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Year – 2025

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NO. 1 OF 2025

NEWSLETTER

January 2025

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For Judicial Service Aspirants

In the service of Judicial Fraternity

1. Study Material-Law

Uniform Civil Code in Uttarakhand

Uttarakhand becomes the first state in India to implement the Uniform Civil Code (UCC) from January 27, 2025. The UCC standardizes personal laws related to marriage, divorce, inheritance, and more, ensuring gender equality and promoting inclusivity.

Uttarakhand has **carved** his name in history by becoming the **first state in India to implement the Uniform Civil Code (UCC)**. Starting today, **January 27, 2025,** the **UCC** will standardize personal laws related to marriage, divorce, inheritance, and more, irrespective of religion or community.

This landmark decision fulfills a key promise made by the **BJP** during the **2022 Uttarakhand Assembly elections** and aligns with **Prime Minister Narendra Modi's vision** of **"One Nation, One Law."**

Why Did Uttarakhand Implement the Uniform Civil Code First?

Uttarakhand has made headlines by **becoming the first state in India** to implement the **Uniform Civil Code (UCC)**, a landmark decision that promises far-reaching social, political, and legal implications. But why did this hill state take such a bold step?

Reasons behind Uttarakhand's move :

1. Uttarakhand's Demographic Diversity & Need for Unity

- Uttarakhand, with its multireligious population, has long faced the challenges of managing religious diversity in personal matters such as marriage, inheritance, and divorce.
- Implementing the UCC is seen as a vital step toward creating legal unity by ensuring that all citizens—regardless of their religion—are treated equally under the law.
- Key benefit: Reduces legal fragmentation by unifying personal laws for all citizens.

2. Championing Gender Equality Through the UCC

- One of the primary drivers for Uttarakhand's Uniform Civil Code implementation is empowering women. Current personal laws across different communities often favor men, especially in areas like property inheritance and divorce.
- The UCC is designed to offer equal rights to women in all communities, ensuring fairness and justice.
- **Key benefit:** Women's empowerment by eliminating gender discrimination in personal laws.

3. Promoting Secularism with a Common Legal Code

- The UCC reflects the secular principles of the Indian Constitution, aiming to establish a common legal framework irrespective of religious beliefs. Uttarakhand's adoption of this law aligns with the goal of minimizing religious influence in personal matters like marriage and inheritance, fostering a more unified, secular society.
- Key benefit: Reinforces secular values by ensuring religion does not dictate civil law.

4. A Bold Political and Social Reform

- Uttarakhand's government, led by the BJP, has demonstrated a clear political will to implement the UCC, reflecting the broader national agenda for legal reforms.
- By doing so, the state not only positions itself as a progressive reformer but also becomes a role model for other states to follow in modernizing legal systems.
- Key benefit: Shows political leadership in driving national legal reform agendas.

5. Reducing Social Polarization with Unified Laws

- Uttarakhand has experienced growing social tensions over issues like interfaith marriages, inheritance disputes, and property rights, all influenced by religious personal laws.
- The UCC is a strategic solution to these challenges, promoting social cohesion and ensuring that all citizens are treated equally, regardless of their background.
- Key benefit: Reduces polarization and enhances social harmony across communities.

6. Responding to Public Demand for Reform

- The UCC is being implemented as part of a broader public demand for a more equitable legal system.
- There is a growing call for legal reforms that ensure fairness, especially in matters like inheritance, marriage, and divorce.
- Uttarakhand's decision directly addresses these demands by offering a fairer, unified approach.
- Key benefit: Meets public demand for fairer, simpler legal frameworks.

7. Uttarakhand Sets a Precedent for Other States

- By implementing the UCC first, Uttarakhand is setting an important precedent for the rest of India. This bold step not only brings immediate legal reforms but also acts as a test case for the national debate on the Uniform Civil Code.
- If successful, Uttarakhand could pave the way for broader national implementation of the UCC.
- Key benefit: Acts as a model state for national legal reforms

What is the Uniform Civil Code?

The Uniform Civil Code (UCC) **is a set of laws designed to replace personal laws based on religious** scriptures and customs. It aims to promote equality and justice by applying the same rules to all citizens in matters like:

- **Marriage and Divorce:** Equal marriageable age, prohibition of polygamy, and restrictions on unfair practices like 'halala.'
- **Inheritance:** Gender-neutral inheritance rights for property and assets.
- **Live-In Relationships:** Legal safeguards for individuals in live-in relationships.
- **Will Provisions:** Simplified and inclusive rules for drafting wills, including unique provisions for defense personnel.

Key Features of Uttarakhand's UCC

Feature	Details
Gender Equality	Equal rights for men and women in marriage, divorce, and property inheritance.
Marriage Registration	Mandatory for all marriages and live-in relationships to ensure legal recognition.
Digital Services	Online platforms established for seamless marriage registration.

Children's Legitimacy	All children are treated as legitimate, irrespective of birth circumstances.
Defense-Specific Wills	Unique "privileged will" provision for defense personnel, allowing oral or written execution.

Timeline of UCC Implementation in Uttarakhand

Milestone	Date	Details
Cabinet Proposal	**March 2022**	The Uttarakhand Cabinet approved the formation of an expert committee to draft the UCC.
Formation of Expert Committee	**May 27, 2022**	Retired Supreme Court judge **Ranjana Prakash Desai was appointed** as the chairperson of the committee.
Draft Submission	**February 2, 2024**	A comprehensive draft was submitted after extensive consultations across various communities.
Legislative Approval	**February 2024**	The Uttarakhand Assembly passed the UCC Bill with overwhelming support.
Presidential Assent	**March 2024**	President **Droupadi Murmu** gave her assent, paving the way for state-wide implementation.
Final Implementation	**January 27, 2025**	Chief Minister **Pushkar Singh Dhami** declared this as the official implementation date.

Why is the UCC Important for Uttarakhand?

- **Promoting Gender Equality:** Eradicates gender biases in personal laws.
- **Simplifying Legal Processes:** Eliminates the complexity of multiple personal laws, making legal proceedings smoother.
- **Strengthening National Unity:** Encourages a sense of inclusiveness among citizens.

Public Reactions: Support and Criticism

Supporters' Viewpoint:

- **Gender Justice:** Eliminates discriminatory practices like polygamy and unequal inheritance laws.
- **Streamlined Legal Framework:** A single set of laws reduces legal complexity and confusion.
- **Unity in Diversity:** Encourages inclusivity among diverse communities.

Critics' Concerns:

- **Cultural Interference:** Critics argue it infringes upon the cultural and religious freedoms of certain communities.
- **Insufficient Consultation:** Some believe more public and community involvement was required during the drafting process.
- **Implementation Challenges:** Resistance from conservative sections of society may create hurdles.

How Uttarakhand Prepared for UCC Implementation

- The state government adopted a phased approach to ensure smooth implementation:
- **Expert Consultations:** Justice (Retd.) Ranjana Prakash Desai's committee consulted stakeholders, including religious groups, legal experts, and social organizations.
- **Drafting the Law:** A comprehensive four-volume draft was prepared, covering all aspects of personal laws.
- **Public Awareness Campaigns:** The government conducted awareness drives to educate citizens about the benefits of the UCC.
- **Digital Infrastructure:** Online portals were set up for efficient marriage registration and grievance redressal.

What's Next?

- Uttarakhand's successful implementation of the UCC may inspire other states to follow suit.
- As the debate over a nationwide Uniform Civil Code intensifies, Uttarakhand's example will likely serve as a model for future initiatives.

States Watching Closely!
Several states, including Gujarat and Himachal Pradesh, have shown interest in exploring the implementation of a UCC.

Conclusion

The implementation of the Uniform Civil Code (UCC) in Uttarakhand is a historic step toward creating a more equitable society. While it has received both praise and criticism, its success will depend largely on effective execution and public acceptance.

As the first Indian state to embrace this progressive reform, Uttarakhand has set a precedent for the rest of the country. Whether this will lead to a nationwide Uniform Civil Code remains a critical question.

B. Important Cases January 2025

Important Supreme Court Cases
January 2025

S.N.	Subject	Case Reference
1.	Tribunal under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 has the power to order the eviction and transfer of possession. Without such a power, the objectives of the 2007 Act, which are to grant speedy, simple and inexpensive remedies to elderly citizens- would be defeated.	Urmila Dixit Vs. Sunil Sharan Dixit and Ors., decided on 02.01.2025
2.	A complaint within the meaning and scope of the Criminal Procedure Code is a complaint filed before a Judicial Magistrate and not an Executive Magistrate. Subsequent mentioning of crucial facts, which the complainant could have stated at the time of lodging of the FIR itself, would raise doubts as it indicates an afterthought. The omission of crucial facts in the FIR cannot be supplemented through witness statements under Section 161 CrPC.	B. N. John Vs. State of U.P. and Anr., decided on 02.01.2025
3.	Mere registration of a will would not make it valid unless the same is not proved as per the requirements of Section 63 of the Indian Succession Act and Section 68 of the Evidence Act. While the first provision pertains to the execution of unprivileged wills, the other one talks about the proof of execution of document.	Leela & Ors. Vs. Muruganantham & Ors., decided on 02.01.2025
4.	Accused who absconded can be prosecuted under Sec. 174A IPC even if proclamation under Sec. 82 Cr.P.C. is extinguished	Daljit Singh Vs. State of Haryana & Anr., decided on 02.01.2025
5.	For Section 354 IPC to apply, criminal force must be used. Further, such application of force must be coupled	Naresh Aneja @ Naresh Kumar Aneja Vs. State of Uttar Pradesh & Anr., decided on

	with intention to outrage a woman's modesty. In order to establish mens rea something better than vague statements must be produced before the court. Mere bald assertions of mental and physical discomfort would not suffice.	02.01.2025
6.	On the account of defective investigation the benefit will not inure to the accused persons on that ground alone. It is well within the domain of the courts to consider the rest of the evidence which the prosecution has gathered such as statement of the eyewitnesses, medical report etc. Accused cannot claim acquittal on the ground of faulty investigation done by the prosecuting agency.	Edakkandi Dineshan @ P. Dineshan & Ors. Vs. State of Kerala, decided on 06.01.2025
7.	Even Section 326 IPC is non-compoundable, the Court can, in exceptional circumstances, invoke its inherent power to give effect to compromise. Such circumstance also includes voluntary settlement between the parties.	H. N. Pandakumar Vs. State of Karnataka, decided on 07.01.2025
8.	Principles that courts must adhere to while appreciating and evaluating evidence in cases based on circumstantial evidence:- (i) The testimony of each prosecution and defence witness must be meticulously discussed and analysed. Each witness's evidence should be assessed in its entirety to ensure no material aspect is overlooked. (ii) Circumstantial evidence is evidence that relies on an inference to connect it to a conclusion of fact. Thus, the reasonable inferences that can be drawn from the testimony of each witness must be explicitly delineated. (iii) Each of the links of incriminating circumstantial evidence should be meticulously examined so as to find out if each one of the circumstances is	Abdul Nassar Vs. State of Kerala & Anr., decided on 07.01.2025

	proved individually and whether collectively taken, they forge an unbroken chain consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. (iv) The judgment must comprehensively elucidate the rationale for accepting or rejecting specific pieces of evidence, demonstrating how the conclusion was logically derived from the evidence. It should explicitly articulate how each piece of evidence contributes to the overall narrative of guilt. (v) The judgment must reflect that the finding of guilt, if any, has been reached after a proper and careful evaluation of circumstances in order to determine whether they are compatible with any other reasonable hypothesis.	
9.	The subsequent suit on the same cause of action would be barred by limitation if filed beyond three years after the rejection of an earlier plaint. Rejected the argument that Order VII Rule 13 CPC justifies filing a fresh suit after the rejection of the earlier plaint. The subsequent suit would be barred by Limitation if filed beyond the period of three years after the rejection of an earlier suit. The subsequent suit would be rejected under Order VII Rule 11(d) CPC being barred under limitation law because Rule 13 does not override the law of limitation i.e., the new suit must still comply with the limitation period under the Limitation Act.	Indian Evangelical Lutheran Church Trust Association Vs. Sri Bala & Co., decided on 08.01.2025
10.	When an application seeking an amendment to plaint is filed due to subsequent developments intrinsically linked to the main cause of action, it	State of West Bengal & Ors. Vs. Pam Developments Pvt. Ltd. & Anr., decided on 09.01.2025

	constitutes a continuous cause of action, and no notice to the government is required under Section 80 CPC.	
11.	A wife, even if she refuses to live with her husband despite a decree of restitution of conjugal rights against her, is entitled to claim maintenance under Section 125 of the Cr.P.C.	Rina Kumari @ Rina Devi @ Reena Vs. Dinesh Kumar Mahto @ Dinesh Kumar Mahato and Anr., decided on 10.01.2025
12.	A subsequent suit filed on a different cause of action would not be subject to the bar under Order II Rule 2 CPC.	Cuddalore Powergen Corporation Ltd Vs. M/S Chemplast Cuddalore Vinyls Limited and Anr., decided on 15.01.2025
13.	A second appeal under Section 100 CPC cannot proceed without framing substantial questions of law	U. Sudheera & Ors. Vs. C. Yashoda and Ors., decided on 17.01.2025
14.	A suit for specific performance does not conclude after the passing of a decree and that the court retains its control even after the decree is passed.	Balbir Singh & Anr. Etc. Vs. Baldev Singh (D) through his LRS. & Ors. Etc., decided on 17.01.2025
15.	A child's legitimacy determines paternity, emphasizing that a child born during a valid marriage is presumed to be the legitimate offspring of parents who had access to each other at the time of conception. The legitimacy and paternity are not distinct concepts and not requiring separate determination. Legitimacy and paternity are inherently intertwined, as the legitimacy of a child directly establishes paternity. If it is proven that the married couple had access to each other at the time of the child's conception, the child is deemed legitimate, thereby establishing the paternity of the couple. Family Court lacks jurisdiction to entertain a plea for paternity claim from the extra-marital affairs.	Ivan Rathinam Vs. Milan Joseph, decided on 28.01.2025
16.	A pendente lite transferee(someone who purchases a suit property during the pendency of the litigation) has no	H. Anjanappa & Ors. Vs. A. Prabhakar & Ors., decided on 29.01.2025

	automatic right to be impleaded in a suit. It said only in exceptional cases, where the transferee's rights are adversely affected or jeopardized, a leave would be granted to the pendente lite transferee (who wasn't impleaded in the suit) to appeal against the decree.	
17.	Magistrate's summoning order must reflect reasons	M/S. JM Laboratories and Ors. Vs. State of Andhra Pradesh and Anr., decided on 30.01.2025

IN THE SUPREME COURT OF INDIA

Urmila Dixit
Vs.
Sunil Sharan Dixit and Ors.
[Civil Appeal No. 10927 of 2024
arising out of SLP (Civil) No. 720 of 2023]

HEADNOTE – Tribunal under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 has the power to order the eviction and transfer of possession. Without such a power, the objectives of the 2007 Act, which are to grant speedy, simple and inexpensive remedies to elderly citizens- would be defeated.

JUDGMENT

Sanjay Karol J.

1. The present appeal arises from the final judgment and order dated 31.10.2022 passed by the High Court of Madhya Pradesh at Jabalpur in Writ Appeal No. 1085 of 2022, whereby the judgment and order dated 02.08.2022 of the Single Judge of the High Court of Madhya Pradesh in Writ Petition No. 11796 of 2022 was set aside.

2. The Single Judge of the High Court had, in turn, affirmed the judgment dated 25.04.2022 passed by the Collector, District Chhatarpur in Case No. 91/Appeal/2021-22 and the judgment dated 27.09.2021 passed by the Sub-Divisional Magistrate and Chairman, Chhatarpur in Case No. 98/B-121/2021-22, allowing the application filed by the Appellant herein under Section 23 of the Maintenance and Welfare of the Parents and Senior Citizens Act, 2007 (hereinafter "the Act") seeking setting aside of Gift Deed dated 09.09.2019.

Factual Matrix

3. The Appellant herein is the mother of the Respondent (son). The subject property was purchased by her on 23.01.1968. On 07.09.2019, the Appellant executed a Gift Deed in favour of the Respondent wherein it has been stated that the donee (Respondent) maintains the donor and makes provision for everything. This deed came to be registered on 09.09.2019. Allegedly, on the same day, a vachan patra / promissory note is executed by the Respondent wherein it has been stated that he will take care of the Appellant till the end of her life and if he does not do so, the Appellant will be at liberty to take back the Gift Deed. The Respondent, before this Court, has alleged this vachan patra to be fabricated.

4. Thereafter, on 24.12.2020, the Appellant filed an application under Sections 22 and 23 of the Act before the Sub Divisional Magistrate, Chhatarpur, alleging that she and her husband were attacked by the Respondent for further transfer of property and that the love and affection between the parties has completely ended. She prayed for setting aside the Gift Deed in question. This application came to be allowed, and the Gift Deed, transferring the property of the Appellant to the Respondent, was declared null and void. The Respondents preferred an appeal against this order, which came to be dismissed vide order dated 25.04.2022.

5. The Respondents, aggrieved, filed a Writ Petition bearing number 11796/2022 before the High Court of Madhya Pradesh, at Jabalpur. The Single Judge affirmed the orders of the Courts below while observing that the Respondents had not approached the Court with clean hands and had failed to serve their parents who are senior citizen. The orders of the Courts below were held to be well-reasoned and in consonance with the Act.

6. A Writ Appeal was preferred thereafter, assailing the order of the Single Judge which has been allowed vide the impugned order. The Division Bench of the High Court, while setting aside the judgments of the Ld. Single Judge, vide the impugned order, made the following observations:-

6.1 Section 23 of the Act is a standalone provision, and the function of the Tribunal is only to find out whether the condition in the gift deed or otherwise contains a clause providing for basic amenities and whether the transferee has refused or failed to provide them. There is no other jurisdiction vested with the Tribunal.

6.2 No condition is there in the gift deed dated 09.09.2019 for maintenance of the transferor.

6.3 The argument relating to the affidavit dt. 07.09.2019, cannot be accepted. If the intention of the parties was such, the gift deed should have had a clause to the same effect.

Issues for Consideration

7. We have heard Ms. V. Mohana, learned senior counsel for the Appellant, and Ms. Madhavi Divan, learned senior counsel appearing for the Respondents. We have also perused the written submissions filed by both sides. The issue which arises for consideration of this Court is whether the High Court was correct in setting aside the order of the Tribunal, granting benefit of Section 23 of the Act, to the Appellant?

8. To answer the issue at hand, it is imperative for this Court to discuss the rules of interpretation to be applied when interpreting a beneficial legislation akin to the Act at hand. While dealing with certain provisions of the Motor Vehicles Act, this Court, in Brahmpal v. National Insurance Company1, observed that a beneficial legislation must receive a liberal construction in consonance with the objectives that the concerned Act seeks to serve.

9. This Court in K.H. Nazar v. Mathew K. Jacob2 reiterated the above expositions and stated that:

"11. Provisions of a beneficial legislation have to be construed with a purpose-oriented approach. [Kerala Fishermen's Welfare Fund Board v. Fancy Food, (1995) 4 SCC 341] The Act should receive a liberal construction to promote its objects. [Bombay Anand Bhavan Restaurant v. ESI Corpn., (2009) 9 SCC 61 : (2009) 2 SCC (L&S) 573 and Union of India v. Prabhakaran Vijaya Kumar, (2008) 9 SCC 527 : (2008) 3 SCC (Cri) 813] Also, literal construction of the provisions of a beneficial legislation has to be avoided. It is the Court's duty to discern the intention of the legislature in making the law. Once such an intention is ascertained, the statute should receive a purposeful or functional interpretation [Bharat Singh v. New Delhi Tuberculosis Centre, (1986) 2 SCC 614 : 1986 SCC (L&S) 335]

13. While interpreting a statute, the problem or mischief that the statute was designed to remedy should first be identified, and then a construction that suppresses the problem and advances the remedy should be adopted. [Indian Performing Rights Society Ltd. v. Sanjay Dalia, (2015) 10 SCC 161 : (2016) 1 SCC (Civ) 55] It is settled law that exemption clauses in beneficial or social welfare legislations should be given strict construction [Shivram A. Shiroor v. Radhabai Shantram Kowshik, (1984) 1 SCC 588].

It was observed in Shivram A. Shiroor v. Radhabai Shantram Kowshik [Shivram A. Shiroor v. Radhabai Shantram Kowshik, (1984) 1 SCC 588] that the exclusionary provisions in a beneficial legislation should be construed strictly so as to give a wide amplitude to the principal object of the legislation and to prevent its evasion on deceptive grounds. Similarly, in Minister Administering the Crown Lands Act v. NSW Aboriginal Land Council [Minister Administering the Crown Lands Act v. NSW Aboriginal Land Council, 2008 HCA 48: (2008) 237 CLR 285], Kirby, J. held that the principle of providing purposive construction to beneficial legislations mandates that exceptions in such legislations should be construed narrowly."

(emphasis supplied)

10. More recently, in Kozyflex Mattresses (P) Ltd. v. SBI General Insurance Co. Ltd.3, this Court held the definition of a consumer under the Consumer Protection Act, 1986 to include a company or corporate person in view of the beneficial purpose of the Act.

11. While considering the provisions of the Medical Termination of Pregnancy Act, this Court in X2 v. State (NCT of Delhi)4, reiterated that interpretation of the provisions of a beneficial legislation must be in line with a purposive construction, keeping in mind the legislative purpose. Furthermore, it was stated that beneficial legislation must be interpreted in favour of the beneficiaries when it is possible to take two views.

12. It is in the above background that we must proceed to examine the Act. The statement of object and reasons of the Act indicates the purpose behind the enactment, as relied upon by this Court in S. Vanitha v. Deputy Commissioner, Bengaluru Urban District and Ors.5, is:

"Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time-consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents."

13. The preamble of the Act states that it is intended towards more effective provisions for maintenance and welfare of parents and senior citizens, guaranteed and recognised under the Constitution.

14. Therefore, it is apparent, that the Act is a beneficial piece of legislation, aimed at securing the rights of senior citizens, in view of the challenges faced by them. It is in this backdrop that the Act must be interpreted and a construction that advances the remedies of the Act must be adopted.

15. Before adverting to the provisions of the Act, we must be cognizant of the larger issue that this case presents, i.e., the care of senior citizens in our society. This Court in Vijaya Manohar Arbat Dr v. Kashirao Rajaram Sawai and Anr.6 highlighted that it is a social obligation for both sons and daughters to maintain their parents when they are unable to do so.

16. In Badshah v. Urmila Badshah Godse and Anr.7, this Court observed that when a case pertaining to maintenance of parents or wife is being considered, the Court is bound to advance the cause of social justice of such marginalised groups, in furtherance of the constitutional vision enshrined in the preamble. Recently, this exposition came to be reiterated in Rajnesh v. Neha and Another8.

17. While issuing a slew of directions for the protection of senior citizens in Ashwani Kumar v. Union of India9, this Court had highlighted:

"3. The rights of elderly persons is one such emerging situation that was perhaps not fully foreseen by our Constitution-framers. Therefore, while there is a reference to the health and strength of workers, men and women, and the tender age of children in Article 39 of the Constitution and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want in Article 41 of the Constitution, there is no specific reference to the health of the elderly or to their shelter in times of want and indeed to their dignity and sustenance due to their age.

4. Eventually, age catches up with everybody and on occasion, it renders some people completely helpless and dependent on others, either physically or mentally or both. Fortunately, our Constitution is organic and this Court is forward looking. This combination has resulted in path-breaking developments in law, particularly in the sphere of social justice, which has been given tremendous importance and significance in a variety of decisions rendered by this Court over the years. The present petition is one such opportunity presented before this Court to recognise and enforce the rights of elderly persons-rights that are recognised by Article 21 of the Constitution as understood and interpreted by this Court in a series of decisions over a period of several decades, and rights that have gained recognition over the years due to emerging situations."

(emphasis supplied)

18. Keeping in mind the beneficial intention of the statute and the above expositions, we now proceed to consider the issue at hand.

19. Section 23 of the Act reads:

23. Transfer of property to be void in certain circumstances.-

(1) Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made

by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.

(2) Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.

(3) If, any senior citizen is incapable of enforcing the rights under sub-section (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of Section 5.

20. In Sudesh Chhikara v. Ramti Devi and Anr.10, this Court refused to grant the benefit of Section 23 in the absence of an averment that the transfer in question was subject to a condition for maintenance of the parents. It was observed:

"14. When a senior citizen parts with his or her property by executing a gift or a release or otherwise in favour of his or her near and dear ones, a condition of looking after the senior citizen is not necessarily attached to it. On the contrary, very often, such transfers are made out of love and affection without any expectation in return. Therefore, when it is alleged that the conditions mentioned in subsection (1) of Section 23 are attached to a transfer, existence of such conditions must be established before the Tribunal."

(emphasis supplied)

21. Furthermore, in Sudesh (supra) for attracting the application of Section 23(1), the following essentials were expounded:

(a) The transfer must have been made subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor; and

(b) The transferee refuses or fails to provide such amenities and physical needs to the transferor.

22. Adverting to the facts at hand, we find that there are two documents on record. One, a promissory note dated 07.09.2019 which records that the promisor (Respondent) shall serve the Appellant and her husband till the end of their life, and in the absence of him fulfilling such obligation, the subsequent deed can be taken back by the Appellant. Second, the Gift Deed dated 07.09.2019 also records a similar condition, i.e. the donee maintains the donor, and the former makes all necessary provisions for the peaceful life of the Appellant-donor. Both these documents were signed simultaneously.

23. The Appellant has submitted before us that such an undertaking stands grossly unfulfilled, and in her petition under Section 23, it has been averred that there is a breakdown of peaceful relations inter se the parties. In such a situation, the two conditions mentioned in Sudesh (supra) must be appropriately interpreted to further the beneficial nature of the legislation and not strictly which would render otiose the intent of the legislature.

Therefore, the Single Judge of the High Court and the tribunals below had rightly held the Gift Deed to be cancelled since the conditions for the well-being of the senior citizens were not complied with. We are unable to agree with the view taken by the Division Bench, because it takes a strict view of a beneficial legislation.

24. Before parting with the case at hand, we must clarify the observations made vide the impugned order qua the competency of the Tribunal to hand over possession of the property. In S. Vanitha (supra), this Court observed that Tribunals under the Act may order eviction if it is necessary and expedient to ensure the protection of the senior citizen. Therefore, it cannot be said that the Tribunals constituted under the Act, while exercising jurisdiction under Section 23, cannot order possession to be transferred. This would defeat the purpose and object of the Act, which is to provide speedy, simple and inexpensive remedies for the elderly.

25. Another observation of the High Court that must be clarified, is Section 23 being a standalone provision of the Act. In our considered view, the relief available to senior citizens under Section 23 is intrinsically linked with the statement of objects and reasons of the Act, that elderly citizens of our country, in some cases, are not being looked after. It is directly in furtherance of the objectives of the Act and empowers senior citizens to secure their rights promptly when they transfer a property subject to the condition of being maintained by the transferee.

26. In view of the above, the impugned judgment and order with the particulars as described in paragraph one of this judgment, is set aside. Consequently, the Gift Deed dated 07.09.2019 is quashed. In the attending facts and circumstances of this case, the Appeal is allowed. Possession of the premises shall be restored to the Appellant by 28.02.2025.

27. The Registry is directed to communicate this judgment to the concerned authorities of the State of Madhya Pradesh who shall ensure compliance. Pending applications, if any, shall stand disposed of.

.....J. (C.T. Ravikumar)

.....J. (Sanjay Karol)

1 (2021) 6 SCC 512

2 (2020) 14 SCC 126

3 (2024) 7 SCC 140

4 (2023) 9 SCC 433

5 (2021) 15 SCC 730

6 (1987) 2 SCC 278

7 (2014) 1 SCC 188

8 (2021) 2 SCC 324

9 (2019) 2 SCC 636

10 2022 SCCOnline SC 1684

IN THE SUPREME COURT OF INDIA

B. N. John

Vs.

State of U.P. and Anr.

[Criminal Appeal No._____ of 2025

@ SLP (Crl.) No. 2184 of 2024]

HEADNOTE – A complaint within the meaning and scope of the Criminal Procedure Code is a complaint filed before a Judicial Magistrate and not an Executive Magistrate.

Subsequent mentioning of crucial facts, which the complainant could have stated at the time of lodging of the FIR itself, would raise doubts as it indicates an afterthought. The omission of crucial facts in the FIR cannot be supplemented through witness statements under Section 161 CrPC.

JUDGMENT

Nongmeikapam Kotiswar Singh, J.

1. Leave granted.

2. The present appeal has been preferred being aggrieved by the judgment dated 22.09.2023 passed by the High Court of Judicature at Allahabad under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC' for short) in Application No. 35311 of 2023 by which the appellant's plea for quashing of the chargesheet No.162 of 2015 dated 20.06.2015, order dated 11.08.2015 taking cognizance and issuing summons, and the entire proceedings in Case No. 9790 of 2015 arising out of Case Crime No. 290 of 2015 under Sections 353 and 186 of the Indian Penal Code, 1860 ('IPC' for short), P.S. Cantt. District Varanasi, U.P., was rejected.

FACTUAL BACKGROUND

3. It is the plea of the appellant that he is the owner of the premises and was in charge of managing & maintaining the hostel, which was being operated by a Non-Governmental Organization, named Sampoorna Development India. This hostel at the relevant time was used for underprivileged children by providing facilities for their accommodation, education and other needs.

3.1 According to the appellant, because of certain personal disputes with one K.V. Abraham, the latter instituted six false cases against him, four of them resulted in his acquittal, while in the other two discharge applications are pending. According to the appellant, it was at the instance of the said Abraham that the officials conducted a raid in the said hostel arbitrarily without authorization and also without providing any prior notice, alleging that provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 ('JJ Act' for short) as applicable then, were not followed in running and managing the said hostel.

3.2 It is the allegation of the appellant that the officials illegally conducted the raid on 03.06.2015 and sought to transfer the children accommodated in the said hostel to some other location purportedly on the ground that the hostel was being run without proper authorization from the competent authority under the JJ Act.

3.3. It was further contended that a false allegation was made against the appellant that he, along with his party, had attacked and assaulted the officials while they were conducting the raid in connection with which an FIR came to be lodged against the appellant and his wife, which was registered as FIR No. 290 of 2015 dated 03.06.2015 at the PS Cantt. District, Varanasi under Section 353 of the IPC.

3.4. On the basis of the said FIR, the appellant was arrested on 08.06.2015. However, he was granted bail on the same day. Subsequently, on completion of the investigation, charge-sheet was filed before the Court of Chief Judicial Magistrate, Varanasi in connection with the said FIR on 20.06.2015 alleging commission of offences under Sections 353 and 186 of the IPC.

3.5. Pursuant to the filing of the chargesheet, the Chief Judicial Magistrate, Varanasi took cognizance and issued summons to the appellant vide order dated 11.08.2015, against which the appellant submitted an application for recalling the said order, which is pending before the Court of CJM, Varanasi.

3.6. According to the appellant, a complaint alleging commission of an offence under Section 186 of the IPC would be maintainable only if it is preceded by a complaint filed by a public servant as mentioned under Section 195 (1)(a) of the CrPC before the court/Magistrate, but there was no such prior complaint filed by any public servant before the Magistrate. Further, though the FIR was filed under Section 353 of the IPC, there were no ingredients to make out a case under the said section.

It is also the case of the appellant that the authorities had maliciously invoked the penal provision of Section 353 of the IPC in the FIR merely to make out a cognizable offence against the appellant to enable the Magistrate to take

cognizance, even though there was no case of any assault or use of criminal force by the appellant to deter any public servant from discharging his duty. Hence, taking cognizance of the said FIR by the CJM, Varanasi under Section 353 of the IPC was unwarranted and illegal.

3.7 Accordingly, the appellant approached the Allahabad High Court invoking jurisdiction under Section 482 of the CrPC seeking quashing of the aforesaid proceedings, that is, Crime Case No. 290 of 2015 pending before the CJM, Varanasi and orders taking cognizance and issuing summons in that regard.

3.8 The Allahabad High Court on perusal of the FIR No.290/15 and the statement of witnesses recorded under Section 161 of the CrPC held that a prima facie case has been made out against the appellant for being summoned and for prosecution under the aforesaid Sections 353 and 186 of the IPC and declined his plea for quashing the aforesaid criminal case which was pending before the CJM, Varanasi.

3.9 While dismissing the petition filed by the appellant, the Allahabad High Court referred to an earlier decision of the High Court in rejecting the application filed by the co-accused seeking quashing of the aforesaid proceedings under Section 482 of the CrPC which was affirmed by this Court on 13.04.2017 by dismissing the SLP in limine.

In the present impugned order, the High Court observed that the allegations against the present appellant and co-accused are same as well as the evidence collected against them and since the plea of quashing the charge sheet and cognizance taken against the said co-accused had already been rejected on merits by the High Court, which was not disturbed by this Court, no interference was warranted for quashing the proceedings under Section 482 of the CrPC, filed by the present appellant and dismissed the petition. Accordingly, the appellant is before us.

SUBMISSION OF THE APPELLANT

4. It is the specific plea of the appellant that cognizance in respect of an offence under Section 186 of the IPC can be taken by the court only after a complaint is made in writing by the public servant to the court as provided under Section 195 (1) of the Cr.P.C. It has been submitted that in the present case no such written complaint was filed by any public official as also ascertained by him from the concerned authority through an application filed to the competent authority under the Right to Information Act, 2005, whereby he was informed that no written complaint was filed before the court by any public servant in connection with Case No. 9790 of 2015 (State Vs B.N. John and Anr.).

4.1 Further, for invoking the provision of Section 353 of the IPC there must be a clear allegation of assault or criminal force by the accused for preventing the public servant from discharging his duty. However, a careful reading of the FIR would indicate that no such allegation was made against the appellant of using criminal force or assault and accordingly, even if the allegations made in the FIR are taken at their face value, it does not disclose the commission of any cognizable offence as contemplated under Section 353 of the IPC.

4.2 Accordingly, it has been submitted that taking cognizance by the CJM, Varanasi, of the aforesaid case under the stated facts and circumstances is quite illegal and perverse in law, as such, the same ought to have been quashed by the Allahabad High Court. It was contended that the Allahabad High Court, however, had misdirected itself by observing that a prima facie case is made out on the basis of the contents of the FIR and the statement of the witnesses recorded under Section 161 CrPC.

4.3 It has also been contended that the Allahabad High Court in the present case ought not to have taken into consideration the order passed in respect of the other co-accused, as the legal issues as highlighted in this appeal, were not considered by the Allahabad High Court while rejecting the plea of the co-accused for quashing the complaint. As such, the said decision cannot be used against the present appellant.

PLEA OF THE RESPONDENT

5. Per contra, it has been submitted on behalf of the State that the decision rendered by the Allahabad High Court is in consonance with the law and no grievance can be made as the High Court had applied the relevant law to the facts of the present case. Further, it has also been submitted that this Court must be very slow in interfering with a reasoned order passed by the High Court, and the impugned order cannot be said to be perverse, illegal, or without any jurisdiction. It was contended that merely because a different view could have been taken by the High Court, it does not render the decision of the High Court illegal, warranting interference from this Court, and the High Court passed the order after going through the records.

ANALYSIS

6. We have heard learned counsel for the parties and perused the record.

7. As far as quashing of criminal cases is concerned, it is now more or less well settled as regards to the principles to be applied by the court. In this regard, one may refer to the decision of this Court in State of Haryana Vs. Ch. Bhajan Lal and Ors., 1992 Supp. (1) SCC 335 wherein this Court has summarized some of

the principles under which FIR/complaints/criminal cases could be quashed in the following words:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for

wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

(emphasis added)

8. Of the aforesaid criteria, clauses no. (1), (4) and (6) would be of relevance to us in this case. In clause (1) it has been mentioned that where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, then the FIR or the complaint can be quashed.

As per clause (4), where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by police officer without an order dated by the Magistrate as contemplated under Section 155 (2) of the CrPC, and in such a situation, the FIR can be quashed. Similarly, as provided under clause (6), if there is an express legal bar engrafted in any of the provisions of the CrPC or the concerned Act under which the criminal proceedings is instituted, such proceeding can be quashed.

9. Our criminal justice system, rooted in the rule of law, contemplates different approaches for dealing with serious and non-serious offences. When complaints pertaining to serious offences are filed, which are generally categorized as cognizable offences under the CrPC, the police, on receiving such information of the commission of a cognizable offence can immediately start the investigation as contemplated under Section 156 of the CrPC. On the other hand, when it relates to non-serious offences which are generally categorized as non-cognizable offences, the law is more circumspect in letting the full force of the criminal justice system operate.

When it is related to non-cognizable offence there are certain safeguards put in place so that the invasive, intrusive, and coercive power of the police is not immediately brought into operation, as enabled under Section 156 of the CrPC. In such a situation any complaint alleging commission of non-serious offence(s) or non-cognizable offence(s) made before the police, has to be vetted by a legally trained person in the presence of a Judicial Magistrate before the police can initiate the investigation.

Thus, even if the police receives any such complaint relating to non-cognizable offence, the police cannot start investigation without there being a green signal from the Magistrate. Further, when such noncognizable offence(s) pertaining to officials who are obstructed from discharging their official duties, there is the additional safeguard before the Magistrate which permits the investigating

authority to investigate. It must be preceded by a complaint filed by a public servant before the court/Magistrate. This is to ensure that only genuine complaints relating to non-serious offences or non-cognizable offences are entertained by the Magistrate.

This is so for the reason that in a democracy, interactions of the citizen with the public servants is more frequent in wherein there may be instances where the members of the public cause obstruction to public servants preventing them from discharging public duties properly. With these safeguards, the fine balance between the liberties of the citizens and the imperatives of the State endowed with coercive authority to maintain law and order is preserved.

10. Keeping the aforesaid principles and aspects in mind, we shall proceed to examine the issues and contentions of the parties before us. 11. Chapter XII of the CrPC deals with information given to the police and their powers to investigate. Section 155 (2) of the CrPC provides that when information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

Section 155(2) of the CrPC further provides that no police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such a case or commit the case for trial. Relevant portions of Section 155 of the CrPC reads as under:

"155. Information as to non-cognizable cases and investigation of such cases.-

(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial." Thus, there is a specific bar on the police to investigate any such non-cognizable offence, without the order of a Magistrate.

12. However, no such bar has been placed when it relates to a cognizable offence as provided under Sections 154 and 156 of the CrPC, under which, any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case that a court having jurisdiction over the local area within the

limits of such station would have power to inquire into or try under the provisions of Chapter XII, as reproduced herein below:

"154. Information in cognizable cases.-

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf:

Provided that if ....."

"156. Police officer's power to investigate cognizable case.-

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) ....."

13. While Section 155 of the CrPC deals with all non-cognizable offences, where the police cannot investigate without a prior order of the Magistrate, Section 195 of the CrPC provides additional conditions under which the Magistrates can take cognizance in respect of certain kinds of non-cognizable offences as mentioned in the said section, which includes Section 186 of the IPC with which we are directly concerned, only after a written complaint is filed by the concerned public servant to the court/Magistrate. Relevant portions of Section 195 of the CrPC read as follows:

"195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

(1) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate; ....."

14. Since, the appellant has been charged for committing offences under Sections 186 and 353 of the IPC, it may be appropriate to reproduce the same. Section 186 of the IPC reads as follows:

"186. Obstructing public servant in discharge of public functions.-

Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both. Section 353 of the IPC reads as follows:

"353. Assault or criminal force to deter public servant from discharge of his duty.-

Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person to the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

15. A bare perusal of Section 195 (1) of the CrPC clearly indicates that there is a bar on the court to take cognizance of any offence punishable under Section 172 to 188 (both inclusive) of the IPC except on a complaint in writing made by the concerned public servant to the court.

Therefore, if it is found as contended by the appellant that in respect of the offence under Section 186 of the IPC against him, no such complaint was filed by the concerned public servant as contemplated under Section 195 (1)(a) CrPC, the CJM could not have taken cognizance of the offence under Section 186 of the IPC. In this regard, the appellant has specifically pleaded to which there is no rebuttal from the State that no such complaint was made in writing by a public servant as required under Section 195(1) of the CrPC relating to the commission of offence by the appellant under Section 186 of the IPC.

16. The State has, however, made a feeble attempt to show that there was indeed a complaint filed by the District Probation Officer to the City Magistrate, Varanasi, on 03.06.2015, alleging that the appellants and his party were creating obstructions to the officials in the process of sending the minor children residing in the institution run illegally by Sampoorn Development India to other approved

institutions and requested the City Magistrate to take cognizance of the same and take legal action. The aforesaid complaint reads as follows:

"To,
City magistrate
Varanasi

Sir,

By your order dated June 3, 2015, letter no. 1346, Mr B.N. John, Ms Susan John and their people are creating obstruction in the process of sending the minor children residing in the non-legal institution run by the Sampoorna Development Trust to other Institutions legally. Please take cognizance of this and take further legal action.

Sincerely
Prabhat Ranjan
03/06/2013

District Probation Officer.
Station Head Cantt/CO Cantt.
S/O is creating obstruction in important work necessary action."

17. A careful examination of the aforesaid letter, however, would reveal the following crucial aspect. The said letter in the form of complaint is addressed to the City Magistrate and not to any Judicial Magistrate. As to what is a complaint is defined under Section 2 (d) of the CrPC which reads as follows:

"2. Definitions.- In this Code, unless the context otherwise requires,

(a) .....

(b) .....

(c) .....

(d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report. Thus, a complaint within the meaning and scope of the Criminal Procedure Code would mean such a complaint filed before a Judicial Magistrate and not an Executive Magistrate.

18. As regards the difference between a Judicial Magistrate and an Executive Magistrate, it has been clarified by this Court in Gulam Abbas v. State of U.P., (1982) 1 SCC 71 as follows:

"24. Turning to the 1973 Code itself the scheme of separating Judicial Magistrates from Executive Magistrates with allocation of judicial functions to the former and the executive or administrative functions to the latter, as we shall presently indicate, has been implemented in the Code to a great extent.

Section 6 provides that there shall be in every State four classes of criminal courts, namely, (i) Courts of Session, (ii) Judicial Magistrates of the First class and, in any metropolitan area, Metropolitan Magistrates;(iii) Judicial Magistrates of the Second Class; and (iv) Executive Magistrates; Sections 8 to 19 provide inter alia for declaration of metropolitan area, establishment of Courts of Session, Courts of Judicial Magistrates, Courts of Metropolitan Magistrates and appointments of Sessions Judges, Additional Sessions Judges, Assistant Sessions Judges, Chief Judicial Magistrates, Judicial Magistrates, Chief Metropolitan Magistrates and Metropolitan Magistrates together with inter se subordination, but all appointments being required to be made by the High Court, while Sections 20, 21, 22 and 23 deal with appointments of District Magistrates, Additional District Magistrates, Executive Magistrates, Sub-Divisional Magistrates and Special Executive Magistrates and their respective jurisdictions in every district and metropolitan area together with inter se subordination, but appointments being made by the State Government.

Chapter III comprising Sections 26 to 35 clearly shows that Executive Magistrates are totally excluded from conferment of powers to punish, which are conferred on Judicial Magistrates; this shows that if any one were to commit a breach of any order passed by an Executive Magistrate in exercise of his administrative or executive function he will have to be challenged or prosecuted before a Judicial Magistrate to receive punishment on conviction.

Further, if certain sections of the present Code are compared with the equivalent sections in the old Code it will appear clear that a separation between judicial functions and executive or administrative functions has been achieved by assigning substantially the former to the Judicial Magistrates and the latter to the Executive Magistrates.

For example, the power under Section 106 to release a person on conviction of certain types of offences by obtaining from him security by way of execution of bond for keeping peace and good behaviour for a period not exceeding three years - a judicial function is now exclusively entrusted to a Judicial Magistrate whereas under Section 106 of the old Code such power could be exercised by a Presidency Magistrate, a District Magistrate or Sub-Divisional Magistrate; but

the power to direct the execution of a similar bond by way of security for keeping peace in other cases where such a person is likely to commit breach of peace or disturb the public tranquillity - an executive function of police to maintain law and order and public peace which was conferred on a Presidency Magistrate, District Magistrate, etc. under the old Section 107 is now assigned exclusively to the Executive Magistrate under the present Section 107; Chapter X of the new Code deals with the topic of maintenance of public order and tranquillity and in that Chapter Sections 129 to 132 deal with unlawful assemblies and dispersal thereof, Sections 133 to 143 deal with public nuisance and abatement or removal thereof, Section 144 deals with urgent cases of nuisance and apprehended danger to public tranquillity and Sections 145 to 148 deal with disputes as to immovable properties likely to cause breach of peace - all being in the nature of executive ("police") functions, powers in that behalf have been vested exclusively in Executive Magistrates whereas under equivalent provisions under the old Code such powers were conferred indiscriminately on any Magistrate, whether Judicial or Executive.

In particular it may be stated that whereas under the old Section 144 the power to take action in urgent cases of nuisance or apprehended danger to public tranquillity had been conferred on "a District Magistrate, a Chief Presidency Magistrate, a Sub-Divisional Magistrate or any other Magistrate, specially empowered by the State Government", under the present Section 144 the power has been conferred on "a District Magistrate, a Sub-Divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in that behalf".

Having regard to such implementation of the concept of separation of judicial functions from executive or administrative functions and allocation of the former to the Judicial Magistrates and the latter to the Executive Magistrates under the Code of 1973, it will be difficult to accept the contention of the counsel for Respondents 5 and 6 that the order passed by a District Magistrate, Sub-Divisional Magistrate or any other Executive Magistrate under the present Section 144 is a judicial or quasijudicial order, the function thereunder being essentially an executive (police) function."

19. Since the Magistrate referred to under Section 155 under Chapter XII of the CrPC refers to a Magistrate who has the power to try such case or commit the case for trial and thus exercises judicial function, he has to be a Judicial Magistrate. Further, under Section 195 (1) of the CrPC read with Section 2 (d) of the CrPC, the complaint, has to be filed before the court taking cognizance, and the complaint which is required to be filed under Section 195 (1) of the CrPC, can only be before a Judicial Magistrate and not an Executive Magistrate who does not have the power to take cognizance of an offence or try such cases.

20. In the present case, since the complaint was filed before the City Magistrate and not before a Judicial Magistrate, the requirement of Section 195 (1) of the CrPC was not fulfilled.

21. Under such circumstances, we are satisfied that the appellant has been able to make out a case that taking cognizance of the offence under Section 186 of the IPC by the Court of CJM, Varanasi, was illegal, as before taking such cognizance it was to be preceded by a complaint in writing by a public servant as required under Section 195(1) of the CrPC. A written complaint by a public servant before the court takes cognizance is sine qua non, absence of which would vitiate such cognizance being taken for any offence punishable under Section 186 of the IPC.

22. This leads us to the next consideration as to whether taking cognizance of the offence under Section 353 of the IPC by the CJM, Varanasi, was in order or not.

23. For a prohibited act to come within the scope of the offence under Section 353 of the IPC, such an act must qualify either as an assault or criminal force meant to deter public servant from discharge of his duty. Obviously, such an act cannot be a mere act of obstruction which is an offence under Section 186 of the IPC. The offence contemplated under Section 353 of the IPC is of a more serious nature involving criminal force, or assault which attracts more stringent punishment that may extend to two years.

On the other hand, the offence of obstruction covered under Section 186 of the IPC is punishable by imprisonment, which may extend to three months at the maximum. A close examination of Section 353 of the IPC would indicate that to invoke the aforesaid offence, there must be use of criminal force or assault on any public servant in the execution of his official duty or with the intent to prevent or deter such public servant from discharging his duty.

It would be clear from a reading of the provisions of Section 186 as well as Section 353 of the IPC that Section 353 of the IPC is the aggravated form of offence where criminal force or assault is involved. Unlike in the case of Section 186 of the IPC where voluntarily obstructing any public servant in discharge of his official function is sufficient to invoke the said section, in the case of offence under Section 353 of the IPC as mentioned above, not only obstruction but actual use of criminal force or assault on the public servant is necessary.

24. In the present case, however, what can be seen from a perusal of the contents of the FIR, is that no such allegation of assault or use of criminal force has been made. The aforesaid FIR is based on the complaint filed by the District Probation Officer, which has already been quoted above, and the same has been reproduced verbatim in the said FIR in which only the allegation of creating disturbance has been made.

25. In the FIR there is no allegation of use of criminal force or assault by the appellant so as to invoke the provision of Section 353 of the IPC. It is to be remembered that a criminal process is initiated only with the lodging of an FIR. Though FIR is not supposed to be an encyclopedia containing all the detailed facts of the incident and it is merely a document that triggers and sets into motion the criminal legal process, yet it must disclose the nature of the offence alleged to have been committed as otherwise, it would be susceptible to being quashed as held in Bhajan Lal's case (supra) (vide clause 1 of Para 102 of the decision). This Court in CBI v. Tapan Kumar Singh, (2003) 6 SCC 175 observed as follows:

"20. It is well settled that a first information report is not an encyclopaedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eyewitness so as to be able to disclose in great detail all aspects of the offence committed.

What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information."

(emphasis added)

26. However, a perusal of the FIR in issue does not at all indicate the commission of any crime of use of criminal force or assault by the appellant to the public servant, except for the offence of obstruction which is punishable under Section 186 of the IPC. As such the ingredients of offence under Section 353 of the IPC are clearly absent in the FIR. To that extent, we are in agreement with the appellant that since no ingredient for the offence under Section 353 of the IPC is found in the FIR, taking cognizance by the CJM of an offence that is not made out in the FIR does not appear to be correct.

27. The High Court, however, has held that on a perusal of the contents of the FIR and the statement made by the witnesses recorded under Section 161 of the CrPC, it can be said that a prima facie case has been made out against the appellant for commission of offences under Section 353 and Section 186 of the IPC. It is to be noted that the FIR was filed under Section 353 of the IPC without

mentioning Section 186 of the IPC. What is to be noted in the present case is that if the appellant had actually used criminal force or had assaulted the public servants, which would bring the said acts within the scope of Section 353 of the IPC, nothing prevented the complainant from mentioning the same in the FIR being the first information.

If such vital and crucial facts are missing from the FIR of which the complainant was fully aware of and was already cognizant of, which he could have mentioned at the first instance, it would indicate that any subsequent mentioning of these facts in the case by the complainant would be an afterthought as has happened in the present case. The alleged fact of assault, or use of criminal force by the appellant could not be said to have been discovered at a later point of time, as these offensive acts, if really had happened, would have happened before the filing of the FIR/complaint and thus should have found mention in the FIR.

These acts were not something that had happened at a later point of time, but would have been known to the complainant had these happened when the complainant and official party were raiding the hostel managed by the appellant. Thus, the absence of mentioning these alleged acts which would constitute ingredients of the offence under Section 353 of the IPC, renders the FIR legally untenable as far as the offence under Section 353 of the IPC is concerned. We do not see any reason why the complainant failed to mention in the FIR the alleged use of criminal force or assault of the public servants to prevent them from discharging their official duties when they were raiding the premises.

28. It appears from the impugned order of the High Court that the High Court also perused the statements of the witnesses recorded under Section 161 of the CrPC during the investigation. We have also gone through these statements made by Sh. Prabhat Ranjan, District Probation Officer; Sh. Satyendra Nath Shukla, City Magistrate; Sh. Vindhavasini Rai, Addl. District Magistrate; and Sh. Surendra Dutt Singh, ACM-IV.

What is interesting to note is that Sri Prabhat Ranjan, the District Probation Officer, Varanasi, who filed the complaint to the City Magistrate stated in his statement recorded under Section 161 of the CrPC that the people in the hostel premises attacked the official team, and thereafter, the FIR was lodged. However, when the FIR was lodged soon after the alleged incident of attack on the officials, nothing was mentioned in the complaint filed by him about the attack, which was the basis for registering the FIR, which we are unable to comprehend. If indeed there was an attack as alleged, it should have found mention in the FIR or the written complaint filed before the City Magistrate soon after the incident.

29. We have also perused the statement of Sri Satyendra Nath Shukla, the City Magistrate who in his statement recorded under Section 161 of the CrPC on

20.06.2015, stated that the people in the hostel premises "were creating obstruction in the government work in the proceeding being carried out. In such a situation, when asked to submit the records again, the husband, wife and some other people along with them became aggressive by speaking loudly, due to which, while somehow trying to escape, around 5:30 pm, the husband, the wife and others created a difficult situation by obstructing the work, which did not allow the rescue to be completed successfully.

After this some children were rescued by the Women District Program Officer with the help of the District Horticulture officer, and the children were sent to Ramnagar, after which they were freed. Then when we asked for the record, Ben John spoke loudly, and his wife and other children got very angry and seemed to be intent on becoming forceful. After this, the District Probation Officer came to me with an application regarding obstruction and assault in government work, on which I passed the order and the SHO Cantt registered a case."

On examination of the said statement of the City Magistrate, we are of the view that even if the said statement is taken at its face value, it does not disclose any ingredient of criminal force or assault to make the offence under Section 353 of the IPC, except for making a bald statement that they were aggressive without disclosing in what manner the officials were obstructed or attacked.

30. We have also gone through the statement made by Sri Surendra Dutt Singh, ACM, 4th District. While he mentions that the appellant and others became aggressive and attacked all the officers, nothing has been mentioned as to how they were attacked, but only a very generalized allegation has been made without specifics. Similarly, the other witnesses also stated the same effect.

31. We do not see any reason why the aforesaid alleged assault or attack was not mentioned in the FIR since soon after the alleged incident happened in the hostel premises, the FIR was lodged. On the other hand, the written complaint to the City Magistrate only uses the expression of "creating obstruction" by stating that "Mr. B.N. John, Ms. Susan John and their people are creating obstruction in the process of sending the minor children residing in the non-legal institution run by the Sampoorna Development Trust to other institutions legally. Please take cognizance of this and take further legal action".

32. There can be no doubt that there is a sea of difference between "creating disturbance" and the "assault" and "criminal force" terms mentioned under Section 353 of the IPC and defined under Sections 350 and 351 of the IPC respectively. "Criminal force" has been defined under Section 350 IPC, which reads as follows:

"350. Criminal force.- Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other." "Assault" has been defined under Section 351 of the IPC which reads as follows:

"351. Assault.- Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation.-Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault."

33. If "disturbance" has to be construed as "assault" or "criminal force" without there being specific acts attributed to make such "disturbance" as "assault" or "criminal face" within the scope of Section 353 of the IPC, it would amount to abuse of the process of law. While "disturbance" could also be caused by use of criminal force or assault, unless there are specific allegations with specific acts to that effect, mere allegation of "creating disturbance" cannot mean use of "criminal force" or "assault" within the scope of Section 353 of the IPC.

34. As noted and discussed above, nothing was mentioned in the complaint/FIR of any specific acts apart from alleging that the appellant and his party were creating disturbance. Nothing has been mentioned how disturbance was created because of assault or use of criminal force. Thus, the contents of the statements recorded later under Section 161 of the CrPC clearly appears to be an afterthought and the allegation of assault/attack was introduced later on, which is inconsistent with the contents of the original FIR.

35. Under the circumstances, we are of the view that non mentioning of these vital facts in the FIR/first complaint, which would indicate assault or criminal force within the scope of Section 353 of the IPC, would vitiate the cognizance taken by the CJM. These vital facts, which constitute the ingredients for offence under Section 353 of the IPC, were not revealed in the FIR. On the other hand, the contents of the FIR would reveal the commission of only non-cognizable offence of obstructing the discharge of official duties of public servants, which would fall within the scope of Section 186 of the IPC, in which event, without the order of the Judicial Magistrate, no investigation could have been launched by the police against the appellant in the said FIR.

It is also to be noted that in the said FIR, Section 186 of the IPC was not even mentioned. We have already found that no complaint was lodged by a public servant against the appellant and his party before the Magistrate/court alleging commission of offence under Section 186 of the IPC as required under Section 195 (1) of the CrPC read with Section 155 of the CrPC. The written complaint filed by the District Probation Officer was not to a Judicial Magistrate but to an Executive Magistrate, hence was not valid.

The police could not have investigated the said offence under Section 186 of the IPC. Thus, the very act of taking cognizance at the initial stage by the CJM, Varanasi, on the basis of the FIR under Section 353 of the IPC, which does not disclose the ingredients and commission of cognizable offence under Section 353 of the IPC, appears to be contrary to law. If the initial process is vitiated, the subsequent process would also stand vitiated. In State of Punjab vs. Davinder Pal Singh Bhullar (2011) 14 SCC 770, it was held as follows:

"107. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact situation, the legal maxim sublato fundamento cadit opus meaning thereby that foundation being removed, structure/work falls, comes into play and applies on all scores in the present case.

108. In Badrinath v. Govt. of T.N. [(2000) 8 SCC 395 : 2001 SCC (L&S) 13 : AIR 2000 SC 3243] and State of Kerala v. Puthenkavu N.S.S. Karayogam [(2001) 10 SCC 191] this Court observed that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is applicable to judicial, quasi-judicial and administrative proceedings equally."

36. What is evident from the records is that the police entertained the FIR under Section 353 of the IPC and investigated the same by conferring jurisdiction upon itself as if it was a cognizable offence as provided under Section 156 of the CrPC, when commission of any cognizable offence was not made out in the FIR, which is not permissible in law. The police added Section 186 of the IPC later, and the CJM, Varanasi, took cognizance of the offence of Section 186 of the IPC along with Section 353 of the IPC when no complaint was made by any public servant to the CJM or any court as required under Section 195 (1) of the CrPC.

37. We are mindful of the position that where, during the investigation of a cognizable or non-cognizable offence on the basis of an FIR lodged, new facts emerge that will constitute the commission of a non-cognizable offence under IPC, in which event, the police can continue with the investigation of the non-cognizable offence of which there cannot be any dispute.

Thus, even if it is assumed that in the course of the investigation of a cognizable offence, the ingredients of a non-cognizable offence are discovered then the police could have continued the investigation without the written complaint to the court or the order of the court in respect of such non-cognizable offence, as it would also be deemed to be a cognizable offence under Section 155(4) of the CrPC, but where the investigation of the cognizable office itself suffers from legal infirmity and without jurisdiction from the initial stage, the entire investigation would be vitiated. For this reason, the police cannot seek the shield under Section 155 (4) of the CrPC when the FIR did not disclose the commission of a cognizable offence.

38. As discussed above, the offence allegedly committed by the appellant as disclosed in the FIR can, at best, be that of a non-cognizable offence under Section 186 of the IPC, though Section 186 of the IPC is not even mentioned in the FIR. It is evident that Section 186 of the IPC was added subsequently, of which the CJM took cognizance later.

The FIR does indicate that a letter was written by the District Probation Officer to the City Magistrate, but the said letter pertains to the filing of the FIR under Section 353 of the IPC and not for offence under Section 186 of the IPC. Further, the said letter dated 03.06.2015 was not addressed to the CJM, Varanasi, before whom such a written complaint was supposed to be made to enable the Court to take cognizance of the offence under Section 186 of the IPC.

39. We have also perused the order dated 13.10.2015 passed by the High Court in the earlier case filed by Mrs. Susan John, the co-accused, wherein the High Court declined to quash the charge sheet No. 162 of 2015 dated 20.6.2015 in the same Case Crime No. 290 of 2015 pending before the Court of CJM, Varanasi, on the ground that perusal of the material on record and looking into the facts of the case at that stage, it cannot be said that no offence is made out against the applicant, and all the submissions made at the Bar relate to the disputed questions of fact, which cannot be adjudicated by the court under Section 482 of the CrPC, and at that stage only the prime facie case is to be seen in the light of the law laid down by this Court in the cases of R P Kapoor vs. State of Punjab, AIR 1960 SC 866; State of Haryana vs. Bhajan Lal (supra); State of Bihar vs. PP Sharma, 1992 SCC (Cr) 192; and Zandu Pharmaceutical Works Ltd. vs. Mohd. Saraful Haq and another, 2005 SCC(Cr) 283.

40. However, it is noticed that the High Court did not examine any of the issues as discussed above in this appeal. The said decision of the High Court was not interfered with by this Court, and the SLP filed against the said order dated 13.10.2015 was dismissed in limine by this Court. This Court has reiterated that in limine dismissal of a Special Leave Petition at the threshold without giving any detailed reasons does not constitute any declaration of law or a binding

precedent under Article 141 of the Constitution. In State of Punjab vs. Davinder Pal Singh Bhullar (2011) 14 SCC 770, it was held as follows:

"113. A large number of judicial pronouncements made by this Court leave no manner of doubt that the dismissal of the special leave petition in limine does not mean that the reasoning of the judgment of the High Court against which the special leave petition had been filed before this Court stands affirmed or the judgment and order impugned merges with such order of this Court on dismissal of the petition. It simply means that this Court did not consider the case worth examining for a reason, which may be other than the merit of the case. An order rejecting the special leave petition at the threshold without detailed reasons, therefore, does not constitute any declaration of law or a binding precedent."

We are, thus, of the view that said decision of the High Court and dismissal in limine by this Court will not come in the way of disposal of this appeal on merits.

41. Under the circumstances, we are of the opinion that taking cognizance by the CJM, Varanasi, of the offences under Section 353 of the IPC and 186 of the IPC was not done by following the due process contemplated under the provisions of law, and accordingly, the same being contrary to law, all the orders passed pursuant thereto cannot be sustained and would warrant interference from this Court.

42. For the reasons discussed above, we are satisfied that the appellant has been able to make out the case for quashing the criminal proceedings pending against the appellant before the CJM, Varanasi.

43. Accordingly, we allow this appeal by quashing Case No. 9790 of 2015 arising out of Case Crime No. 290 of 2015 under Sections 353 and 186 of the IPC, under P.S. Cantt, District Varanasi, pending before the Court of the CJM, Varanasi, and the consequent orders passed by the CJM, Varanasi in taking cognizance and issuing summon to the appellant.

Consequently, the impugned order dated 22.09.2023 passed by the Allahabad High Court in Application Under Section 482 No. 35311 of 2023 is also set aside.

.....J. (B. V. Nagarathna)

.....J. (Nongmeikapam Kotiswar Singh)

New Delhi;

January 02, 2025.

IN THE SUPREME COURT OF INDIA

Leela & Ors.
Vs.
Muruganantham & Ors.,

[Civil Appeal No. 7578 of 2023]

HEADNOTE – Mere registration of a will would not make it valid unless the same is not proved as per the requirements of Section 63 of the Indian Succession Act and Section 68 of the Evidence Act. While the first provision pertains to the execution of unprivileged wills, the other one talks about the proof of execution of document.

JUDGMENT

C.T. Ravikumar, J.

1. The unsuccessful defendant Nos.1 to 3 in OS No.142/1992 which is a suit for partition and allotment of 5/7th share filed by respondent Nos.1 to 5 herein, filed this appeal against the judgment dated 15.11.2019 passed by the High Court of Madras, Madurai Bench in AS No.368/2002 whereby and whereunder the appeal was dismissed and the judgment and decree in O.S. No. 142 of 1992 dated 27.09.2001 on the file of the Additional Sub-Court, Tenkasi was confirmed. Essentially, the Trial Court and the High Court have concurrently declined to accept the case of the appellants based on the Will dated 06.04.1990. Hereafter in this appeal, for the sake of convenience, the parties are referred to, in accordance with their rank and status in the Original Suit, unless otherwise specifically mentioned.

2. The plaint averments, in brief is as follows: -

The suit schedule properties originally belonged to one Balasubramaniya Thanthiriyar. He married twice. Through his first wife, Rajammal (plaintiff No.4/respondent No.4), he got three sons, namely, Muruganandam (plaintiff No.1/respondent No.1), Ganesh Murthy (plaintiff No.2/respondent No.2) and Kannan (plaintiff No.3/respondent No.3) and one daughter by name Mahalakshmi (plaintiff No.5/respondent No.5). While the marriage with the first wife Rajammal was subsisting, Balasubramaniya married Leela (petitioner No.1/defendant No.1) and as such, she is an illegitimate wife. Sivakumar (petitioner No.2/defendant No.2) and Lt. Mageshwaran (petitioner No.2/defendant No.3) are the illegitimate sons of Balasubramaniya through Leela.

3. Earlier, Balasubramaniya Thanthiriyar instituted O.S. No.504/ 1986 against his first wife and children through her viz., plaintiff Nos.4, 1 to 3 and 5 respectively. Later, it was compromised at the instance of the elderly villagers and partition of properties effected between them as per partition deed dated 04.12.1989. As per the partition deed, his properties were divided into four schedules. Properties described and contained in the first-schedule were allotted to himself by Balasubramaniya Thanthiriyar.

The second-schedule properties consisting of 22 items were allotted to the share of plaintiffs/respondent Nos.1 to 3 herein viz., his sons through his first wife and the third-schedule properties were allotted to his first wife viz. plaintiff/respondent No.4. The fourth-schedule properties were allotted in the name of his minor daughter viz., plaintiff/respondent No.5. Balasubramaniya died on 28.11.1991.

4. In fact, the lis in the present suit viz., O.S. No.142/1992 is with respect to the several properties left to the share of Balasubramaniya Thanthiriyar as per the aforesaid partition deed and described as suit schedule properties. According to the plaintiffs, defendant No. 1 is not entitled to any share in the property of deceased Balasubramaniya Thanthiriyar being an illegitimate wife, in the sense that they married when the first wife was alive and that marriage was subsisting.

It is the contention of the plaintiffs that they each have 1/7 share and thus, totalling 5/7 share in the properties of Balasubramaniya Thanthiriyar and respondent Nos.2 and 3 too got 1/7 share each only in such properties. The first item of the schedule properties is shops buildings occupied by defendants 4 to 12, the tenants. Conspiring with them the defendant Nos.1 to 3 attempted to get the entire amount of rent from the defendant Nos.4 to 12 and to withdraw the bank deposit. Upon such developments the plaintiffs issued notices to defendant Nos.4 to 12 and then, filed H.R. C.O.P. No. 2 to 10 of the year 1992 in the Court of Tenkasi Rent Controller and deposited the rent amount.

As relates to plucking of coconuts from the groves mentioned as items 18 to 21 the defendant Nos.1 to 3 created problems and were trying to appropriate the harvest with the help of the police. In short, the defendant Nos.1 to 3 are trying to create prejudice to their shares and also to create encumbrance on the shares of the plaintiffs. They also pleaded that the defendant Nos. 1 to 3 claimed execution of a Will in their favour by Balasubramaniya Thanthiriyar and if they created any such record, it is a wilful forgery. In short, according to the plaintiffs they and defendant Nos. 2 and 3 are in joint possession of the suit schedule properties as co-owners.

5. The first defendant/ the first respondent filed a written statement which was adopted by defendant Nos. 2 and 3/respondents 2 and 3. Now, respondent No. 3 is no more and he is represented by his legal heirs.

6. In the suit, the appellants herein/the defendants produced the Will dated 06.04.1990 which is an unregistered one. They filed a written statement stating that Balasubramaniya was being harassed and assaulted by the plaintiffs and it is due to that harassment that the partition deed dated 04.12.1989 was executed. The plaintiff/ respondents herein could not claim any right over the properties based on the partition deed. The plaintiffs got no right over the first-schedule properties which was allotted to Balasubramaniya. It is their contention that the first-schedule properties belonged to Balasubramaniya and, therefore, after his demise only the second and third defendants got entitlement.

7. Based on the rival pleadings, the Trial Court framed the following issues:-

"(i) Whether the plaintiffs are entitled to a share in the first schedule of the properties?

(ii) Whether the will dated 06.04.1990 is valid?

(iii) Whether the plaintiffs and defendants 2 and 3 are in joint enjoyment of the suit properties?

(iv) Whether the plaintiffs are entitled to 5/7th share 1n the property?

(v) What are the reliefs available to the plaintiffs?"

8. On the side of the plaintiffs, PW-1 was examined and Ext.A1 was marked. On the side of the defendants, DW-1 and 2 were examined and Ext.B1 and B2 were marked. The Trial Court decreed the suit in favour of the plaintiff and against which the defendant/appellant Nos.1 to 3 preferred first appeal. It is contended that the Trial Court failed to recognise the significance of Ext.A1 which clearly reveals absence of joint family consisting of father and the plaintiffs. It was also the contention that the Trial Court failed to attach due importance to Ext.B2-Will.

9. Based on the such pleadings the Appellate Court framed the following issues:-

"(i) Whether the will, dated 06.04.1990, is valid?

(ii) Whether the respondents are entitled for 5 /7th share in the suit properties?

(iii) Whether the appeal is to be allowed?"

10. The High Court considered the materials on record and after hearing the parties declined to accept the Will and dismissed the appeal. In this appeal the appellant assails the judgment of the High Court as also the judgment and decree of the Trial Court which was confirmed by the High Court, raising various grounds.

11. As noticed hereinbefore, deceased Balasubramaniya Thanthiriyar, while alive, effected a partition on 04.12.1989. The bone of contention in the appeal is with respect to the shares allotted thereunder in favour of Balasubramaniya Thanthiriyar by himself. When the partition is not in dispute and also the factum of allotment of the properties under the first schedule thereunder to Balasubramaniya Thanthiriyar, it has to be treated that the properties allotted to him were his selfacquired properties. Even otherwise, with respect to his exclusive title and ownership over the properties, none of the parties raised any dispute.

While the plaintiffs contend that they are to partitioned 1/7th each among them, five in number and the two children of Balasubramaniya Thanthiriyar through the first appellant/first defendant-Leela; Concurrently, it was found that the plaintiffs are entitled to 5/7 shares (1/7th each) and the two sons born to Balasubramaniya Thanthiriyar through Leela, though illegitimate, are entitled to 1/7th share each. The concurrent finding in that regard requires interference if only the finding on the validity and enforcement of the alleged Will dated 06.04.1990 is interfered with in this proceeding.

12. The learned Senior Counsel appearing for the appellants would contend that the Courts below have erred in arriving at the finding that the said Will is not genuine and shrouded with suspicious circumstances. It is the submission that the appellants/defendant Nos.1 to 3 had succeeded in establishing its execution in terms of Section 63 of the Indian Succession Act, 1925, by examining two attesting witnesses and Section 68 of the Indian Evidence Act, 1872.

It is also the contention that both the Trial Court and the High Court have failed to consider that initially there was a dispute on the entire property belonging to Balasubramaniya Thanthiriyar between him, on the one side and his first wife and children through her born to him on the other side viz., O.S. No.504 of 1986 filed by Balasubramaniya Thanthiriyar himself. It is the further contention that later, he effected a partition of the said properties through a partition deed dated 04.12.1989 into four schedules and except the first schedule the others were given in favour of the plaintiffs and only thereafter the property allotted to him was bequeathed as per the Will dated 06.04.1990 to the appellants herein.

The said Will was attested by two witnesses, satisfying the statutory requirement under Section 63 of the Indian Succession Act. In such circumstances, according

to the learned Senior Counsel the irresistible conclusion could have been and should have been that Balasubramaniya Thanthiriyar wanted to give properties to his second wife and the children born through her and it is the realisation of his intention in that regard which resulted in execution of the said Will dated 06.04.1990.

It is also the contention that a scanning of the suspicious circumstances in the light of the innumerable decisions on the validity of Will, especially touching the question of suspicious circumstances which would make a proven Will in the sense, as executed unworthy to act upon, would reveal that the circumstances relied on by the Courts in the case in hand to hold the Will as not genuine being shrouded with suspicions are absolutely unsustainable as they were not sufficient to cast a suspicion on the genuineness of the validly executed Will dated 06.04.1990.

13. The learned counsel appearing for the respondents would submit that there cannot be any doubt with respect to the settled position that mere proof of an execution of a Will in terms of the requirement under Section 63 of the Succession Act and Section 68 of the Evidence Act, though would go to show that the Will concerned was executed but, that by itself cannot make the said Will genuine and worthy for acting upon. It is further submitted that the Courts below have rightly found concurrently that the said Will is not genuine as it is shrouded with suspicious circumstances.

14. We are of the considered view that the fate of this appeal depends upon the decision on the genuineness and the question whether the suspicious circumstances are removed/explained to the satisfaction of this Court. The Will is executed on the stamp papers bought in the name of petitioner No.1, who was examined as DW-1. Still, DW-1 categorically denied the case of having played a role in the execution of the said Will.

Before looking into the alleged and upheld suspicious circumstances, it is only apposite to refer to the settled position that though it is the propounder to establish the execution of the Will and once the same is discharged, it is for the objector to pinpoint the suspicious circumstances. It is also the settled position that upon such objection, it is for the propounder to remove such suspicious circumstances. (See the decision of this Court in Derek A.C. Lobo v. Ulric M.A. Lobo (Dead) by LRS.1), in one among us (C.T. Ravikumar, J.) is a party.

15. Now, we will refer to the suspicious circumstances pointed out by the Courts below:-

(i) That the first appellant (DW-1) one of the beneficiaries and the mother of the other beneficiaries played active role in the execution of the Will in question and concealed this fact before the Court;

(ii) Contradictory recitals on the health of the testator in the Will and the evidence of DW-1 herself strengthening the same;

(iii) Non-matching of the signature of the testator in Ext.A1-partition deed and Ext.B2-Will dated 06.04.1990;

(iv) Non-examination of the person who typed the Will;

(v) Non-examination of the Scribe;

(vi) Incongruity with respect to the place of execution of the Will.

(vii) Failure to prove that the testator executed the Will after understanding its contents.

16. At the outset, it is to be stated that legitimacy or illegitimacy of the second wife and the children born through the second wife is not a matter of relevance for consideration in the case on hand as the question is not in relation to partition of ancestral properties.

So also, the fact of non-inclusion of the first wife and children through her is not of much relevance in view of the admitted position that Balasubramaniya Thanthiriyar on 04.12.1989 partitioned his entire properties into four schedules and allotted three, out of the four, schedules to them and allotted on the first schedule to himself. Therefore, the first question is whether the appellants who claimed under the Will dated 06.04.1990 proved its execution in accordance with law and if so, still the question is whether it is shrouded with suspicious circumstances.

17. There is a concurrent version with respect to the place of the execution of the Will. Though, the recitals in the Will would show that with respect to the health of Balasubramaniya Thanthiriyar contradictory versions appear in the said Will. In one part of the Will it is stated, "with full conscious, with good memory and without instigation by anyone" and at the same time in another part it is stated, "I suffer from heart disease and got treatment from several doctors".

The Court also took note of the fact that defendant No.1 herself stated that the health of her husband was in bad condition and as there was a danger to his life, he executed the Will at Madurai and had no role in the preparation of the Will. The Courts found that two pages of the stamp papers were bought in the name of defendant No.1 from Tenkasi and still defendant No.1 contended that she did not

participate in the execution of the Will. DW-1 stated in her written statement that till the partition in 1989, when the properties were enjoyed jointly, no problem had occasioned to him. It is taken that the said statement of DW-1 itself would reveal that the properties were jointly enjoyed.

18. The Courts below on appreciation of the evidence concurrently found that the version of DW-1 that she had not participated in the execution of the Will and that she was not aware of the execution of the Will, is incorrect.

19. In the light of the rival contentions and the evidence discussed in detail by the Trial Court and then by the High Court, the question is whether the appellant succeeded in proving the execution of the Will and if so, whether the appellants who disputed its execution and also challenged the Will on the ground of existence of suspicious circumstances would make the same unreliable and not worthy for proceeding further.

20. There can be no doubt with respect to the manner in which execution of a Will is to be proved. In the light of plethora of decisions including the decisions in Moturu Nalini Kanth v. Gainedi Kaliprasad (Dead, through Lrs.)2 and in Derek AC Lobo's case (supra) this position is well settled that mere registration of a Will would not attach to it a stamp of validity and it must still be proved in terms of the legal mandates under the provisions of Section 63 of the Indian Succession Act and Section 68 of the Evidence Act. It is not the case of the appellant that the Will dated 06.04.1990 is a registered one.

21. Now, Section 63 of the Succession Act reads thus:-

"63. Execution of unprivileged wills.-

Every testator, not being a soldier employed in an expedition or engaged in actual warfare, [or an airman so employed or engaged,] or a mariner at sea, shall execute his will according to the following rules:-

(a) The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

(c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence an d by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the

presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary."

22. Section 68 of the Evidence Act makes it clear that at least one attesting witness has to be examined to prove execution of a Will. It is true that in the case at hand DW2 was the attesting witness who was examined in Court. Therefore, the question is whether they had deposed to the effect that the Will in question was executed in accordance with sub-rules (a) to (c) thereunder.

23. The Trial Court rightly held that the propounder of the Will has to establish by satisfactory evidence that the Will was signed by the testator, that the testator at the relevant time was in a sound disposing state of mind and that he understood the nature and effect of the dispositions and put his signature out of his own free will.

24. The first appellant, who was defendant No.1 and the propounder of the Will, was examined as DW1. Her categoric case is that Balasubramaniya Thanthiriyar was not living with the plaintiffs. In her written statement she stated that he had executed the unregistered Will dated 06.04.1990 without instigation from anyone when had good memory. Her deposition would reveal that she herself and her sons viz., defendant Nos.2 and 3 were the beneficiaries of the Will.

She did not divulge the fact that two pages on the stamp papers on which the Will was typed were bought in her name from Tenkasi. Still, she deposed that she had not played any role in the execution of the Will. DW2 who is the attesting witness to the Will in question is the brother of DW1, the first appellant. Going by her oral evidence, it was DW1, her brother who had brought the same to her. She had also deposed that in 1990 her husband, the testator was unwell and was under treatment in Madras and his health was in bad condition. Add to it, she deposed that his and her life was in danger from the sons of his first wife.

Thus, if DW1 is to be believed the testator's physical and also mental conditions were not in sound disposition, as held by the Trial Court and appreciating the evidence the Courts have found that there is no such circumstance of threat as alleged and attempted to be proved by the first defendant (DW1) necessitating the testator to execute the Will.

25. Now, going by DW1, she had no role in the preparation of the Will. But the undisputed and proven fact is that two stamp papers on which the Will was typed were brought in the name of the first defendant from Tenkasi. In this context, it is also to be seen that the attesting witness who was examined as DW2 in Court is admittedly the brother of the first defendant viz., DW1 and further that it is her case that the Will in question was given to her by DW2 in Tenkasi.

26. Now, another circumstance which was taken into account by the Courts below is that nothing is on record to show that the testator had executed the Will after understanding its contents. Though DW2 deposed that the notary public read over the Will and then Balasubramaniya signed it. The Courts below correctly took note of the fact revealed from the very Will that such noting that it was read over to the testator is absent there. Another situation crops up for consideration if DW2 is believed. If the testator was in good health and Will was prepared at his direction and he himself was able to dictate it why it should be read over to him before putting signature. The deposition of DW2 was thus:-

"the notary public read it over and Balasubramania Thanthiriar signed it."

27. Though in normal circumstances there was no necessity to examine the scribe and the non-examination of the scribe cannot be a suspicious circumstance, it was taken note of by the Courts in the circumstances explained above.

28. The circumstances under which DW2 came into the possession of the Will is also a matter which was exponable either by DW1 or DW2. This is because according to DW1, her brother-DW2 gave the same to her in Tenkasi and the noting in the Will and the evidence of DW2 would go to show that it was executed at Madurai.

29. In the circumstances, paragraph 21 of the impugned judgment also assumes relevance. It reads thus:-

"21. On the side of the respondents, it is stated that the will executed in a far away place from where the testator used to reside and the attesting witness not known to the testator are suspicion circumstance to disprove the will. It is stated that the will is stated to have been executed at Madurai whereas the testators residence was at Tenkasi and that the evidence of D.W.1 and D.W.2 was that D.W.1 was not present at Madurai and the evidence of D.W.1 was that she was not aware that her husband was going to execute a will at Madurai and that the stamp papers were purchased in the name of the first defendant at Tenkasi and these circumstance creates suspicion regarding the execution of the will."

30. The very case of the first defendant viz., DW1 is that the testator was being looked after by her. She was residing at Tenkasi and if the testator used to stay there with her and her deposition is to the effect that she was not aware that her husband was going to execute a Will at Madurai and then, the proven fact is that two stamp papers, on which 2 pages of the Will were typed, were purchased in the name of the first defendant from Tenkasi, create some suspicion.

As noted earlier, the health of testator was in bad condition and if so, the case that the execution of the Will was at a far away place from Madurai is also a matter casting suspicion. Evidently, it was taking into consideration all the aforesaid and

such other circumstances that the High Court arrived at the finding that the execution of the Will itself was not proved. The circumstances surrounding the Will were also concurrently held as suspicious.

31. In the circumstances, the evidence of DW2 cannot be taken sufficient to prove the execution of the Will in question in the manner it is required to be proved and to accept it as genuine. It can only be held that the defendants have failed to prove that the testator executed the Will by putting his signature after understanding its contents.

In such circumstances, when the findings are concurrent how can the findings on the validity and genuineness of the Will in question by the Trial Court and the High Court be interfered with. There is no reason to hold that the appreciation and findings are absolutely perverse warranting appellate interference by this Court. It is also to be noted that the defendant Nos.2 and 3 also got 1/7th share each in the suit schedule properties.

32. For all these reasons the appeal has to fail. Consequently, it is dismissed. In the circumstances, there is no order as to costs.

.....J. (C.T. Ravikumar)

.....J. (Rajesh Bindal)

New Delhi;

January 02, 2025.

1 2023 SCC OnLine 1893; 2023 INSC 1093

2 2023 SCC OnLine SC 1488; 2023 INSC 1004

IN THE SUPREME COURT OF INDIA

Daljit Singh
Vs.
State of Haryana & Anr.

[Criminal Appeal No. 4359 of 2024
arising out of SLP (Crl.) No. 12606/2023]

HEADNOTE – Accused who absconded can be prosecuted under S.174A IPC even if proclamation under Sec. 82 Cr.P.C. is extinguished

JUDGMENT

Sanjay Karol, J.

1. The questions arising in this appeal that assails the judgment and order dated 2nd June, 2023 passed by the High Court of Punjab & Haryana at Chandigarh in Case No.CRM-M-5784 of 2023 (O&M), whereby under Section 482 of Criminal Procedure Code, 19731 the Court refused to quash Complaint Case No.151 of 2010 dated 8th June, 2010; summoning order dated 17th August, 2010; and order dated 28th November, 2016 declaring the appellant a proclaimed offender passed by the Judicial Magistrate, 1st Class, Bhiwani; are that whether the proclaimed offender status, under the provisions of the Cr.P.C., of an accused can subsist if such accused stands acquitted during trial in connection to the very same offence; and whether the subsistence of the proclamation under Section 82 of Cr.P.C. is necessary for the authorities to proceed against an accused against whom such a proclamation stands issued, under Section 174A of the Indian Penal Code, 18602.

2. The facts which gave rise to the question as above, in brief, are:

2.1 The Appellant ran a business concern which was awarded a contract for '8-Laning' of a National Highway (NH-1) within Delhi, by the National Highways Authority of India3.

2.2 In furtherance of such a contract, Respondent No. 24 approached a company by the name of M/s Bhola Singh Jaiprakash Construction Ltd. for stone crushing. On mutually agreed specifications, it is also part of the agreement that the same would be supplied to the construction site. In connection thereto, cheques by way of security, were also issued. The work under the agreement was also executed but allegedly did not meet the specifications, hence resulting in a dispute.

2.3 The NHAI terminated the Appellant's contract on 13th January, 2009 and accordingly cashed the bank guarantee furnished. It is alleged that the cheques

issued by way of security to Respondent No. 2 were misplaced and the new cheque worth ₹10 Lacs given as the payment was duly encashed on 16th October, 2009.5 Subsequently on 30th November, 2009 cheque issued from the bank guarantee account as security was also encashed despite having encashed the subsequent cheque issued as final payment.

2.4 The Complaint case, in connection with the unclaimed cheque, was filed on 8th June, 2010, in which summons were issued on 17th August, 2010. Thereafter, the case was allegedly transferred out of Bhiwani, and eventually back to its jurisdictional Court. Notice upon non-appearance of the Appellant, direction to issue written proclamation under Section 82 Cr.P.C. with a further direction to the Appellant to appear before the Court on 28th November, 2016 was issued on 15th October, 2016. On 28th November, 2016, the order declaring the Appellant and another director of the company as proclaimed offenders, was issued6. All such proceedings and orders are subject matter of challenge in this Appeal.

2.5 This other Director, RP Singh preferred quashing petitions before the High Court which came to be eventually dismissed.

2.6 The Appellant was arrested under the PO Order on 19th December, 2022 and released on bail the same day, by the competent Court. He was raided by the police again, in connection with an FIR7 of similar nature.

2.7 The Quashing Petition in which the impugned order came to be passed was filed on 31st January, 2023. The same was dismissed on 2nd June, 2023 by the impugned order and judgment.

3. The impugned order dismissed the Appellant's petition under Section 482, Cr.P.C., with reference to an earlier judgment of the Court wherein it had been held that if a person had been declared a proclaimed offender, such a petition by him would not be maintainable. It was observed that the validity of such a proclamation is also to be raised before the Court which issued the proclamation.

4. We have heard the learned counsel appearing for the parties. It is the admitted position at the Bar that in subsequent developments after the filing of the special leave petition, the Appellant stands exonerated in the germane proceedings under section 138 of the Negotiable Instruments Act, 1881. It is against this backdrop that the questions identified in paragraph 1 of this judgment, arise for consideration.

5. Section 82 of the Cr.P.C. runs thus:

"82. Proclamation for person absconding.-

(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows:-

(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

[(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect."

6. Let us now consider some of the pronouncements of this Court to appreciate its import.

6.1 In Kartarey v. State of U.P.8 the meaning of the word 'absconder' was recorded as follows:-

"43. To be an "absconder" in the eye of law, it is not necessary that a person should have run away from his home, it is sufficient if he hides himself to evade the process of law, even if the hiding place be his own home."

Further, in Jayendra Vishnu Thakur v. State of Maharashtra9, it was observed:-

"40. The term "absconding" has been defined in several dictionaries. We may refer to some of them:

Black's Law Dictionary - To depart secretly or suddenly, especially to avoid arrest, prosecution or service of process.

P. Ramanatha Aiyar - primary meaning of word is "to hide".

Oxford English Dictionary - "To bide or sow away".

Words and Phrases - "clandestine manner/intent to avoid legal process".

6.2 The object and purpose of Section 82, Cr.P.C. was taken note of in Vimlaben Ajitbhai Patel v. Vatslaben Ashokbhai Patel10. S.B Sinha J., writing for the Court held as under:-

"32. The provisions contained in Section 82 of the Code of Criminal Procedure were put on the statute book for certain purpose. It was enacted to secure the presence of the accused. Once the said purpose is achieved, the attachment shall be withdrawn. Even the property which was attached, should be restored. The provisions of the Code of Criminal Procedure do not warrant sale of the property despite the fact that the absconding accused had surrendered and obtained bail. Once he surrenders before the court and the standing warrants are cancelled, he is no longer an absconder.

The purpose of attaching the property comes to an end. It is to be released subject to the provisions of the Code. Securing the attendance of an absconding accused, is a matter between the State and the accused. The complainant should not ordinarily derive any benefit therefrom. If the property is to be sold, it vests with the State subject to any order passed under Section 85 of the Code. It cannot be a subject-matter of execution of a decree, far less for executing the decree of a third party, who had no right, title or interest thereon."

(Emphasis Supplied)

6.3 The evidentiary value of a person absconding has been discussed in Raghubir Singh v. State of U.P.,11 in the following terms:

"11. the act of absconding, even if proved, is normally considered a somewhat weak link in the chain of circumstances utilised for establishing the guilt of an accused person. If the evidence of eyewitnesses is held trustworthy then the act of absconding even if established would serve only to further fortify the satisfaction of the court with respect to the guilt of the accused concerned, for, even an

innocent person may well try to keep out of the way if he learns of his false implication in a serious crime reported to the police."

(Emphasis Supplied)

6.4 In Rahman v. State of U.P.,12 it was held that absconding by itself is not conclusive either of guilt or of a guilty conscience. For, a person may abscond on account of fear of being involved in the offence or for any other allied reason. The observations in Matru v. State of U.P.,13 are instructive.

"19. Even an innocent man may feel panicky and try to evade arrest when wrongly suspected of a grave crime such is the instinct of self-preservation. The act of absconding is no doubt relevant piece of evidence to be considered along with other evidence but its value would always depend on the circumstances of each case. Normally the courts are disinclined to attach much importance to the act of absconding, treating it as a very small item in the evidence for sustaining conviction. It can scarcely be held as a determining link in completing the chain of circumstantial evidence which must admit of no other reasonable hypothesis than that of the guilt of the accused."

(Emphasis Supplied)

6.5 The notice under Section 41 Cr.P.C., must have necessarily been issued prior to the notice and declaration under Section 82, and attachment under its subsequent sections. In State v. Dawood Ibrahim Kaskar14, it was held:-

"22. Now, the power of issuing a proclamation under Section 82 (quoted earlier) can be exercised by a Court only in respect of a person "against whom a warrant has been issued by it". In other words, unless the Court issues a warrant the provisions of Section 82, and the other sections that follow in that part, cannot be invoked in a situation where in spite of its best efforts the police cannot arrest a person under Section 41."

6.6 Numerous judgments of this Court which concern this Section, have been about bail. Illustratively, Sureshchandra Ramanlal v. State of Gujarat15, State of M.P. v. Pradeep Sharma16, Prem Shankar Prasad v. State of Bihar17 and Srikant Upadhyay v. State of Bihar18. However, we are not concerned with bail in the present matter, so it is not necessary to go into them.

7. Having considered the law as laid down in the judgments above in respect of Section 82, at this stage we must also consider Section 174A IPC which lays down penal consequences for intentionally evading the process under Section 82 Cr.P.C. It reads as under:-

"174A. Non-appearance in response to a proclamation under section 82 of Act 2 of 1974.-

Whoever fails to appear at the specified place and the specified time as required by a proclamation published under sub-section (1) of section 82 of the Code of Criminal Procedure, 1973 shall be punished with imprisonment for a term which may extend to three years or with fine or with both, and where a declaration has been made under sub section (4) of that section pronouncing him as a proclaimed offender, he shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine."

Now, let us consider the second question arising in this appeal, in reference to this provision is, whether the subsistence of the proclamation u/s 82 Cr.PC is necessary for the authorities to proceed against the accused person u/s 174A IPC. In other words, whether Section 174A IPC can stand independent of the proclamation u/s 82 Cr.P.C. or not?

7.1 The purpose of Section 82 Cr.P.C., as can be understood from a bare reading of the statutory text is to ensure that a person who is called to appear before a Court, does so. This Section appears as part of Chapter VI which is titled 'Process to Compel Appearance'. Section 83 to 90 provide for the additional method of attachment of property to the end of securing appearance. Necessarily then some or the other proceeding has to be ongoing for which the presence of such person is necessary. The words of the Section dictate that it can be only issued in respect of a person against whom a warrant has been issued. Neither a warrant nor proclamation subsequent can be conjured up out of thin air.

7.2 Section 174A IPC, inserted by the 2005 Amendment to the Indian Penal Code inserts a substantive offence, prescribing punishment of three years or fine or both when such proclamation is issued under Section 82(1) Cr.P.C. and, seven years and fine if the said proclamation is under Subsection (4) thereof. The object and purpose of this Section is to ensure penal consequences for defiance of a Court order requiring a person's presence.

7.3 Now, what happens if the status under Section 82 Cr.P.C. is nullified i.e., the person subjected to such proclamation, by virtue of subsequent developments is no longer required to be presented before a Court of law. Then, can the prosecution still proceed against such a person for having not appeared before a Court during the time that the process was in effect. The answer is in the affirmative. We say so for the following reasons:-

(i) The language of Section 174A, IPC says "whoever fails to appear at the specified place and the specified time as required by proclamation.". This implies

that the very instance at which a person is directed to appear, and he does not do so, this Section comes into play;

(ii) What further flows from the language employed is that the instance of non-appearance becomes an infraction of the Section, and therefore, prosecution therefor would be independent of Section 82, Cr.P.C. being in effect;

(iii) So, while proceedings under Section 174A IPC cannot be initiated independent of Section 82, Cr.P.C., i.e., can only be started post the issuance of proclamation, they can continue if the said proclamation is no longer in effect.

(iv) We find that the Delhi High Court has taken this view, i.e., that Section 174A, IPC is a stand-alone offence in Mukesh Bhatia v. State (NCT of Delhi)19; Divya Verma v. State20; Sameena & Anr. v. State GNCT of Delhi & Anr.21 For the reasons afore-stated, we agree with the findings made in these judgments/orders. At the same time, it stands clarified that we have not commented on the merits of the cases.

(v) Granted that the offence prescribed in Section 174A IPC is indeed stand-alone, given that it arises out of an original offence in connection with which proceedings under Section 82 Cr.P.C. is initiated and in the said offence the accused stands, subsequently, acquitted, it would be permissible in law for the Court seized of the trial under such offence, to take note of such a development and treat the same as a ground to draw the proceedings to a close, should such a prayer be made and the circumstances of the case so warrant.

8. In conclusion, we hold that Section 174A IPC is an independent, substantive offence, that can continue even if the proclamation under Section 82, Cr.P.C. is extinguished. It is a stand-alone offence. That being the position of law, let us now turn to the present facts. As we have already noted supra, the Appellant stands acquitted of the main offence.

9. The record speaks to the fact that an FIR under Section 174A IPC was registered against the Appellant, in connection with which, he was released on bail by the Judicial Magistrate, First Class, Bhiwani, vide order dated 19th December, 2022. It reads: -

"Dinesh Kumar Vs. R.P. Singh etc.
BA-3034-2022
COMA-1664-2013
Present: Complainant in person with Sh. Raj kumar Gugnani, Advocate.

Sh. Devender Singh Tanwar, counsel for the accused Daljeet Singh.

Reply to the bail application not filed. Brief arguments on the bail application heard. At this juncture a compromise has been effected wherein the matter has been settled for 9.5 lakh out of which Rs. 1 lakh have been paid to the complainant and another Rs. 1 lakh shall Be transferred in his bank account today. The nephew and son of the accused have further suffered a statement that the remaining 7.5 lakh shall be paid to the complainant on or before the adjourned date of hearing.

The complainant have suffered a statement and agrees with the said arrangement. In the given circumstances when the matter has been settled and even otherwise also the proceedings had been stayed by Hon'ble High court way back on 07.02.2017 and which have only been dismissed on 15.11.2022 after which, the accused was arrested on 17.12.2022. he is admitted to bail subject to the following conditions.

1. He shall furnish personal and surety bonds in the sum of Rs.50,000/-along with an FDR In the sum of Rs. 50,000/-

2. The present place of residence as well as office of the accused be furnished by way of affidavit through next of kin.

3. That he shall come present in Court in person on all dates of hearing, failing which his bail shall be cancelled, subject to just exceptions. Requisite bonds, affidavit and FDR furnished. Accepted and atlested. Additional affidavit also filed by surety that he shall not en cash the FDR without the permission of the Court and that the R.C. submitted is original which he shall not sell without the permission of The Court Release Warrant be issued forth with. Adjourned to 21.01.2023 for payment else for further proceedings."

(emphasis supplied)

10. None has disputed the above or brought to the attention of this Court such a fact that the said arrangement has not been complied with.

11. The Appellant has been acquitted which means that there is no case for which his presence is required to be secured. Resultantly, the appeal is allowed. In the attending facts and circumstances of the case, i.e. that the original offence pertains to the year 2010; the money subject matter of dispute stands paid, the judgment of the High Court with the particulars as mentioned in paragraph 1 of this judgment, stands quashed and set aside. All criminal proceedings, inclusive of the FIR under Section 174A IPC, shall stand closed. The Appellant's status, as a 'proclaimed person' stands quashed.

Pending Application(s) if any, stand disposed of.

.....J. (C.T. Ravikumar)

.....J. (Sanjay Karol)

New Delhi;

January 02, 2025.

1 Hereinafter, "Cr.P.C."
2 Hereinafter, "IPC"
3 Hereafter, "NHAI"
4 Hereinafter referred to as the complainant
5 Cheque No. 72107, Bank of Baroda.
6 Hereafter referred to as the 'PO Order'
7 FIR No. 200 dated 17th December 2023 u/s 174A, IPC.
8 (1976) 1 SCC 172
9 (2009) 7 SCC 104
10 (2008) 4 SCC 649
11 (1972) 3 SCC 79
12 AIR 1972 SC 110
13 (1971) 2 SCC 75
14 (2000) 10 SCC 438
15 (2008) 7 SCC 591
16 (2014) 2 SCC 171
17 (2022) 14 SCC 516
18 2024 SCC OnLine SC 282
19 2022 SCC OnLine Del 1023
20 2023 SCC OnLine Del 2619
21 Crl. M.C No, 1470 of 2021, Dated 17th May, 2022

IN THE SUPREME COURT OF INDIA

Naresh Aneja @ Naresh Kumar Aneja
Vs.
State of Uttar Pradesh & Anr.,

[Criminal Appeal No._____ of 2025
arising out of SLP (Crl.) No. 1093 of 2021]

HEADNOTE – For Section 354 IPC to apply, criminal force must be used. Further, such application of force must be coupled with intention to outrage a woman's modesty. In order to establish mens rea something better than vague statements must be produced before the court. Mere bald assertions of mental and physical discomfort would not suffice.

JUDGMENT

Sanjay Karol, J.

1. Leave Granted.

2. The instant appeal questions the correctness of judgment in order dated 8th January, 2021, passed in Application u/s 482 No. 18712 of 2020 by the High Court of Judicature at Allahabad, whereby the appellant request to quash the chargesheet and proceedings arising out of Case Crime No. 1074 of 2019 u/s 354, 506 of the Indian Penal Code, 18601 was turned down.

FACTS IN BRIEF

3. The appellant and respondent no. 22 are Directors in a joint concern by the name of 'M/s LAJ-IDS Exports Pvt. Ltd.' with the shareholding divided

3:1. Record reveals certain allegations and counter allegations in regard to mishandling of the company's finances, however, the same are not within the scope of the present adjudication.

3.1 In July 2019, the appellant vide a communication Annexed as P-2 sought to end this partnership. However, this fact also stands disputed.

3.2 On 20th July, 2019, respondent no. 2 filed a complaint before the Senior Superintendent of Police, Janpad - Gautambuddh Nagar, making allegations against RK Aneja (brother of the appellant and A-1 in the chargesheet) of inappropriate behaviour in the workplace as also alleged threat of murder. The complaint reads as under:

"To,

The Senior Superintendent of Police,
Janpad - Gautambuddh Nagar (U.P.)

Sir,

The humble request is that Applicant Puja D/o Late A.K. Tankha is R/o H.N.2106 Tower Lotus bulword Sector 100 Noida P.S. 39, Gautambuddh Nagar and Applicant is working ass Director in I.D.S. Export Pvt. Ltd. House No.208, Sector 63, Noida Company and R.K. Aneja R/o 7 Hauz Khas New Delhi are working as Director in the aforesaid company and Applicant has been working in the aforesaid company from February 2018. R.K. Aneja has been harassing and troubling the Applicant since October November 2018 and from few months R.K. Aneja has been holding hands on small works and when the Applicant works on computer while sitting then he touches the Applicant which cannot be explained by Applicant.

Applicant informed this to Naresh then he said that he will make R.K. Aneja understand. Holding the hand of Applicant and touching her body in above office by the R.K. Aneja has been seen by Chaman Lal S/o Kishan Lal R/o E-1813 G.N.22, Sangam Vihar, New Delhi and Savender Singh R/o I.P. Extension New Delhi. R.K. Aneja has tried to rape Applicant and upon screaming he threatened to kill her, then the Applicant pushed R.K. Aneja and escaped from there and left the company.

Applicant went to police station and police officer did not lodge his complaint then the Applicant went and met Senior Superintendent of Police Gautambudh Nagar in Public Audience and gave her complaint on which no steps have been taken. Applicant is again giving this complaint to Senior Superintendent of Police. Therefore, it is requested t you sir, that direction be given to the Station House Officer Phase-3 to lodge the first information report against the above persons and take legal actions.

Applicant
Sd/-"

3.3 A preliminary enquiry report was submitted to the competent authority on 6th August, 2019. However, on 14th August, 2019, the complainant filed an application bearing no. 457/2019 u/s 156(3) of the Code of Criminal Procedure, 19733, before the Chief Judicial Magistrate4, Gautambuddh Nagar alleging non-lodging of complaint as also no investigation having taken place on the representation given to the Senior Superintendent of Police, Gautambuddh Nagar. Relevant extract thereof is as under:

"Conclusion:-

During the investigation, we spoke to both the parties and gone through all the facts and it was found that R.K. Aneja has firm in the name of "Laj Exports Limited which works in the field of Garments. The above firm was registered in the year 2005. Applicant Pooja Tankha has firm in the name of "IDS Fashions Pvt. Ltd. In the above firm Applicant and her mother are designated Director. In the year 2018 Applicant met with Accused R.K. Aneja through common friend Ajay Dalvi. Applicant informed that she has various buyer from foreign in case Accused make joint company then business can be increased.

After that a joint business company was registered by the Applicant and Accused in the name of Laj IDS Exports Private Limited" in the above firm R.K. Aneja and Naresh Aneja had 75% share and Applicant had 25% share. The above firm used to do designing and export of Bridal wear and Evening Wear. Applicant had various customer in foreign therefore he was given operational management work whereas the account finance and other policy decision were with R.K. Aneja and Naresh Aneja. Because of various difference between the Applicant and Accused during the business of company, the dispute arose in the company.

Accused states that Applicant used to book the orders received from foreign in her own private company "IDS Fashions Private Limited and not in the name of Laj IDS Exports Private Limited, but the resources were used of Laj IDS Exports Private Limited. On the other hand the Applicant states that the foreign customers know her personal company IDS Fashions Private Limited and not Laj IDS Exports Private Limited therefore all orders are taken in the name of IDS Fashions Private Limited and those are fulfilled by the company Laj IDS Exports Private Limited, the information was well within the knowledge of the other Director of Laj Exports Private Limited.

Accused has made allegation on the applicant that she has booked the order from foreign without any acceptance/approval and did not give any information to the Accused and has got the work executed from "Laj Exports Private Limited because of which huge financial loss has occurred. On the other hand Applicant states that even after being Director she was not able to see the accounts of "Laj IDS Exports Private Limited and she has made allegation on the other Directors that they have done misappropriation of account and theft of tax. Hence it is clear that there is dispute going on between applicant and Accused with regard to management and finances of "Laj IDS Exports Private Limited.

Applicant had made allegation in her complaint that Accused Director R.K. Aneja used to harass her and used to threat him to kill her. During the enquiry with Applicant it was informed that Accused R.K. Aneja used to touch her inappropriately and also used to stand behind with bad intention. Although these

allegations were opposed by the Accused. It is stated that in other firms there are 1600 girls are working but no one has made allegation of harassment till date.

During the investigation other worker of Laj IDS Exports Private Limited Smt. Babli W/o Shri Ashok Singh Kumar, Shri Chamanlal S/o Shri Kishan Lal ...illegible Yadav S/o Shri Harishchandra Yadav, Avdhesh Kumar, Pawan Kumar, Sarwal Khan etc. were enquired and statement were taken who has stated in their statement that they had no information of such incident done with the Applicant by the R.K. Aneja. During the investigation Applicant has also not provided any evidence like CCTV footage etc. apart from her verbal statement from which the same can be clarified.

From the complete information it is clear that there is a dispute between Applicant and Accused regarding management and finance of Laj IDS Exports Private Limited but the allegation of harassment and touching inappropriately by the Accused cannot be certainly stated.

Sd/-
(Piyush Singh)
District Magistrate-Second
Janpad-Gautambudhnagar."

(emphasis supplied)

3.4 The CJM, on 20th August, 2019, in pursuance of this application, directed registration of complaint and investigation thereof. On 4th September, 2019, First Information Report5 No. 1074 of 2019 came to be registered u/s 354 & 506 of IPC where under the present appellant is A-2. Certain portions are extracted below:-

"Copy complaint in Hindi in typed form before Hon'ble Chief Judicial Magistrate Sir, Gautambuddh Nagar, Complaint No. 457 of 2019 Pooja D/o Late A.K. Tankha, R/o H.N.2106 Tower Lotus Vulworld Sector 100 Noida P.S. 39, Gautambuddh Nagar... Applicant Versus 1. R.K. Aneja Director 2. Naresh Aneja Director presently working in Company and address Laj IDS Export Pvt. Ltd House No.208, Sector 63, Noida, District Gautambuddh Nagar,. Respondent. Ps Phase 3, Complaint under Section 156(3) CrPC, sir the humble request is that Applicant Pooja D/o Late A.K. Tankha R/o H.N. 2016 Tower Lotus Sector 100, Noida PS 39 Gautambuddhnagar is working as Director in the company and R.K. Anuja and Naresh R/o 7 Hauz Khas New Delhi are also the director in the above company.

Applicant has been working in the aforesaid company from February 2018. R.K. Aneja has been harassing the troubling the Applicant since October November 2018 and from few months R.K. Aneja has been holding hands on small works

and when the Applicant works on computer while sitting then he touches the Applicant which cannot be explained by Applicant. Applicant informed this to Naresh then he said that he will make R.K. Aneja understand.

Holding the hand of Applicant and touching her body in above office by the R.K. Aneja is seen by Chaman Lal S/o Kishan Lal R/o E- 1813 G.N. 22 Sangam Vihar, New Delhi and Savender Singh R/o I.P. Extension New Delhi. R.K. Aneja has tried has tried to rape Applicant and upon screaming he threatened to kill her, then the Applicant pushed R.K. Aneja and escaped from there and left the company. Applicant went to police station and police officer did not lodge his complaint then the Applicant went and met Senior Superintendent of Police Gautambudh Nagar in Public Audience and gave her complaint on which no steps have been taken.

Applicant is again giving this complaint to Senior Superintendent of Police but till date no investigation has taken place. Constrained with the above the applicant is filing the present complaint here. Therefore, it is requested to you sir, that direction be given to the Station House Officer Phase-3 to lodge the first information report against the above persons and take legal actions. Date 14.08.20219 Applicant SD English...illegible."

(emphasis supplied)

3.5 It is also to be noted that, shortly after the present complainant filed her complaint, the appellant and his brother filed a complaint against the complainant alleging criminal breach of trust, cheating, and siphoning of funds of the partnership concern.

3.6 The appellant as also A-1 filed a Writ Petition in the High Court6 seeking protection from arrest as also the quashing of the subject FIR. Such a prayer to quash was refused but protection from arrest was granted till submission of the final report.

3.7 Chargesheet No. 8264 of 2020 was filed on 10th January, 2020, under the sections above named stating that the statement of the complainant, statements of the appellant and witnesses and the statement of appellant u/s 164 CrPC, the offences were found to be made out. Relevant extract thereof is as follows:-

"sir the above case was registered on the complaint of the above Complainant Pooja Tankha after investigation by SI Pramod Kumar Tyagi PS Phase 3. The above investigation was transferred from PS 3 to PS Site 5. I SI have gone through the above case and received C.D. and investigated. In the above case there is an anticipatory order from the Hon'ble High Court of Allahabad for the arrest of above accused Rajinder Kumar Aneja S/o Santlal Aneja R/o H-7, Hauz

Khas, PS Hauz Khas New Delhi because of which the Accused cannot be arrested.

Upon investigation statement of complainant and witness were taken and inspected the incident spot and statement under Section 164 Cr.PC was taken from Accused Rajender Kumar Aneja S/o Santlal Aneja R/o H-7, Hauz Khas PS Hauz Khas New Delhi 2. Naresh Kumar Aneja S/o Sant Lal Aneja R/o H-7, Hauz Khas PS Hauz Khas New Delhi, which is found under Section 354/506 IPC. Therefore, the Charge Sheet is present through Challan before Hon'ble Court. Kindly give appropriate punishment."

Cognizance thereon was taken on 24th June, 2020.

PROCEEDINGS BEFORE THE HIGH COURT

4. The appellant filed a petition u/s 482 CrPC seeking a quashing of the chargesheet dated 10th January, 2020; cognizance order dated 24th June, 2020 as also stay on further proceedings against the appellant arising out of Case Crime No. 1074 of 2019 i.e. Trial Case No. 8264 of 2020 pending before the Civil Judge, Junior Division, FTC-2, Gautambuddh Nagar.

5. By the impugned order, the Learned Single Judge refused the prayer, observing that only malicious or malafide institution of proceedings warrants interference by way of the inherent powers of the High Court. It was further observed that there were disputed questions of facts and that the High Court could not enter into, nor could it undertake a "microscopic examination of facts and evidence to thwart the prosecution case". Before it, a prayer for accepting the plea of bail was made seeking directions to the concerned court in that regard.

6. The Trial Court was directed to consider the prayer for bail on its own merits, and the appellant was directed to appear before the concerned Court within 45 days, and for such a time period, he was protected from any coercive steps.

SUBMISSIONS

7. We have heard Mr. R Basanth and Ms. Shobha Gupta, Learned Senior Counsel for the appellant and complainant, respectively.

7.1 The case of the appellant, as can be understood from the record as also the submissions made, is as follows:

(a) Prior to the application u/s 156(3) CrPC, an earlier complaint dated 14th August, 2019, was registered making the same allegations, which fact has been hidden from the Learned Magistrate. The preliminary investigating report submitted in respect thereto records that no offence under Sections 354 & 506

IPC are made out and in fact, the dispute arises from company affairs and management. In other words, the appellant has been falsely implicated in this case.

(b) Contents of the FIR or the chargesheet do not disclose commission of any offence by the appellant nor has the complainant alleged any act on his part in the application u/s 156(3) CrPC. There is only one-line in the chargesheet stating that the allegations against the appellant were proved.

(c) The FIR is motivated since the complainant possessed intentions to commit fraud. Upon her intentions and actions being unearthed, several cases have been filed against them.

7.2 The Complainant's case is as under:

(a) There is an attempt to paint the dispute as one originating from the company's affairs, however, the appellant and his brother took undue advantage of the complainant and blackmailed her.

(b) The FIR and statements u/s 161 and 164 CrPC are clear that A-1 made inappropriate advances towards her and when she wished to file a complaint, the appellant degraded her by way of abusive language and physical and mental harassment.

(c) The appellant has concealed relevant facts before this court, such as his criminal history, including complaints allegedly filed by persons other than the complainant herein.

(d) With reference to Rupan Deol Bajaj v. K.P.S Gill7, Rajesh Bajaj v. State of NCT of Delhi8 and Medchl Chemicals and Pharma (P) Ltd. v. Biological E Ltd . & Ors,9it is submitted that prima facie offence is made out against the appellant, and therefore, the same should not be quashed.

CONSIDERATION BY THIS COURT

8. In the above conspectus, the sole question to be considered by this court is whether the charges levied against the appellant are ex-facie made out from the record, thereby justifying the High Court's refusal to quash proceedings by invoking its inherent powers u/s 482 CrPC.

9. For the purposes of immediate recall, it may be stated here that the chargesheet finds the offences u/s 354 & 506 IPC to be established, warranting trial against the appellant as well as A-1.

10. It is well settled that when considering an application u/s 482 CrPC, the court cannot conduct a mini-trial but instead is to be satisfied that prima facie the offences as alleged are made out. To put it differently, it is to be seen, without undertaking a minute examination of the record, that there is some substance in the allegations made which could meet the threshold of statutory language.

11. Let us now consider the sections under which the offences have been alleged.

"354. Assault or criminal force to woman with intent to outrage her modesty.- Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.

503. Criminal intimidation.- Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threats, commits criminal intimidation.

Explanation.-A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

506. Punishment for criminal intimidation.- Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

if threat be to cause death or grievous hurt, etc.-and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

12. A bear perusal of Section 354, IPC reveals that for it to apply, the offence must be committed against a woman; criminal force must be applied against her; and such application of force must be with the intent to outrage her modesty. [See: Raju Pandurang Mahale v. State of Maharashtra10]

12.1 Criminal force is defined in Section 350 IPC11, however, what exactly does modesty means, which is an essential aspect for this Section to apply, has not been defined so as to constitute an offence u/s 354 IPC. Any discussion on this

Section is incomplete without reference to Rupan Deol Bajaj (supra) wherein the Learned Judges observed:

"14. Since the word 'modesty' has not been defined in the Penal Code, 1860 we may profitably look into its dictionary meaning. According to Shorter Oxford English Dictionary (3rd Edn.) modesty is the quality of being modest and in relation to woman means "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct".

The word 'modest' in relation to woman is defined in the above dictionary as "decorous in manner and conduct; not forward or lewd; shamefast". Webster's Third New International Dictionary of the English Language defines modesty as "freedom from coarseness, indelicacy or indecency; a regard for propriety in dress, speech or conduct". In the Oxford English Dictionary (1933 Edn.) the meaning of the word 'modesty' is given as "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct (in man or woman); reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions".

15. From the above dictionary meaning of 'modesty' and the interpretation given to that word by this Court in Major Singh case [AIR 1967 SC 63 : 1967 Cri LJ 1 : 1966 Supp SCR 286] it appears to us that the ultimate test for ascertaining whether modesty has been outraged is the action of the offender such as could be perceived as one which is capable of shocking the sense of decency of a woman."

12.2 While we hold the above observations as also the discussion made in Major Singh (supra) in the highest esteem and regard, it must not escape us that the observations were made in the societal context and milieu of that time and its import today should be interpreted in our present context. Reference in this regard may be made to observations by Bhat, J in Attorney General v. Satish12,

"66. These require an element of application of physical force, to women. The expression "modesty" was another limitation as older decisions show that such a state was associated with decorousness [Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194 : 1995 SCC (Cri) 1059] of women. This added a dimension of patriarchy and class. [Section 354 (or any other provision of IPC) does not offer a statutory definition of the term "modesty", and over time, was interpreted broadly, contemporaneously with the developing and acknowledged role of women in society, to overcome its inherently colonial and patriarchal origins.

One cannot be unmindful of the circumstances in which these provisions were enacted by a colonial power, at a time, when women's agency itself was unacknowledged, or had limited recognition. Further, women in India were

traditionally-during the time of enactment of IPC, in the mid- Nineteenth Century-subordinated to the care of their fathers, or their husbands, or other male relatives. They had no share in immovable property; notions of gender equality were unheard of, or not permitted. Women had no right to vote. Quite naturally, the dignity of women- or indeed their autonomy, was not provided for.

67. The advent of the Constitution of India revolutionised-at least in law, all that. Regardless of gender, race, caste, religion or region, or all of the acknowledged sectarian and discrimination enabling barriers, everyone enjoyed equality of law, and equal protection of law (Article 14). Further, the provision in Article 15(1) proscribed discrimination by the State (in all its forms) on various grounds, including gender. Article 15(3) enabled the State to enact special provisions for women and children."

12.3 Turning to the facts of the instant case, keeping in view the contents of the FIR, the statement in the final report of the investigating officer, and the statement u/s 164 CrPC of the complainant, we are of the view that even prima facie the ingredients as referred to supra, are not met. The record is silent with respect to the use of any force, apart from bald assertions of mental and physical discomfort caused to the complainant by the appellant.

12.4 It is well settled that for mens rea to be established, something better than vague statements must be produced before the court. As evidenced by the annexures referred to above, i.e. the FIR, the preliminary investigation report as also the concluding portion of the chargesheet, no direct allegation nor any evidence in support thereof can be found attributing intent to the appellant. It cannot be said, then, that a case u/s 354 IPC is made out against the appellant.

13. Let us now examine the next charge for which the appellant stands accused. For an offence u/s 503 to be established, it must be shown that:- (1) Threatening a person with any injury; (i) to his person, reputation or property; or (ii) to the person, or reputation of anyone in whom that person is interested. (2) Such threat must be intentional; (i) to cause alarm to that person; or (ii) to cause that person to do any act which he is not legally bound to do as the means of avoiding the execution of such threat; or (iii) to cause that person to omit to do any act which that person is legally entitled to do as the means of avoiding the execution of such threat. Punishment for this offence is prescribed u/s 506 IPC, which is two years or with a fine or both, as applicable to this case.

13.1 Manik Taneja v. State of Karnataka13 as affirmed by a bench of three judges in Parminder Kaur v. State of Punjab14, records the principle of application of Section 506, IPC in the following terms:-

"11. A reading of the definition of "criminal intimidation" would indicate that there must be an act of threatening to another person, of causing an injury to the person, reputation, or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with the intent to cause alarm to the person threatened or it must be to do any act which he is not legally bound to do or omit to do an act which he is legally entitled to do.

13. It is the intention of the accused that has to be considered in deciding as to whether what he has stated comes within the meaning of "criminal intimidation". The threat must be with intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. But material has to be placed on record to show that the intention is to cause alarm to the complainant."

13.2 A recent judgment of this court, Sharif Ahmed v. State of U.P15 held as under:-

"38. An offence of criminal intimidation arises when the accused intendeds to cause alarm to the victim, though it does not matter whether the victim is alarmed or not. The intention of the accused to cause alarm must be established by bringing evidence on record. The word 'intimidate' means to make timid or fearful, especially: to compel or deter by or as if by threats.

The threat communicated or uttered by the person named in the chargesheet as an accused, should be uttered and communicated by the said person to threaten the victim for the purpose of influencing her mind. The word 'threat' refers to the intent to inflict punishment, loss or pain on the other. Injury involves doing an illegal act." This judgment also, with reference to Manik Taneja (supra), underscored the importance of material and evidence being placed on record to demonstrate intention. A mere statement without intention would not attract the offence.

13.3 What flows from the judgments referred is that for an offence of criminal intimidation to be prima facie established, the intention should be clearly visible, and the same is to be established by evidence on record. Granted that at this stage, evidence on record is not the standard to be applied since the trial is underway, but at least the results of the investigation and the material gathered thereunder, which is on record, should disclose somewhat of an offence. The FIR, interim investigation report and the chargesheet, reproduced above, do not disclose any offence having been committed by the appellant herein.

14. During oral submissions, it was urged that the statements u/s 161 and 164 CrPC, when read collectively, do indeed disclose an offence having been

committed by the appellant. This was in response to the submission on behalf of the appellant that, on the face of it no offence is made out against him. We find it difficult to accept the submission on behalf of the complainant. The position of law in regard to the admissibility of these statements is settled. We may refer to State of Maharashtra v. Maroti16 (authored by one of us, Hon. C.T Ravikumar J.) wherein the Court held-

"23. In the decision in Rajeev Kourav v. Baisahab [Rajeev Kourav v. Baisahab, (2020) 3 SCC 317 : (2020) 2 SCC (Cri) 51] , a two-Judge Bench of this Court dealt with question as to the matters that could be considered by the High Court in quashment proceedings under Section 482CrPC. It was held therein that statements of witnesses recorded under Section 161CrPC being wholly inadmissible in evidence could not be taken into consideration by the Court while adjudicating a petition filed under Section 482CrPC.

In that case, this Court took note of the fact that the High Court was aware that one of the witnesses mentioned that the deceased victim had informed him about the harassment by the accused, which she was not able to bear and hence wanted to commit suicide. Finding that the conclusion of the High Court to quash the criminal proceedings in that case was on the basis of its assessment of the statements recorded under Section 161CrPC, it was held that statements thereunder, being wholly inadmissible in evidence could not have been taken into consideration by the Court while adjudicating a petition filed under Section 482CrPC. It was also held that the High Court committed an error in quashing the proceedings by assessing the statements recorded under Section 161CrPC.

24. There can be no dispute with respect to the position that statements recorded under Section 161CrPC are inadmissible in evidence and its use is limited for the purposes as provided under Sections 145 and 157 of the Evidence Act, 1872. As a matter of fact, statement recorded under Section 164CrPC can also be used only for such purposes."

15. Arguendo, accepting the submissions of the learned senior counsel appearing for the complainant, if examine the statements, both u/s 161 and 164 (the latter of which was handed to us in sealed cover) still, our conclusion that no prima facie offence is made out on the part of the appellant, does not change. For reference, the statement of the complainant u/s 161 is reproduced below:-

"The statement under section 161of the Criminal Procedure Code (CrPC) was given by Pooja Tankha complainant on September 4, 2019. She stated that she held the position of Director in Laj IDS Export Company. My partners were R K Aneja and Naresh Aneja, whose office was located in Sector 63, Noida, at 208. Whenever I worked in the office, R K Aneja would come to my office and

subject me to physical harassment, touching her from various places without her consent.

He did not heed her refusal. I couldn't explicitly state where all he touched me against my will. Concerned about this, when I opposed R K Aneja and went to the police Station to file a report. However, I was told that since I has only one son and lives alone I should consider my situation and that Naresh Aneja was mentally harassing me. Once, when I was working in that office, Chaman Lal and the pantry boy, Ashish alias Pawan saved from the indecent actions of R.K Aneja. This incident took place on September 4, 2019.

Sd/-
04.09.2019"

16. This Court has on numerous occasions considered the power of the High Courts to quash criminal proceedings u/s 482 CrPC. The scope thereof, therefore, does not require us to devote substantive portions of this judgment thereto. Only for the purposes of immediate reference, we take notice of a few pronouncements in this regard, other than State of Haryana v. Bhajan Lal17, which is recognised as the locus classicus on the issue.

16.1 This Court's judgment in Indian Oil Corporation v. NEPC India Ltd.18 culled out the following principles:-

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused. For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the

proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

16.2 The scope of this power is best remembered in the words of Y.V Chandrachud J. (as his Lordship then was) writing for the Court in State of Karnataka v. L. Muniswamy19 wherein it was observed:-

"7. In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution.

In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

16.3 Other judgments of this Court in State of A.P. v. Aravapally Venkanna20; Neeharika Infrastructure (P) Ltd. v. State of Maharashtra21; Sachin Garg v. State of U.P.22; Vishal Noble Singh v. State of U.P.23 may also be seen in this context.

17. Having regard to the judgments above, we are of the view that the sum total of the circumstances, submissions and documents on record, considered supra, do not point to appellant (Naresh Aneja) having committed any offence against the

complainant. In that view of the matter, the impugned judgement of the High Court of Judicature at Allahabad passed in Application u/s 482 No. 18712 of 2020 is set aside. Ex consequenti, criminal proceedings arising out of FIR No. 1074 of 2019 are quashed qua the present appellant.

18. The appeal is allowed. It is clarified that the observations here are restricted only to the present Appellant, and no view whatsoever has been expressed in respect of R.K Aneja, regarding whom the law will continue on its course. Pending applications, if any, shall stand closed.

.....J. (C.T. Ravikumar)

.....J. (Sanjay Karol)

New Delhi;

January 02, 2025

1 Hereinafter referred to as 'IPC'

2 Hereinafter referred to as 'the complainant'

3 'CrPC' for short

4 Abbreviated as 'CJM'

5 For short 'FIR'

6 Criminal Writ Petition 22246 of 2019; disposed of vide order dated 1st October 2019

7 (1995) 6 SCC 194

8 (1999) 3 SCC 259

9 (2002) 1 SCC 234

10 (2004) 4 SCC 371

11
350. Criminal force.- Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

12 (2022) 5 SCC 545

13 (2015) 7 SCC 423

14 (2020) 8 SCC 811

15 2024 SCC OnLine SC 726

16 (2023) 4 SCC 298

17 (1992) Suppl (1) SCC 335

18 (2006) 6 SCC 736

19 (1977) 2 SCC 699

20 (2009) 13 SCC 443

21 (2021) 19 SCC 401

22 2024 SCC OnLine SC 82

23 2024 SCC OnLine SC 1680

IN THE SUPREME COURT OF INDIA

Edakkandi Dineshan @ P. Dineshan & Ors.
Vs.
State of Kerala

[Criminal Appeal No. 118 of 2013]

HEADNOTE – On the account of defective investigation the benefit will not inure to the accused persons on that ground alone. It is well within the domain of the courts to consider the rest of the evidence which the prosecution has gathered such as statement of the eyewitnesses, medical report etc. Accused cannot claim acquittal on the ground of faulty investigation done by the prosecuting agency.

JUDGMENT

Prasanna B. Varale, J.

1. The present criminal appeal arises out of judgment and order dated 12th April 2011 passed by High Court of Kerala at Ernakulam, in Cri. Appeal No. 1040/2006. By the impugned judgment and order, the Appellants/Accused- A4 to A10 and A13 to A15 have been acquitted under Sections 302 r/w 149 of the Indian Penal Code, 1860 (hereinafter 'IPC') while conviction and sentence against A1 to A3 and A11 and A12 was confirmed. Additionally, A3 was convicted and sentenced under Section 5 of the Explosive Substance Act,1908.

FACTS

2. For the sake of brevity and for maintaining continuity the accused persons are referred as per their sequence in the trial.

3. The factual matrix of the case are that on 01.03.2002, Rashtriya Swayam Sevak Sangh/Vishva Hindu Parishad (in short 'RSS/VHP') had called for a hartal. The Hartal led to clashes between members of the Communist Party of India (M) (in short 'CPI (M)') and RSS. A group of 11 persons, afraid of the mob led by CPI(M), hid and stayed near a shed situated near the Meloor river. At midnight, they saw 11 persons coming from the eastern side and 5 persons coming from the northern side carrying deadly weapons like, axe, dagger and chopper. All the 11 but for the 2 deceased persons were alerted and rushed towards the river to save themselves. The two deceasednamely Sunil and Sujeesh, were asleep and thus, the mob inflicted fatal injuries on them.

The body of Sujeesh was taken to a hospital in Thalassery where he was pronounced dead and based on the statement of PW-1, FIR No. 53/2002 dated

02.03.2002 was registered under Section 43, 147, 148, 341, 506(ii), 307, 302 r/w 149 IPC & Section 3, 5 of Explosive Substances Act, 1908 at P.S. Dharmadam on receipt of the report investigating agency was set in motion. PW-19 conducted the investigation and on 02.03.2002 body of the 2nd deceased person Sunil was found at a marshy land near the spot of occurrence in the morning.

The inquest of both the dead bodies was conducted and inquest reports were prepared. Subsequently, post-mortem was done on the same day. A1, A9 and A11 were arrested on 06.03.2002. Pursuant to the disclosure statement of A11 made under Section 27 of The Indian Evidence Act, 1872 (hereinafter 'IEA'), recovery of the axe used in the murder was made from the bushes near the spot of occurrence. A2, A4, A10, A15 were arrested on 10.03.2002 and, based on the disclosure statement of A12, a chopper was recovered. A3, A5 to A8 and A12 were arrested on 16.03.2002.

It is pertinent to note here that though one Ashraf was named in the FIR as A13, subsequently on 10.03.2002 a report for deletion of his name was moved by PW19 before the Ld. Magistrate stating that Ashraf was undergoing treatment at Mangalore on the date of incident. On completion of investigation, Chargesheet was filed against all the accused persons (A1 to A15). The Trial Court vide its judgment dated 24.04.2006 found all accused persons guilty under Section 143, 147, 506 (ii), and 302 r/w. 149 of IPC. A2,3,11,12 were also found guilty under Section 148 of IPC and under Section 5 of the Explosive Substance Act and A15 was completely acquitted of all charges.

4. On appreciation of evidence on record, the High Court in its elaborate judgment dated 12th April 2011 convicted A1 to A3 and A 11 & 12 while acquitting A4 to10, A13 & A14 and confirmed the acquittal of A15.

5. Aggrieved by the said judgment of the High Court, A1 to A3 and A11 and 12 are before us. For the sake of convenience, we will refer to the parties by their respective nomenclature before the Trial Court.

6. It may be useful for our purposes to note that since A1 had died, proceedings against stood abated.

CONTENTIONS

7. The Ld. counsel for appellants vehemently submitted that FIR is ante-timed, the prosecution story is not palpable. According to the prosecution, the FIR was registered on 3 am on 02.03.2002 which was communicated to the police station at 3:45 am. The Magistrate has only noted the date of FIR as 02.03.02 and did not note the time. The prosecution has failed to examine the handwriting of the person who had noted the time of the FIR as 3:45 pm. Moreover, the FIR records

the death of Sunil at 3 am whereas the knowledge of death of Sunil was only at 7:30 am.

It was vehemently argued that there are major interpolations in the FIR which needs consideration like insertion of names of A14 and A15 and correction of date. It was submitted that the prosecution has tried to implicate innocent persons and the same can be seen from testimonies of eyewitnesses PW1, PW2, PW4 who gave their statements about Ashraf being present on the spot of the alleged incident. Further, it was argued that there is violation of statutory provision of Section 154 of Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C') as the FIR came to be lodged belatedly.

8. It was stressed upon by the Ld. Counsel for the appellant that Sunil was murdered elsewhere, and the body was brought to the scene of occurrence to implicate the appellants. The FIR mentioned death of Sunil but his body was recovered only at 7:30 am 6 meters away from the spot towards the landside near the mangroves implying chances that the body was brought to the scene of occurrence to implicate the appellants. It is further submitted that the recovery made under Section 27 of IEA is not credible. It was contended that an prudent man would mention a police jeep as a 'police jeep' itself.

There was no mahazar suggesting examination of jeep for blood stains. It was submitted that the doctor who had examined Sujeesh had not recorded the names of persons who brought the dead body to him. As per the appellants, the body of Sunil was found not even close to the river and as such there cannot be any high tide. The eyewitnesses could not have seen the incident as alleged because of the obstacles such as heap of coconut husk, mangrove and shed.

It was vehemently argued that inquest report was not made properly and the eyewitnesses were giving parrot like statements only to implicate the accused persons due to political enmity. It was submitted that it is an improbable human conduct for the eyewitnesses to keep standing when a bomb is being thrown at them rather than fleeing from the spot and that recovery of bomb was not made in a proper manner.

9. On the other hand, Ld. counsel for the State of Kerala argued that the judgment passed by the High Court is a very well-reasoned judgment. The High Court has rightly convicted the accused persons on appreciation of evidence and the appeal of the appellants needs to be set aside.

ANALYSIS

10. Crime creates a sense of societal fear and it affects adversely the societal conscience. It is inequitable and unjust if such a situation is allowed to perpetuate and continue in the society. In every civilized society, the purpose of criminal

administrative system is to protect individual dignity and to restore societal stability and order and to create faith and cohesion in the society. The courts in the discharge of their duties are tasked with balancing of interests of the accused on one hand and the state/society on the other.

11. Having said this, let us consider the evidence on record to see as to whether the High Court has appreciated the evidence in a proper manner to partly allow the appeal.

12. Admittedly, there was a long-standing political rivalry between RSS and CPI. As has been stated by PW1, he and 11 others were earlier a part of CPI and they had defected and joined RSS and hence there were estranged relations between the two groups. Admittedly, a call of Hartal was given by one organization and the same was opposed by another political party, leading to a clash between the followers of these two parties. The version of witnesses discloses that the group of 11 members rushed to a shed near river Meloor to save their lives from the violent mob. This group of 11 members were hiding themselves near the river and in the night the accused persons led a deadly attack on them and ultimately, two persons lost their lives as a result of this incident.

13. In the postmortem report issued by PW7, it was opined that the death of Sunil was due to injuries caused to vital organs like liver, lung, heart and shock resulting from loss of blood. Similarly, the postmortem report pertaining to Sujeesh submitted by PW8 concluded that the death of Sujeesh was due to injuries to vital organs like liver, lung, spleen, hemorrhage, and shock. A cumulative reading of both the reports sufficiently establish that death of both the victims was homicidal.

14. It was urged by the counsel for the appellants that there are material contradictions in the testimonies given by the prosecution witnesses, particularly the eyewitnesses. In this context, the question arises, whether these contradictions are material enough for the benefit of doubt to be given to the appellants so as to set aside their conviction.

15. The law relating to material contradiction in witness testimony has been discussed by this Court in the judgment of Rammi vs State of MP 1. It was held that:

(25) "It is common practice in trial court to make out contradictions from the previous statements. Merely Because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No Doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness.

Only such of the inconsistent statement which is capable to be "contradicted" would affect the credit of the witness" The abovementioned settled position of law was again reiterated by this Court in the judgment of Birbal Nath vs State of Rajasthan2 wherein it was held as under:

"(19) No doubt statement given before police during investigation under section 161 are "previous statements" under section 145 of the Evidence Act and therefore can be used to cross examine a witness. But this only for a limited purpose, to "contradict" such a witness. Even if the defense is successful in contradicting a witness, it would not always mean that the contradiction in her two statements would result in totally discrediting this witness. It is ere that we feel that the learned judges of the High Court have gone wrong.

(21) In the landmark case of Tehshildar Singh v State of UP3 this Court has held that to contradict a witness would mean to "discredit" a witness. Therefore, unless and until the former statement of this witness is capable of "discrediting" a witness, it would have little relevance. A mere variation in the two statements would not be enough to discredit a witness.

This has been followed consistently by this Court in its later judgement, including Rammi (Supra)". Bearing in mind the abovementioned settled position of law, this court is of the considered opinion that though there is a variance in the statements of the witnesses, it is minor and not of such a nature which would drive their testimony untrustworthy. This court finds the deposition of witnesses PW1, 2 and 4 to be honest, truthful, and trustworthy. Hence, the observations made by the High Court in this regard are well reasoned.

16. It is worthwhile to mention that in his examination in chief, PW1- V K Jithesh had mentioned that Sunil was not seen. In his cross examination, PW1 had stated that he had told the police at the picket post that Sunil was missing. This was apparently in contradiction to the stand of the defence that death of Sunil was mentioned in the FIR at 3 am itself while his body was found only at 7:30 am in the morning. The statement of PW1 to the police mentioning that Sunil is "missing" cannot be seen in an abstract. "Noscitur a sociis" is a well-recognized principle used for interpretation of statutes.

It means that the meaning of a word can be determined by the context of the sentence; it is to be judged by the company it keeps. Though this principle Is used for interpretation of words in a statute, the inherent principle can very well be applied to the facts of the present case which have be seen in the context of the entire set of events that had transpired that night. The High Court has also, in its well-reasoned judgment considered the fact that while struggling for his life, injured Sunil might have made some movements and while so he might have

fallen into the slushy area and happened to be amidst the bushes which is the reason for him being allegedly "missing".

17. In the FIS, PW1 had stated that Sujeesh was taken in a jeep to the hospital. However, the defence had submitted before this Court that there was no explicit mention of "police jeep" when the statement before the police was recorded. As per the appellants, this holds importance since there is no mahazar suggesting the particulars of the jeep or examination of the jeep for bloodstains or any other evidence to show that his body was carried in a police jeep showing that theory of police jeep was introduced by the police.

This court is of the opinion that it is a natural human conduct that to save the life of someone, the entire focus of the person in such a situation would be to take the injured to the hospital rather than wasting time on giving minute details. It was a prudent conduct on the part of PW1. The omission to state "police" jeep does not constitute a material omission or contradiction. The same has also been rightly dealt by the High Court in great details.

18. Either a partial, untrue version of one of the witnesses or an exaggerated version of a witness may not be a sole reason to discard the entire prosecution case which is otherwise supported by clinching evidence such as truthful version of the witnesses, medical evidence, recovery of the weapons etc. At this stage, it may not be out of place to refer to the principle called as 'falsus in uno, falsus in omnibus'.

19. It is a settled position that 'falsus in uno, falsus in omnibus' (false in one thing, false in everything) that the above principle is foreign to our criminal law jurisprudence. This aspect has been considered by this Court in a plethora of judgements. In the case of Ram Vijay Singh vs State of UP4, a Three Judge bench of this Hon'ble Court had held that:

"(20) We do not find any merit in the arguments raised by the learned counsel for the Appellant. A part statement of a witness can be believed even though some part of the statement may not be relied upon by the Court. The maxim falsus in uno, falsus in omnibus is not the rile applied by the courts in India. This Court recently in a judgement IIangovan vs State of T.N. held that Indian Courts have always been reluctant to apply the principle as it is only a rile of caution. It was held as under: (SCC Pg 536, Para 11)"

"(11) The Counsel for the Appellant lastly argued that once the witnesses had been disbelieved with respect to the co accused, their testimonies with respect to the present accused must also be discarded. The Counsel is, in effect, relying on the legal maxim "falsus in uno, falsus in omnibus", which Indian Courts have always been reluctant to apply. A three Judge bench of this Court, as far back as

in 1957, in Nisar Ali v. State of UP, held on this point as follows (AIR p 368, Para 9-10)

"(9) This maxim has not received general acceptance in different jurisdictions in India nor has this maxim come to occupy the status of a rule of law. It is merely a rule of Caution. All that it amounts to is that in such cases the testimony may be disregarded and not that it must be disregarded.

(10) The Doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of Evidence"

(21) Therefore, merely because a prosecution witness was not believed in respect of another accused, the testimony if the said witness cannot be disregarded qua the present Appellant. Still, further it is not necessary for the prosecution to examine all the witnesses who might have witnessed the occurrence. It is the quality if evidence which is relevant in criminal trial and not the quantity."

Hence, as can be seen from above, it has being a consistent stand of this Hon'ble Court that the principle 'falsus in uno, falsus in omnibus' is not a rule of evidence and if the court inspires confidence from the rest of the testimony of such a witness, it can very well rely on such a part of the testimony and base a conviction upon it.

20. Though the learned defence counsel vehemently submitted that the dead body of Sujeesh was found at a different place away from the dead body of the other victim Sunil and as such, on this count alone, the prosecution case is to be discarded. We are unable to accept the submissions of the learned counsel for the reason that the evidence of eye witnesses clearly reveal that this mob of 11 persons being apprehensive of their life rushed towards the river. It is further disclosed in the version of witnesses that members of this group took shelter near a shed in bushy area.

In this process, it is quite natural that all the members may not find a suitable place for hiding at a particular spot or one spot. This being the situation, it was also natural and possible that Sujeesh might have rushed to another spot to hide and save himself and as such his body is found away from the dead body of another victim Sunil. The violent mob of accused persons led a deadly attack on the members of the mob and was successful in killing two members of the mob. Thus in our opinion, merely because the dead body of Sujeesh was found at a place little away from the place of body of other victim Sunil, it cannot be the sole and decisive factor to discard the entire case of prosecution.

21. One more thrust of argument from the appellants was that the prosecution has not conducted the investigation in a fair and impartial manner as they have tried

to rope in innocent persons who were not present at the spot. There was an attempt to rope in one Ashraf and there was a consistency in the statements of the eyewitnesses that they had seen Ashraf when the crime was taking place. Admittedly, there is a rivalry between the two groups so the possibility of exaggeration cannot be ruled out. When the fact that Ashraf was not at all present during the crime and that he was present in the hospital came to light of the prosecution, they had moved a report and sought deletion of his name.

22. A cumulative reading of the entire evidence on record suggests that the investigation has not taken place in a proper and disciplined manner. There are various areas where a properly investigation could have strengthened its case. In the case of Paras Yadav & ors. vs. State of Bihar5, the Apex Court observed as under:

"Para 8 - the lapse on the part of the Investigating Officer should not be taken in favour of the accused, may be that such lapse is committed designedly or because of negligence. Hence, the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. For this purpose, it would be worthwhile to quote the following observations of this Court from the case of Ram Bihari Yadav v. State of Bihar and others, J.T. (1998) 3 SC 290. "In such cases, the story of the prosecution will have to be examined de hors such omissions and contaminated conduct of the officials otherwise the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law enforcing agency but also in the administration of justice."

Hence, the principle of law is crystal clear that on the account of defective investigation the benefit will not inure to the accused persons on that ground alone. It is well within the domain of the courts to consider the rest of the evidence which the prosecution has gathered such as statement of the eyewitnesses, medical report etc. It has been a consistent stand of this court that the accused cannot claim acquittal on the ground of faulty investigation done by the prosecuting agency. As the version of eyewitnesses in specifically naming the appellants have been consistent throughout the trial, we find that there is enough corroboration to drive home the guilt of the accused persons.

When the testimony of PW1 Jitesh, PW 2 and PW4 is seen cumulatively, their versions can be seen to be corroborating each other. All of them being eyewitnesses, what is material to be seen is their stand is consistent when they said that it was A2 who was responsible for inflicting blows on both the deceased. It may not be out of place to mention that though the unfortunate incident took place at midnight around 1 am, it was a full moon night and as such, it was not pitch dark. This has also not been vehemently disputed by the

defence counsel. Hence, the version put forth by the prosecution witnesses inspires confidence of this Court.

The specific role attributed by the prosecution witnesses cannot be challenged on extraneous grounds which have been raised by the defense. There is no contradiction when it comes to assigning specific role to the above accused. Admittedly, there was an enmity between the witnesses as they were from different political groups. Moreover, it can be seen from the record that the Accused and the witnesses were well acquainted with each other as PW1, PW 2 and PW4 had defected from the CPI and had joined RSS. The witnesses could have tried to implicate anyone had they wished to take advantage of their past acquaintance and recent rivalry.

23. It has been held by this court in the case of Raju alias Balachandran and ors. vs. State of Tamil Nadu6:

"29 The sum and substance is that the evidence of a related or interested witness should be meticulous and carefully examined. In a case where the related and interested witness may have some enmity with the assailant, the bar would need to be raised and the evidence of the witness would have to be examined by applying a standard of discerning scrutiny. However, this is only a rule of prudence and not one of law, as held in Dalip Singh [AIR 1963 SC 364] and pithily reiterated in Sarwan Singh [(1976) 4 SCC 369] in the following words: (Sarwan Singh case [(1976) 4SCC 369, p.3376, para 10)

"10. The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, to as a rule of law, that the evidence of such witnesses should be scrutinized with little care. Once that approach is made and the court is satisfied that the evidence of the witnesses has a ring of truth such evidence could be relied upon even without corroboration."

Bearing in mind the above legal position of the interested witnesses the testimonies of PW1, PW2 and PW4 is the only piece of evidence available of the eye- witnesses. Even if it is assumed that they are interested witnesses there is no such inconsistency in their statements which would raise a reasonable suspicion about their evidence being concocted and untruthful. They were present at the spot where the incident took place and they have delivered a version which is palpable one. Their versions about seeing and hearing the appellants inflicting injuries on the bodies of the deceased Sunil and Sujeesh are in harmony with each other.

24. As regards the conviction of A3 under Explosive Substances Act, 1908 is concerned, this court is of the opinion that the mere act of throwing the bomb by A3 would give rise to reasonable suspicion that he did not have the bomb in his

control for a lawful object. The High Court has rightly upheld the conviction of A3 for Section 5 of Explosive Substances Act, 1908.

25. The entire submissions of the appellants were that since there are contradictions, the entire story of the prosecution is false. As we have already mentioned above, the principle of 'falsus in uno, falsus in omnibus' does not apply to the Indian criminal jurisprudence and only because there are some contradictions which in the opinion of this Court are not even that material, the entire story of the prosecution cannot be discarded as false.

It is the duty of the Court to separate the grain from the chaff. In a given case, it is also open to the Court to differentiate the accused who had been acquitted from those who were convicted where there are a number of accused persons, like in the present case.

26. On appreciation of the evidence, we are unable to find any fault with the judgment and order dated 12.04.2011 passed by the High Court of Kerala at Ernakulam in Criminal Appeal No.1040/2006. Accordingly, we arrive at the conclusion that the present appeal deserves to be dismissed.

27. The present appeal is accordingly dismissed. Pending application(s), if any, shall be disposed of accordingly.

.....J. [Sudhanshu Dhulia]

.....J. [Prasanna B. Varale]

New Delhi;

January 06, 2025.

1 1999 8 SCC 649.

2 2023 INSC 957.

3 AIR 1959 SC 1012.

4 2021 SCC Online SC 142.

5 [1999 (2) SCC 126].

6 (2012) 12 SCC 701.

IN THE SUPREME COURT OF INDIA

H. N. Pandakumar
Vs.
State of Karnataka

[Miscellaneous Application No. 2667 of 2024]
[SLP (Crl.) No. 895 of 2024]

HEADNOTE – Even Section 326 IPC is non-compoundable, the Court can, in exceptional circumstances, invoke its inherent power to give effect to compromise. Such circumstance also includes voluntary settlement between the parties.

JUDGMENT

Vikram Nath, J.

1. The present Miscellaneous Application1 seeking direction for compounding of offence has been filed by the applicant/petitioner in Special Leave Petition (Criminal) No. 895/2024, which was dismissed by this Court vide order dated 19.01.2024, thereby upholding the conviction of the applicant/ petitioner under Section 326 of the Indian Penal Code, 18602. The applicant/petitioner, H.N. Pandakumar (Accused No. 3 in the original case), seeks relief for compounding the offense based on a compromise reached between the parties after the dismissal of the Special Leave Petition.

2. The original complaint was lodged by the respondent/complainant, Puttaraju, in FIR No. 198/2008 at K.R. Pete Rural Police Station, Mandya, alleging that Accused Nos. 1 to 5 had formed an unlawful assembly and assaulted the complainant and his family members, causing grievous injuries.

Following an investigation, charges were framed against all the accused under Sections 143, 341, 504, 323, 324, and 307 read with Section 149 the Indian Penal Code, 18603. The Trial Court, vide its judgment dated 24.01.2012 in Sessions Case No. 68/2009, convicted Accused Nos. 3 and 4 under Section 326 read with Section 34 IPC, sentencing them to rigorous imprisonment for two years imposing a fine of Rs. 2,000/- each. The remaining accused were acquitted.

3. The petitioner's/applicant's appeal before the High Court of Karnataka, Bengaluru, in Criminal Appeal No. 218/2012, resulted in partial modification of the Trial Court's judgment. Vide its judgment dated 01.09.2023, the High Court reduced the petitioner's/applicant's sentence to one year while enhancing the fine amount to Rs. 2,00,000/- (Rupees two lakhs only). Accused No. 4 was acquitted.

Aggrieved, the petitioner/applicant approached this Court through the aforementioned Special Leave Petition, which was dismissed on 19.01.2024.

4. Subsequently, the applicant/petitioner has filed the present Miscellaneous Application seeking relief for compounding the offense under Section 326 IPC, based on a compromise reached between the parties after the dismissal of the Special Leave Petition. The applicant/petitioner states that all the disputes between the applicant/petitioner's family and the complainant's family have been amicably resolved with the intervention of elders and villagers. The applicant/ petitioner has agreed to pay Rs. 5,80,000/- as total compensation to the complainant as part of the settlement.

The complainant has filed an Interlocutory Application No. 227010/2024 for impleadment in support of the petitioner's prayer for compounding the offense, affirming the compromise and seeking closure of the matter to ensure peace and harmony between the parties. The complainant and the petitioner reside in close proximity, with only a road separating their houses, making it essential to maintain a peaceful relationship between the two families.

The parties are also distantly related, and any lingering hostility is likely to disturb the social fabric of their neighbourhood. The compromise covers not only the criminal case but also related property disputes, including the right of way, which had been a point of contention for years. The applicant/petitioner's commitment to paying the agreed compensation reflects a genuine effort to end the discord and uphold the terms of the settlement. This Court notes that the complainant's unequivocal support for the compromise further underscores the voluntary nature of the settlement and the shared desire to put an end to all disputes.

5. In light of the amicable settlement and the complainant's unequivocal consent, as evidenced by the Interlocutory Application, this Court finds it appropriate to allow the present M.A. While the offense under Section 326 IPC is non-compoundable under the provisions of the Criminal Procedure Code, 1973, the exceptional circumstances of this case, including the voluntary settlement between the parties, warrant the exercise of this Court's inherent powers to give effect to the compromise.

6. Accordingly, the Miscellaneous Application is allowed. The order dated 19.01.2024 dismissing the SLP in limine is recalled.

7. Leave granted.

8. For the facts and reasons recorded above, the appeal is partly allowed. The conviction recorded by the court's below is confirmed, however, the sentence of one year RI is reduced to the period already undergone.

9. The I.A. for impleadment stands disposed of in terms of this order.

10. All pending applications, if any, are also disposed of.

.....J. (Vikram Nath)

.....J. (Prasanna B. Varale)

New Delhi;

January 07, 2025

1 In short "M.A."

2 IPC

3 IPC

IN THE SUPREME COURT OF INDIA

Abdul Nassar
Vs.
State of Kerala

[Criminal Appeal No(s). 1122-1123 of 2018]

HEADNOTE – Principles that courts must adhere to while appreciating and evaluating evidence in cases based on circumstantial evidence:-
(i) The testimony of each prosecution and defence witness must be meticulously discussed and analysed. Each witness's evidence should be assessed in its entirety to ensure no material aspect is overlooked.
(ii) Circumstantial evidence is evidence that relies on an inference to connect it to a conclusion of fact. Thus, the reasonable inferences that can be drawn from the testimony of each witness must be explicitly delineated.
(iii) Each of the links of incriminating circumstantial evidence should be meticulously examined so as to find out if each one of the circumstances is proved individually and whether collectively taken, they forge an unbroken chain consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.
(iv) The judgment must comprehensively elucidate the rationale for accepting or rejecting specific pieces of evidence, demonstrating how the conclusion was logically derived from the evidence. It should explicitly articulate how each piece of evidence contributes to the overall narrative of guilt.
(v) The judgment must reflect that the finding of guilt, if any, has been reached after a proper and careful evaluation of circumstances in order to determine whether they are compatible with any other reasonable hypothesis.

JUDGMENT

Mehta, J.

1. These appeals assail the judgment and order dated 28th February, 2018 passed by the Division Bench of the High Court of Kerala at Ernakulam in Criminal Appeal No. 1452 of 2013 and Death Sentence Reference No. 3 of 2013[1]. The Death Sentence Reference and the Criminal Appeal arose out of the judgment dated 31st July 2013 passed by the Court of Sessions Judge, Manjeri[2] in Sessions Case No. 487 of 2012.

2. By the aforesaid judgment, the learned trial Court found the appellant (the sole accused) guilty of the offences punishable under Sections 302 and Section 376 of the Indian Penal Code, 1860[3] and sentenced him as follows:

(i). Under Section 302 IPC: Death sentence (subject to the confirmation by the High Court)

(ii). Under Section 376 IPC: Rigorous Imprisonment for 7 years and a fine of Rs. 1,000/- (in default to undergo Rigorous Imprisonment for two months). [This imprisonment was allowed to be set off under Section 428 of the Code of Criminal Procedure, 1973[4]]

3. Being aggrieved by his conviction and sentence awarded by the learned trial Court, the accused preferred Criminal Appeal No. 1452 of 2013 before the High Court. Since the trial Court awarded capital punishment to the accused appellant, the matter was referred to the High Court under Section 366 CrPC for confirmation of the death sentence vide D.S.R. No. 3 of 2013. Both D.S.R. No. 3 of 2013 and Criminal Appeal No. 1452 of 2013 were decided by the High Court vide common impugned judgment dated 28th February 2018 whereby, the Criminal Appeal was dismissed, and the Death Sentence Reference was allowed confirming the death sentence awarded to the accused. Being aggrieved, the accused appellant has filed the present appeals by way of special leave.

4. This Court vide order dated 4th September, 2018, stayed the execution of death sentence awarded to the accused appellant.

5. During the pendency of these appeals, the appellant passed away on 16th January 2024. An application was submitted by the legal heirs of the appellant before this Court under Section 394(2) CrPC for the continuation of the present appeals to wash off the stigma attached to the accused appellant and his family which was allowed vide order dated 1st February, 2024.

6. Brief facts relevant and essential for the disposal of these appeals are as follows:-

6.1 The prosecution story in brief is that on 4th April, 2012, at about 6:30 am, the child victim aged about 9 years was proceeding from her house to the Madrassa situated at Ponnamkallu in Amarambalam Village. On the way to the Madrassa, she went to the house of the accused which was situated on the side of the panchayat road at Ponnamkallu, in search of her friend who is the daughter of the accused so as to go to the Madrassa together.

6.2 On seeing the child victim all alone, the accused who was also alone in the house, committed rape upon her in a room in his house at around 6:45 am, and after that, he strangled the child victim with a shawl and smothered her with his hands which lead to the death of the victim.

6.3 It is the case of the prosecution that the accused, with the intention to destroy evidence, concealed the dead body of the victim beneath a cot inside the bedroom

in the said house. Thereafter, the accused shifted the victim's dead body to the bathroom attached to the said house. He also attempted to dispose of the dead body in the septic tank situated at the north-eastern corner of the house as the stones from under the slab of the septic tank were found removed.

6.4 When the victim could not be found anywhere despite frantic efforts to trace her out, a written complaint[5] came to be submitted by complainant-Salim (PW-1) at the Nilambur Police Station on 4th April, 2012 at 7:00 pm on the basis of which an FIR No. 308 of 2012[6] came to be registered at the Nilambur Police Station under Section 57 of Kerala Police Act, 2011 and the investigation was commenced.

6.5 The dead body of the girl was found at around 7:30 pm on 4th April, 2012, in the bathroom adjacent to the house of the accused appellant and thereupon, the offence punishable under Section 57 of the Kerala Police Act, 2011 was altered to Section 302 IPC vide Exhibit P-9. Further, on the next day, offences punishable under Sections 376 and 201 IPC and Section 23 of the Juvenile Justice (Care and Protection) Act, 2000[7] were also added to FIR No. 308 of 2012[8] vide Exhibit P-20, and the investigation continued. The accused appellant was arrested on 6th April, 2012.

6.6 The Investigating Officer (PW-24) forwarded a report[9] regarding the addition of the name and address of the accused in the aforesaid FIR. Material forensic evidence was collected from the crime scene and was subjected to scientific examination. Incriminating recoveries were effected in furtherance of the disclosure statements made by the appellant. After the conclusion of the investigation, a charge sheet came to be filed against the accused for the offences punishable under Sections 376, 302, and 201 IPC and Section 23 of the JJ Act in the Court of the concerned Jurisdictional Magistrate.

6.7 The case being exclusively Sessions triable was committed to the Court of Sessions Judge, Manjeri ('trial Court') where charges were framed against the accused for the above offences. The accused pleaded not guilty and claimed trial.

7. The prosecution examined as many as 24 witnesses and exhibited 25 documents and 17 material objects to prove its case. For the sake of convenience, the details of the prosecution witnesses, exhibits and material objects are given below:-

Prosecution Witnesses:-

PW-1	Saleem
PW-2	Nazarudheen
PW-3	Abdul Azeez

PW-4	Unnikrishnan
PW-5	Vijayachandran Kutty
PW-6	Harinarayanan
PW-7	Ibrahim Kutty
PW-8	Shamsudheen
PW-9	Suhara
PW-10	Ibrahim Darimi
PW-11	Ramakrishnan
PW-12	Unnikrishnan
PW-13	Musthafa
PW-14	Subramaniam
PW-15	Sunil Pulikkal
PW-16	Nisha
PW-17	Ratheesh
PW-18	Abraham
PW-19	Dr. Sonu
PW-20	Dr. Vinod Kumar
PW-21	Dr. R. Sreekumar
PW-22	Dr. P.A. Sheeju
PW-23	Pradeep Kumar
PW-24	A.P. Chandran

Exhibits:-

Ex. P-1	First Information Statement
Ex. P-2	Seizure Mahazar
Ex. P-3	Admission abstract and certificate of the deceased, issued by the Headmaster, Government LP School, Kavalamukkatta
Ex. P-4	Property certificate issued by Village Officer, Amarambalam
Ex. P-5	Scene Plan
Ex. P-6	Seizure Mahazar
Ex. P-7	Seizure Mahazar
Ex. P-8	Septic Tank Report issued by Asst. Engineer, PWD Building Section, Nilambur
Ex. P-9	Report incorporating the offence under S. 302, Indian Penal Code, 1860 (IPC)
Ex.	Seizure Mahazar

P-10	
Ex. P-11	First Information Report
Ex. P-12	Potency Certificate 8
Ex. P-13	Examination report on semen stains, blood, and hair
Ex. P-14	DNA Report
Ex. P-15	Post-Mortem report
Ex. P-16	Seizure Mahazar
Ex. P-17	Seizure Mahazar
Ex. P-18	Seizure Mahazar
Ex. P-19	Inquest Report
Ex. P-20	Report submitted in court incorporating offences under S. 376 and 201 of the IPC, and the offence under S. 23 of the Juvenile Justice (Care and Protection) Act, 2015
Ex. P-21	Report submitted in court adding name of the accused to the FIR.
Ex. P-22	List of property sent to Magistrate, filed by PW24.
Ex. P-23	Extract of confessional statement of the accused.
Ex. P-24	Chemical analysis certificate.
Ex. P-25	Copy of request for collection of nail clippings, hair, and blood of the accused.

Material Objects:-

MO1	Chapels
MO2	Chapels
MO3	Writing pad
MO4	Pen
MO5	Plastic cover
MO6	Plastic carry bag
MO7	Midi skirt
MO8	Petticoat

MO9	Midi top
MO10	Piece of shawl
MO11	Underwear
MO12	Piece of shawl
MO13	Piece of shawl
MO14	Dothi
MO15	Full sleeves shirt
MO16	Passport of the accused.
MO17	Election Identity Card of the accused

8. The accused upon being questioned under Section 313 CrPC denied the prosecution allegations but chose not to lead any evidence in defence. The trial Court proceeded to convict and sentence the accused in the above terms[10] vide judgment dated 31st July 2013.

9. Being aggrieved by the conviction and sentence awarded by the trial Court, the accused appellant preferred Criminal Appeal No. 1452 of 2013 under Section 374(2) CrPC before the High Court of Kerala at Ernakulam. Since, the trial Court awarded death sentence to the accused for the offence punishable under Section 302 IPC, the matter was referred to the High Court for confirmation of the death sentence under Section 366 CrPC vide D.S.R. No. 3 of 2013.

10. Criminal Appeal No. 1452 of 2013 and D.S.R. No. 3 of 2013 were decided vide common judgment dated 28th February 2018, whereby the Division Bench of the High Court dismissed the Criminal Appeal and allowed the Death Sentence Reference confirming the death sentence awarded to the accused appellant. The said judgment is assailed in the present appeals.

Submissions on behalf of the appellant:

11. Shri Trideep Pais, learned senior counsel representing the accused appellant advanced the following pertinent submissions to assail the impugned judgment:-

11.1 That the prosecution has not been able to establish that the body of the victim girl was dumped in the bathroom by the accused. The bathroom where the body was found was located outside the house of the accused and was open and easily accessible to all and sundry. The accused was not in the house at the time of the incident and thus, the possibility of someone else having committed the crime cannot be ruled out.

11.2 That the body of the deceased was discovered at around 7:30 pm and the police officials arrived at the scene for the first time at around 9:00 pm i.e. after a delay of 1.5 hours. Admittedly, local people arrived at the crime scene during this time and thus, the possibility of the public tampering with the body of the

deceased and disturbing and contaminating the crime scene cannot be ruled out which brings the integrity of samples collected during the investigation under a shadow of doubt.

11.3 That the scene of occurrence and body of the deceased remained unsealed and unguarded for around 14 hours until 9:00 am of 5th April, 2012, i.e., the time when inquest was prepared. This renders every subsequent seizure of samples or evidence collected from the house of the accused or the body of the deceased unreliable with a strong possibility of degradation and contamination of body and so also the tampering of evidence.

11.4 That as per the statement of AP Chandran, Investigating Officer (PW-24), the underwear was found on the body of the deceased while as per the Inquest Report[11], the underwear (MO 11) was found in the kitchen. Further, none of the witnesses to the inquest report were examined and also the contents of the inquest report have not been proved by the Investigating Officer (PW-24) in his deposition.

11.5 That the blood stains were only found in the north-west room which is admittedly not the room where the crime was committed and there is no tangible evidence on record to explain how the dead body was taken unnoticed from the crime scene to the bathroom situated outside the house of the accused.

11.6 That no seizure memo was prepared for the collection of the clothes of the deceased i.e. midi skirt, petticoat, top and underwear seized by the Investigating Officer (PW-24) and even the inquest report[12] does not mention that these items were sealed.

11.7 That the chain of custody of all articles seized by the police has not been established and there has been a lapse in sending the material articles for forensic examination. Also, the manner of storage of the biological samples has been improper which is contrary to the mandate laid down by this Court in Rahul v. State (NCT of Delhi)[13] and Prakash Nishad @ Kewat Zinak Nishad v. State of Maharashtra[14].

11.8 That the findings of the DNA Report[15] dated 11th January, 2024 and FSL Report[16] of seminal stains, blood and hair dated 4th January, 2024 cannot be relied upon due to the absence of corroborative evidence of seizure and reasons behind the findings of the experts. Thus, these reports do not meet the standards of expert evidence enumerated under Section 45 of the Indian Evidence Act, 1872.

11.9 That it is a settled position of law that the accused must be given an opportunity to explain all evidence against him during the recording of his statement under Section 313 CrPC which has not been complied with in the

instant case inasmuch as the findings of DNA examination and serological examination were not put to the accused and thus, the same cannot be relied upon in support of the prosecution case.

11.10 That the disclosure statement[17] made by the accused cannot be relied upon as the exclusive knowledge or access of the accused to the terrace from which the alleged recovery was made is not shown by the prosecution and the recovered articles were not identified in TIP[18] or adequately link with the deceased.

11.11 That the material witness, Amina Thana who had last seen the deceased going towards the Madrassa, and other witnesses namely, Muhammad Shan, Kunhiappa, and Keshavan who were part of the search party were not examined by the prosecution.

11.12 That the testimony of the prosecution witnesses, Nazarudheen (PW-2), Shamsudheen (PW-8) and Unnikrishnan (PW-12) cannot be relied upon. Nazarudheen (PW-2) stated that he went to the house of the accused on four occasions, and it was during his fourth visit, he found the dead body of the victim in the bathroom. It was contended that PW-2 had even searched the bathroom on his third visit but did not find anything and thus apparently, the recovery of the dead body is a planted one.

11.13 That there is no eyewitness to the alleged incident and the case of the prosecution hinges entirely on circumstantial evidence. The prosecution has failed to prove the complete chain of incriminating circumstances pointing towards the guilt of the accused. In this regard, learned senior counsel relied upon the judgments of this Court in Hanumant v. State of Madhya Pradesh[19]; Sharad Birdhichand Sarda v. State of Maharashtra[20] to submit that it is settled law that in a case of circumstantial evidence, the chain of circumstances must be so complete that it is consistent only with the guilt of accused and every other possible hypothesis is excluded.

11.14 That the instant case does not fall within the purview of the rarest of rare cases. The High Court affirmed the death sentence awarded to the accused without adverting to the relevant mitigating and aggravating circumstances pertaining to the accused. He thus implored the Court to accept the appeals and set aside the impugned judgments.

Submissions on behalf of Respondent-State:-

12. Per contra, Shri R. Basant, learned senior counsel representing the State, vehemently and fervently opposed the submissions advanced by the learned senior counsel for the accused appellant and submitted that every reasonable hypothesis points towards the guilt of the accused. He urged that two Courts, i.e., the trial Court as well as the High Court, have recorded concurrent findings of

facts, convicting the accused and hence, this Court in the exercise of its jurisdiction under Article 136 of the Constitution of India should be slow to interfere with such concurrent findings of facts. He advanced the following submissions while supporting the impugned judgment and imploring the Court to dismiss the appeals:-

12.1 That the blood stains were found inside the house of the accused, beneath the cot and on the cot, and the DNA Report[21] establishing that the blood stains found were that of the deceased.

12.2 That the seminal stains on the vaginal swab and smear of the deceased collected by Forensic Surgeon (PW22) also matched with the DNA of the accused as per the DNA Report (Exhibit P-14).

12.3 That the Inquest Report (Exhibit P-19) is an admissible piece of evidence since the same was prepared by the Investigation Officer (PW-24) while discharging his official duties under Section 174 CrPC. In this regard, the learned counsel placed reliance on Rameshwar Dayal and Others v. State of U.P.[22] and George and Others v. State of Kerala and Another[23].

12.4 That no explanation has been given by the accused for recovery of the writing pad (MO3), pen (MO4), plastic cover (MO5), plastic carry bag (MO6) and the underwear of the victim (MO11) from the roof of his own house.

12.5 That the learned counsel for the appellant contended that Nazarudheen (PW2) went to the house of the accused four times on the date of the incident i.e. 4th April, 2012. The body of the deceased was found by him on the fourth visit, and PW2 had even searched the bathroom on his third visit but did not find anything. However, he submitted that it is clear from the evidence of Nazarudheen (PW2) that he had a grave suspicion against the accused, and he informed this fact to Shamsudheen (PW8) and Unnikrishnan (PW12). The accused became apprehensive after the third visit of Nazarudheen (PW2) and thus, he told PW2 that he did not have the key to his house. In the meantime, he shifted the body from the bedroom to the bathroom in an attempt to hide the dead body in the septic tank.

12.6 That the instant case falls within the rarest of rare cases as the accused was in a relationship of trust, belief, and confidence with the deceased, being the father of a friend of the deceased and there are no extenuating circumstances which can be said to mitigate the enormity of the crime. On these submissions, Mr. Basant implored the Court to dismiss the appeals and affirm the impugned judgement.

Discussion and Conclusion:-

13. We have given our thoughtful consideration to the submissions advanced at bar and have gone through the judgments of the trial Court and High Court as well as the evidence available on record.

14. Indisputably, the prosecution case rests on circumstantial evidence. The law with regard to a case based purely on circumstantial evidence has very well been crystalized in the judgment of this Court in the case of Sharad Birdhichand Sarda(supra), wherein this Court held thus:

"152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. State of Madhya Pradesh [(1952) 2 SCC 71: AIR 1952 SC 343: 1952 SCR 1091: 1953 Cri LJ 129]. This case has been uniformly followed and applied by this Court in a large number of later decisions up to date, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh [(1969) 3 SCC 198: 1970 SCC (Cri) 55] and Ramgopal v. State of Maharashtra [(1972) 4 SCC 625: AIR 1972 SC 656]. It may be useful to extract what Mahajan, J. has laid down in Hanumant case [(1952) 2 SCC 71: AIR 1952 SC 343: 1952 SCR 1091: 1953 Cri LJ 129]:

"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."

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established: (1) The circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

15. In the light of these guiding principles, we will have to examine the facts of the present case.

16. Before delving into the discussion with respect to the submission regarding the breach in the link evidence on which the entire focus was laid by the learned senior counsel for the appellant, we would like to discuss the other important pieces of evidence on which the trial Court as well as the High Court relied upon so as to record and uphold the conviction recorded against the accused appellant.

17. The High Court primarily relied upon the deposition of maternal uncle of the deceased child namely, Saleem(PW-1), another maternal uncle of the deceased child namely, Nazarudheen (PW-2), mother of the deceased, Suhara (PW-9), and the Madrassa teacher, Ibrahim Darimi (PW-10). The summary of the evidence of these witnesses can be extracted from paragraphs 8 to 11 of the impugned judgment rendered by the High Court which is reproduced hereinbelow for the sake of convenience:-

"8. PW1 is the uncle (mother's brother) of the deceased. He gave Fl statement regarding the fact that the girl was missing from their house. Ext.P1 is the FI statement given at 7.00 p.m. on 4/4/2012. In the statement, he has stated that she had gone to the madrassa at about 7 am on 4/4/2012. Since she did not come back by about 10 am, he had gone and enquired at the Madrassa, and he was told that she had not reached there. When enquired with the people in the locality, they told that she was seen within 100 meters of the madrassa. They went and checked

up in the locality and the house of relatives where she would normally go. Since no information was received, a complaint was filed.

9. PW9 is the mother of the deceased child., She deposed that the victim was studying in the 3rd standard in Government L.P. School at Kavalamukkatta in 2012. The birth certificate had been produced by the Headmaster of the School PW5 and marked as Ext.P3. In Ext.P3, her date of birth was shown as 25/8/2002.

10. PW10, the teacher in the madrassa deposed that she was studying in the 3rd standard and normally she comes at 7.00 a.m. and the class will be over by 9.00 a.m. On 4/4/2012, there was an examination, but she did not come.

11. PW2 is another uncle (mother's brother), of the deceased. He deposed that while conducting search for the minor girl, he got information from a lady by name Amina that she saw her granddaughter and the victim going together in the direction of madrassa. When he enquired in the madrassa, he was informed that she did not reach there. The house of the accused is very near to the madrassa. PW2 conducted a search near the house of the accused also. The house of the accused was found locked. During a second search, PW2 again reached near the house of the accused by around 4.00 p.m. Even at that time, the house was found locked. By about 6.45 p.m., he along with certain other persons reached near the house of the accused.

The accused was found sitting on the veranda. When they asked the accused about the girl, he told them that he also went in search for her, and he reached the house only at that time PW2 also searched the shed and the bathroom of the said house. He asked the accused to open the house in order to conduct a search. Accused told him that the key was with his wife and that he would go and bring it. PW2 therefore went to search in the pond which was situated near the house of the accused. He again went near the madrassa where he met a few other persons including PW8.

However, PW2 had some suspicion regarding the accused which he communicated to them. They therefore came to the house of the accused. They found the house of the accused locked. PW12 had a torch with him. He went to the bathroom and found a heap of clothes. He called others. PW8 entered the bathroom and removed the clothes and found the dead body of the girl lying beneath the clothes. They shouted for the people in the locality. Many people gathered and the police also had come, PW8 and PW12 who were also along with PW2 had supported the above version."

18. Neither there is any doubt, nor any argument was raised by the learned counsel for the appellant that any of these witnesses bore an animus against the accused so as to influence them for deposing falsely against the accused. All

these witnesses are either related to the victim or were residents of the neighbourhood who could not have entertained any motive for falsely implicating the accused and that too, for such a heinous offence. The evidence of these witnesses portrays the following sequence of the events:-

18.1 The child victim had proceeded from the house for going to the Madrassa at 6:30 am on 4th April, 2012. She did not reach the Madrasa on which a search was started.

18.2 Since the last location of the child victim was found near the house of the accused, Nazarudheen (PW-2) [the maternal uncle of the deceased] conducted the search near his house which was found locked.

18.3 The search proceedings continued and Nazarudheen (PW-2) again reached near the house of the accused at around 4:00 pm. Even at that time, the house of the accused was locked.

18.4 At around 6:45 pm, Nazarudheen (PW-2) accompanied with certain other persons reached near the house of the accused and the accused was found sitting in the veranda of the house.

18.5 On inquiry being made from the accused about the girl, he replied that he had also gone for search of the child and had reached back to his house only at that time.

18.6 Nazarudheen (PW-2) also searched the shed and the bathroom of the house of the accused. He asked the accused to open the house in order to conduct a search. The accused told him that the key was with his wife, and he would go to fetch it.

18.7 Nazarudheen (PW-2) went to search in the pond which was situated near the house of the accused. He again went near the Madrassa where he met few other members of the search party including Shamsudheen (PW-8).

18.8 The conduct of the accused raised suspicion upon which Nazarudheen (PW-2) along with the other members of the search party [Shamsudheen(PW-8) and Unnikrishnan(PW-12)] came back to the house of the accused which was still locked.

18.9 Unnikrishnan (PW-12) had a torch with him. He lighted the torch and went to the bathroom and in illumination thereof, he found a heap of clothes. He called the other members of the search party. Shamsudheen (PW-8) entered the bathroom and removed the clothes and found the dead body of the child victim lying beneath the clothes.

18.10 A hue and cry was raised, and many people gathered there. The parents of the deceased child were also called.

18.11 The people of the locality caught hold of the accused and he was taken to the hospital where certain injuries were noted on his body. Shamsudheen (PW-8) and Unnikrishnan (PW-12) also fully supported the version of Nazarudheen (PW-2) in their depositions.

18.12 The dead body of the deceased child was subjected to postmortem at the hands of Dr. P.A. Sheeju (PW-22) who took note of a total of 37 ante-mortem injuries in the postmortem report[24]. The doctor opined that the victim died due to manual compressive and ligature constrictive strangulation. The injuries on the body and external genitalia were suggestive of forcible vaginal penetrative sex.

19. A holistic view of the evidence of Nazarudheen (PW-2), Shamsudheen (PW-8) and Unnikrishnan (PW-12) would show that their initial attempts to search the house of the accused did not succeed because the same was found to be locked. At that time, these witnesses had also checked inside the bathroom which is just adjacent to the house of the accused. The accused has not denied that this bathroom was a part and parcel of his property.

20. When the initial search of the bathroom was taken, nothing was seen therein. Immediately thereafter, the accused posed to the search party that the key to the lock of his house was with his wife. There was an intervening gap in these two events. After some interregnum, when the witnesses Nazarudheen (PW-2), Shamsudheen (PW-8) and Unnikrishnan (PW-12) went into the bathroom of the accused, they found the dead body of the child lying there.

It shows that when the witnesses kept on persevering to search the house of the accused, he tried to parry their attempts. Taking advantage of the gap wherein the witnesses had gone to the Madrassa, he shifted the dead body from inside of the house to the bathroom and that is why the dead body was found lying in the bathroom on second search being made.

21. The Investigating Officer (PW-24) apprehended the accused and arrested him. At the time of arrest, the accused was found having injuries which appear to have been caused by the local people before his arrest.

22. The Investigating Officer (PW-24) interrogated the accused and recorded his disclosure statement[25] and acting in furtherance thereof, the school bag containing the writing pad and footwear etc. of the victim were recovered. These articles were identified by Suhara(PW-9), the mother of deceased.

23. The summary of the scientific evidence and the carrying of the samples by the police officials for forensic examination are contained in paragraph 13 of the

impugned judgment rendered by the High Court and the same is being reproduced hereinbelow for the sake of ready reference:-

"13. The investigating officer had also taken steps for conducting scientific evidence by sending about 16 sealed packets to the Forensic Science Laboratory, PW20 had conducted the examination of seminal stain on item Nos.1 to 5, 12 and 13(a) and the same was detected in all those items. The items were a midi skirt M07, a dhoti MO14, a towel and vaginal swab. Blood was also detected on the midi skirt, petticoat, dhoti, a full sleeve shirt, cotton gauze etc. The blood was found to be of human origin.

Further, nail cuttings were also examined by PW20. But no foreign tissues were detected. Various other items were sent by PW20 for DNA analysis. Pw21 has conducted a DNA analysis. DNA typing showed that the seminal stains in item Nos. l and 13(a) belonged to the accused. Item No.1 is the midi skirt and item No. 13(a) is the vaginal swab. Item No.16 was the blood sample taken from the accused. It is further reported that the DNA typing showed that the blood stains in items Nos, 5 and 6 and the cells on the nail cuttings in item Nos.17(a) and 17(b) belonged to the accused.

Item No.5 is the reddish brown coloured torn single dhoti and item No.6 is the green coloured torn and soiled full sleeve shirt with selflines. Further DNA typing shows that item Nos.1, 7, 8 and 12 and vaginal cells in item No:13(a) belonged to the deceased. Item No.7 is the blood stain collected in cotton gauze from the floor beneath the cot and item No.8 is the blood stain collected in the cotton gauze from the cot. Ext.P14 is the report prepared by PW21."

24. Though learned counsel for the appellant has vehemently and fervently criticised the link evidence, but after going through the testimony of the Investigating Officer (PW-24), DNA expert (PW-4) Constable Nisha (PW-16) and on an overall appreciation of the evidence of the witnesses mentioned above, we find that the prosecution has given convincing link evidence to establish the safe keeping of the samples right from the time of the seizure till receipt at the forensic laboratory. The accused himself has not claimed that after his arrest, the Investigating Officer (PW-24) tried to collect his sample of the semen. Thus, there was no possibility that the semen containing the DNA of the accused could have been planted on the body of the deceased.

25. The following circumstances stand firmly established from a threadbare analysis of the evidence available on record, pointing towards the guilt of the accused appellant:-

(i) The child victim was a friend of the daughter of the accused, and they used to go to Madrassa together.

(ii) On the date of incident, the child victim was seen with the daughter of the accused. However, she never reached Madrassa.

(iii) When the child victim did not return home, an extensive search was conducted and since, the child victim was last seen with the daughter of the accused, the needle of suspicion pointed towards the house of the accused, more particularly because his house was situated close by the Madrassa.

(iv) Nazarudheen (PW-2) tried to repeatedly search the house of the accused along with neighbours and in the efforts to trace out the child victim, the witness found the house of the accused locked in his first and second attempts.

(v) During the third search attempt, the witness(PW-2) found the accused sitting in verandah of his house. Upon being asked for the permission to search his house, the accused stated that the keys of the house were with his wife, and he would bring it himself.

(vi) The witness Nazarudheen (PW-2) during the third attempt, searched the slopping shed and the bathroom adjacent to the house but to no avail whereafter, he went to search the pond near the house of the accused.

(vii) After searching the pond, the witness(PW-2) fixed the battery of the torch which he had called from his father, since it was dark and reached near the Madrassa.

(viii) In the fourth attempt, witnesses namely, Nazarudheen (PW-2), Shamsudheen (PW-8) and Unnikrishnan (PW-12) got suspicious of the accused's conduct and resumed the search of the house of the accused and even this time, the house of the accused was locked, and the accused was not present there. PW-12 inspected the bathroom by lighting his torch and found a heap of clothes, which was removed by PW-8 and the dead body of the child victim was discovered concealed thereunder.

(viii) Two stones of the septic tank inside the house of the accused were also found moved.

(ix) Blood-stained pink colour midiskirt (MO-7), petticoat (MO-8) and black miditop (MO-9) worn by the deceased child victim were identified by her mother(PW-9), recovered by the police officials from the house of the accused and were seized. An underwear(MO11) of the deceased was also found in the kitchen of the house of the accused.

(x) Blood stains were found on the cot and floor beneath it.

(xi) As per the postmortem report[26], a total of 37 ante mortem injuries were found on the child victim's body along with injuries on the genitalia, suggestive of forcible penetrative sexual assault. The cause of death was opined to be manual compressive and ligature constrictive strangulation.

(xii) As per the FSL report[27], the midiskirt worn by child victim, the dhoti of the accused and cotton gauze collected from the scene of crime contained human spermatozoa and semen. The hair collected from the crime scene matched with the hair of the deceased child victim

(xiii) The DNA report[28] clearly proved that the DNA profile of the semen stains found on the midiskirt (MO-7) matched with that of the accused. Further, the blood stains found on the cot and beneath it were that of the deceased child victim.

(xiv) The slippers, hard-board writing pad, plastic cover of the writing pad, grey coloured pen and light rose small plastic carry bag belonging to the deceased child victim, as identified by her mother (PW-9), were recovered in furtherance of the voluntary disclosure statement[29] of the accused.

26. Based on the analysis of the evidence on the record, we are of the view that the chain of incriminating circumstances required to bring home the guilt of the accused is complete in all aspects. In the present case, we affirm that the prosecution has been able to prove the guilt of the accused appellant by fulfilling the five golden principles (Panchsheel) laid down by this Court in the case of Sharad Birdhichand Sarda(supra) and that the circumstances present before us, taken together establish conclusively only one hypothesis that being the guilt of the accused appellant.

27. In the wake of the discussion made hereinabove, there is no doubt in the mind of the Court that the prosecution has proved by leading clinching and convincing circumstantial evidence that the accused had committed forcible and violent sexual assault on the child victim and, thereafter, strangled and killed her.

28. While we concur with the ultimate conclusions reached by the learned trial Court and the High Court, we cannot overlook the deficiencies in the methodology adopted by both the Courts in the appraisal and analysis of the circumstantial evidence. The manner in which the evidence has been scrutinized lacks the depth and rigor expected, raising concerns about the adequacy of the evaluative process undertaken to arrive at the said decisions.

29. The Courts have undertaken an examination of the testimonies of the witnesses but has omitted to delineate the inferences derivable therefrom. Moreover, they failed to expound upon how the prosecution has succeeded in

constructing an unbroken chain of circumstances that irrefutably establishes the culpability of the accused to the exclusion of any other hypothesis.

30. We deem it essential to enunciate the principles that courts must adhere to while appreciating and evaluating evidence in cases based on circumstantial evidence, as follows:

(i). The testimony of each prosecution and defence witness must be meticulously discussed and analysed. Each witness's evidence should be assessed in its entirety to ensure no material aspect is overlooked.

(ii). Circumstantial evidence is evidence that relies on an inference to connect it to a conclusion of fact. Thus, the reasonable inferences that can be drawn from the testimony of each witness must be explicitly delineated.

(iii). Each of the links of incriminating circumstantial evidence should be meticulously examined so as to find out if each one of the circumstances is proved individually and whether collectively taken, they forge an unbroken chain consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.

(iv). The judgment must comprehensively elucidate the rationale for accepting or rejecting specific pieces of evidence, demonstrating how the conclusion was logically derived from the evidence. It should explicitly articulate how each piece of evidence contributes to the overall narrative of guilt.

(v). The judgment must reflect that the finding of guilt, if any, has been reached after a proper and careful evaluation of circumstances in order to determine whether they are compatible with any other reasonable hypothesis.

31. Consequently, the appeals lack merit and are hereby dismissed. However, the question of execution of death sentence awarded to the appellant has been rendered otiose, considering the fact that he has passed away. Thus, there remains no question of dealing with the aspect of capital punishment awarded to the appellant(since deceased).

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

.....J. (B.R. Gavai)

.....J. (K.V. Viswanathan)

.....J. (Sandeep Mehta)

New Delhi;

1 Hereinafter, being referred to as D.S.R. No. 3 of 2013

2 Hereinafter being referred to as 'trial Court'

3 Hereinafter being referred to as 'IPC'

4 Hereinafter being referred to as 'CrPC' 3

5 Exhibit P-1 5

6 Exhibit P-11

7 Hereinafter being referred to as 'JJ Act'

8 Supra, Note 6

9 Exhibit P-21

10 Refer, Para 2

11 Exhibit P-19

12 Exhibit P-19

13 (2023) 1 SCC 83

14 2023 SCC OnLine SC 666

15 Exhibit P-14

16 Exhibit P-13

17 Exhibit P-23

18 Test Identification Parade

19 (1952) 2 SCC 71

20 (1984) 4 SCC 116

21 Exhibit P-14

22 (1978) 2 SCC 518

23 (1998) 4 SCC 605

24 Exhibit P-15

25 Exhibit P-23

26 Exhibit P-15

27 Exhibit P-13

28 Exhibit P-14

29 Exhibit P-23

IN THE SUPREME COURT OF INDIA

Indian Evangelical Lutheran Church Trust Association
Vs.
Sri Bala & Co.

[Civil Appeal No. 1525 of 2023]

HEADNOTE – The subsequent suit on the same cause of action would be barred by limitation if filed beyond three years after the rejection of an earlier plaint.

Rejected the argument that Order VII Rule 13 CPC justifies filing a fresh suit after the rejection of the earlier plaint. The subsequent suit would be barred by Limitation if filed beyond the period of three years after the rejection of an earlier suit.

The subsequent suit would be rejected under Order VII Rule 11(d) CPC being barred under limitation law because Rule 13 does not override the law of limitation i.e., the new suit must still comply with the limitation period under the Limitation Act.

JUDGMENT

Nagarathna, J.

1. This appeal has been filed by assailing the order dated 15.03.2022 passed by the Madras High Court, Madurai Bench in C.R.P. (MD) No.1116 of 2011 dismissing the Civil Revision Petition filed by the appellant.

1.1 For the sake of convenience, the parties in the present appeal are being referred to as per their status and positions before the trial court.

Factual Background:

2. According to the plaintiff/respondent herein, the present dispute pertains to land measuring 5.05-acre being a portion of a 6.48-acre property known as Loch End at Kodaikanal, originally purchased by American missionaries of the Lutheran Church Missouri Synod and Missouri Evangelical Lutheran India Mission in 1912. The Kodaikanal International School (seeking to implead in the suit) is located across the road from Loch End.

In 1975, an agreement was made between the American missionaries and the India Evangelical Lutheran Church Trust Association (defendant/ appellant herein) to transfer various properties, including the Kodaikanal property, to the defendant. This agreement was formalized through the joint filing of O.P.

No.101/1975 under Section 7 of the Charitable and Religious Trust Act, 1921 before the District Judge, Madurai, leading to a decree dated 26.11.1975, appointing the defendant as the trustee of those properties for the objects of the Trust stated thereunder.

2.1 According to the plaintiff, the defendant being in need of funds decided to sell a part of those properties, including the 5.05 acres of Loch End, consisting of 12 out of 15 buildings (hereinafter referred to as "suit scheduled property"). An agreement to sell was executed on 26.04.1991 between the defendant and the plaintiff, i.e., M/s. Sri Bala & Co., for the suit scheduled property, on a total sale consideration fixed at Rs.3,02,00,000/- (Rupees Three Crores and Two Lakhs only) and an advance payment of Rs. 10,00,000/- (Rupees Ten Lakhs only) was made. Partial possession of the property is said to have been handed over to the plaintiff. At that time, the impleading party was allegedly in possession of three of the twelve buildings on Loch End in the capacity of a tenant.

2.2 The plaintiff filed an unnumbered suit in the year 1993 before the Court of the Subordinate Judge, Dindigul Anna District for specific performance of the agreement to sell dated 26.04.1991, by seeking execution of the sale deed in respect of the suit scheduled property and for placing the plaintiff in possession of the property. The said suit was subsequently transferred to the Court of the Subordinate Judge, Palani. But the said suit was rejected vide order dated 12.01.1998 passed by the Court of Subordinate Judge, Palani due to non-payment of requisite court-fees by the plaintiff.

2.3 The plaintiff thereafter filed O.S. No.49/2007 before the Court of the Principal District Judge, Dindigul District, seeking specific performance of the sale agreement dated 26.04.1991, with a direction to the defendant to execute the sale deed in favour of the plaintiff after receiving the balance sale consideration for the suit scheduled property.

2.4 The defendant sought rejection of the second suit by filing I.A. No.233/2007 under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 (for short, "Code"), on the ground that the subsequent suit for specific performance is barred by the principle of res judicata as the plaintiff had not filed any appeal against the rejection of the plaint in the previous suit. The defendant also contended that the subsequent suit for specific performance was barred by the law of limitation since it was filed after a gross delay of almost nine years and beyond the period stipulated under Article 54 of the Limitation Act, 1963 ("Limitation Act", for short).

2.5 The plaintiff filed its objections to the defendant's application for rejection of plaint and placed reliance on Order VII Rule 13 of the Code to argue that a rejection of a plaint does not preclude the presentation of a fresh plaint for the

same cause of action. It was further contended by the plaintiff that as per the sale agreement, the Kodaikanal International School, which is in possession of part of the suit scheduled property in the capacity of a tenant, has to be evicted and the vacant possession ought to be handed over to the plaintiff.

Since the tenants had not been vacated from the property, the suit for specific performance of the sale agreement is not barred by Article 54 of the Limitation Act. Reliance was placed by the Plaintiff on an extension letter dated 15.07.1991 executed by the defendant's Secretary-cum-Treasurer namely Reverent A. Sundaram in favour of the plaintiff, which had extended the period of the sale agreement in light of multiple pending litigations with the impleading party.

2.6 The said application, i.e., I.A. No.233/2007, was dismissed by the trial court vide order dated 16.09.2010, on the grounds that the previous suit was not decided on merits and therefore the principle of res judicata would not apply and further, the issue of limitation period being extended to file the suit for specific performance in light of the pending litigations with the impleading party was a question of fact and the said issue had to be adjudicated only after examination of proper witnesses and documents during trial. Thus, the trial court refused to reject the plaint at such an early stage.

2.7 Being aggrieved by the order of the trial court, defendant preferred a civil revision petition before the High Court being C.R.P. (MD) No.1116/2011. However, the High Court on 15.03.2022 dismissed the said Civil Revision Petition. The High Court observed that the previous suit was neither registered nor numbered and since the issues were not finally decided, it was not hit by the principle of res judicata.

Further, the question of extension of the limitation period is a mixed question of fact and law which can be decided only after the recording of evidence and not at the stage of rejection of plaint. Thus, the High Court confirmed the order dated 16.09.2010 passed by the trial court on the application filed by the defendant for rejection of the plaint. The said order of the High Court in C.R.P. (MD) No.1116/2011 is under challenge in this appeal.

2.8 Two more orders arising out of the same set of facts were passed by the Madras High Court, Madurai Bench on the same date as that of the impugned order. The issues in those matters dealt with impleadment and beneficiary rights of the impleading party with respect to the suit scheduled property. This Court granted leave in those matters as well and had tagged them with the present matter. However, since the present appeal deals with an issue more germane to the suit and the relevance of those two appeals rests on the fate of the present appeal, the present appeal was de-tagged by this Court from the other two connected matters vide order dated 24.10.2024.

Submissions:

3. We have heard Sri P.V. Balasubramaniam, learned senior advocate for the appellant/defendant and learned senior advocate Sri V. Giri for the respondent/plaintiff and perused the material on record.

3.1 Sri Balasubramaniam, at the outset submitted that both the High Court as well as the trial court were not right in dismissing the application filed by the appellant/defendant in the suit under Order VII Rule 11(d) of the Code. No doubt, the respondent/plaintiff in the suit had the right to file another suit on the same cause of action after rejection of the plaint in the earlier unnumbered suit filed by it in the year 1993 for the relief of specific performance of the agreement to sell dated 26.04.1991 on the strength of Order VII Rule 13 of the Code. However, the said suit had to be on the same cause of action as the earlier suit and within the period of limitation as prescribed under the Limitation Act, 1963.

Thus, the rejection of the plaint in the earlier suit filed by the respondent/plaintiff was not a bar to file a fresh suit on the same cause of action. The law provides for another opportunity to a plaintiff to reagitate on an identical cause of action despite the rejection of the plaint in the earlier suit filed by a plaintiff on the basis of Order VII Rule 13 of the Code. However, the second suit which is on the same cause of action must be maintainable in law and not hit by Order VII Rule 11(d) of the Code.

3.2 Elaborating on the aforesaid contention, learned senior counsel submitted that in the instant case, the first suit was filed in the year 1993 to seek specific performance of the agreement to sell dated 26.04.1991 which suit was filed within the period of limitation as prescribed under Article 54 of the Limitation Act. The plaint of the said suit was rejected vide order dated 12.01.1998 owing to non-payment of the requisite court-fees by the plaintiff. If another suit had to be filed by the very same plaintiff on the very same cause of action, then the second suit had to be within the prescribed period of limitation and otherwise not barred by law.

In the instant case, the respondent/plaintiff filed the second suit only in the year 2007 for specific performance of agreement to sell dated 26.04.1991, when the cause of action accrued to the respondent/plaintiff in the year 1993 itself, i.e., when the earlier suit was filed. Even if the period of the pendency of the said earlier suit till the rejection of the plaint on 12.01.1998 is excluded for the purpose of computing the limitation period which had commenced as early as in the year 1993, there is no explanation as to why the second suit i.e., O.S. No.49/2007 was filed only in the year 2007.

At best, the limitation period could have extended for a period of three years from 12.01.1998 for the filing of the second suit by the respondent/plaintiff. That, the aforesaid facts are all admitted by the respondent/plaintiff in the plaint itself and hence, on that basis the trial court as well as the High Court ought to have exercised their jurisdiction in rejecting the plaint in O.S. No.49/2007 as the filing of the second suit in the year 2007 is way beyond the prescribed period of limitation.

3.3 It was contended that when the earlier suit was filed by the respondent/plaintiff, it was on the basis of the cause of action that had accrued to the plaintiff. If the plaint in the earlier suit was rejected on 12.01.1998, then the second suit ought to have been filed immediately thereafter so as to maintain a continuity in the cause of action or possibly within three years from the date of the rejection of the plaint, which would mean that the suit ought to have been filed by 12.01.2001.

But, in the instant case, the filing of the suit in the year 2007 gives rise to an inference that the respondent/plaintiff had acquiesced to the rejection of the plaint and thus had waived its right to seek specific performance of the agreement to sell dated 26.04.1991. Therefore, the filing of the second suit in the instant case is only an afterthought, a chance and being speculative in nature, ought to have resulted in rejection of the plaint on the basis of Order VII Rule 11(d) of the Code as being hit by Article 54 of the Limitation Act and therefore, barred in law.

3.4 It was therefore submitted that the plaint in O.S. No.49/2007 may be rejected by setting aside the impugned order and allowing this appeal.

3.5 Per contra, learned senior counsel Sri Giri supported the impugned orders rejecting the application filed by the appellant herein under Order VII Rule 11(d) of the Code and contended that there is no merit in this appeal. Elaborating on this submission, Sri Giri contended that on the basis of Order VII Rule 13 of the Code, the second suit, namely, O.S. No.49/2007 was filed.

In the plaint of the aforesaid suit, it has been categorically averred that the letter dated 15.07.1991 which was executed by the Secretarycum- Treasurer Reverend, namely, A. Sundharam in favour of the plaintiff clearly extended the period of limitation owing to multiple litigations pending between the parties and the party seeking to implead in the said suit. Further, the question of a suit being barred under Article 54 of the Limitation Act is a mixed question of law and fact which cannot be decided on mere averments made in the plaint.

Hence, the trial court as well the High Court rightly rejected the application filed by the appellant herein for seeking rejection of the plaint. It was contended that owing to the pendency of litigation between the parties, the time for performance

under the agreement dated 26.04.1991 was automatically extended and therefore, it was only when the other litigation between the parties herein and the impleading party in the suit concluded that the cause of action for filing the second suit in the year 2007 resurfaced as till then it was dormant and hence, there is no merit in this appeal.

It was contended that there was in fact no basis to file the application under Order VII Rule 11(d) of the Code by the appellant herein as the issue of limitation could have been adjudicated upon on conclusion of the trial and along with the other issues which arise in the suit. It was submitted that there is no merit in this appeal and the same may be dismissed.

3.6 By way of reply, learned senior counsel for the appellant contended that there is a contradiction in the submission of the respondent/plaintiff inasmuch as when the earlier suit was filed in the year 1993 it was on the basis of a cause of action which had accrued to the plaintiff and there was no reference to letter dated 15.07.1991 extending the time for performance under the agreement or for that matter, resulting in extension of time for the filing of the suit akin to Section 18 of the Limitation Act. There is no reference to the letter dated 15.07.1991 in the earlier suit filed by the respondent/plaintiff and the same is also not admitted by the appellant herein.

Even otherwise, the pendency of other litigations vis-à-vis the suit scheduled property could not have been a reason for filing the second suit as late as in the year 2007 for seeking specific performance of the agreement to sell dated 15.07.1991. On a comparison of the earlier suit and the present suit and on a holistic reading of the plaint in the second suit, the trial court as well as the High Court ought to have allowed the application filed by the appellant herein and rejected the plaint as being barred in law, hit by the Limitation Act and thus, coming within the scope and ambit of Order VII Rule 11(d) of the Code. Therefore, learned senior counsel submitted that the present appeal may be allowed with costs.

Points for Consideration:

4. The short issue before this Court in this appeal is, whether the plaint in the subsequent suit for specific performance filed by the plaintiff, i.e., O.S. No.49/2007, is liable to be rejected in terms of Order VII Rule 11(d) of the Code on the ground that the said suit is barred by the law of limitation.

What order is to be passed?

5. The detailed narration of facts and contentions would not call for a reiteration.

5.1 The undisputed facts of the case are that on 26.04.1991, the appellant/defendant entered into an agreement to sell the suit scheduled property to the respondent/plaintiff for a total consideration of Rs.3,02,00,000/- (Rupees Three Crores and Two Lakhs only) and an advance payment of Rs.10,00,000/- (Rupees Ten Lakhs only) was made. There was a time schedule for the payment of the balance in sale consideration within a period of twenty-seven months from 26.04.1991 which is also extracted in paragraph 4 of the plaint.

Thus, within a period of twenty-seven months from the date of the agreement, the entire balance of sale consideration had to be paid by the respondent/plaintiff to the appellant herein. However, as early as in 1993 itself, the suit for specific performance of the agreement to sell was filed by the respondent/plaintiff, which was an unnumbered suit, but the plaint in the said suit was rejected vide order dated 12.01.1998 passed by the trial court due to non-payment of the requisite court fees by the respondent/plaintiff.

5.2 Thereafter, it was only in the year 2007 that the respondent/plaintiff filed O.S. No.49/2007 seeking the very same relief of specific performance of the sale agreement on receipt of the balance sale consideration. This suit was filed on the strength of Order VII Rule 13 of the Code.

It is in this suit that the appellant/defendant filed an application under Order VII Rule 11(d) of the Code on the ground that the said suit was barred by the law of limitation since it was filed after a gross delay of almost nine years from the date of rejection of the plaint in the earlier suit and the said suit not being maintainable as barred in law. Consequently, the plaint was subject to rejection. The trial court dismissed the application filed for seeking rejection of the plaint by its order dated 16.09.2010 and the said order has been sustained by the High Court by the impugned order.

Legal Framework:

Order VII Rule 11 of the Code:

6. Since the issue in this appeal pertains to the correctness or otherwise of the impugned orders refusing rejection of the plaint, at this stage, we deem it necessary to refer to Order VII Rule 11 of the Code which deals with the grounds for rejection of a plaint:

"11. Rejection of plaint.- The plaint shall be rejected in the following cases-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law:

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provision of rule 9:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

6.1 In the instant case, an application was filed under Order VII Rule 11(d) of the Code where the ground of rejection of the plaint was that the suit appears from the statement in the plaint to be barred by any law. In this regard, our attention was drawn to various decisions of this Court with regard to rejection of plaint under Order VII Rule 11 of the Code which are as follows:

(i) In T. Arivandandam vs. T.V. Satyapal, (1977) 4 SCC 467, this Court while examining the aforesaid provision has held that the trial court must remember that if on a meaningful and not a formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order VII Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order X of the Code, as observed by Krishna Iyer, J.

(ii) The object of the said provision was laid down by this Court in Sopan Sukhdeo Sable vs. Assistant Charity Commissioner, (2004) 3 SCC 137. Similarly, in Popat and Kotecha Property vs. State Bank of India Staff Association, (2005) 7 SCC 510, this Court has culled out the legal ambit of Order VII Rule 11 of the Code.

(iii) It is trite law that not any particular plea has to be considered, but the whole plaint has to be read. As was observed by this Court in Roop Lal Sathi vs. Nachhattar Singh Gill, (1982) 3 SCC 487, only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected. Similarly, in Raptakos Brett & Co. Ltd. vs. Ganesh Property, (1998) 7 SCC 184, it was observed that the averments in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 Order VII of the Code is applicable.

(iv) It was further held with reference to Order VII Rule 11 of the Code in Saleem Bhai vs. State of Maharashtra, (2003) 1 SCC 557 that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power at any stage of the suit i.e. before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Order VII Rule 11 of the Code, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

(v) In R.K. Roja vs. U.S. Rayudu, (2016) 14 SCC 275, it was reiterated that the only restriction is that the consideration of the application for rejection should not be on the basis of the allegations made by the defendant in his written statement or on the basis of the allegations in the application for rejection of the plaint. The court has to consider only the plaint as a whole, and in case the entire plaint co

(vi) In Kuldeep Singh Pathania vs. Bikram Singh Jaryal, (2017) 5 SCC 345, this Court observed that the court can only see whether the plaint, or rather the pleadings of the plaintiff, constitute a cause of action. Pleadings in the sense where, even after the stage of written statement, if there is a replication filed, in a given situation the same also can be looked into to see whether there is any admission on the part of the plaintiff. In other words, under Order VII Rule 11, the court has to take a decision looking at the pleadings of the plaintiff only and not on the rebuttal made by the defendant or any other materials produced by the defendant.

(vii) In an application under Order VII Rule 11 of the Code, a plaint cannot be rejected in part. This principle is well established and has been continuously followed since the 1936 decision in Maqsud Ahmad vs. Mathra Datt & Co. AIR 1936 Lah 1021. This principle is also explained in another decision of this Court in Sejal Glass Ltd. vs. Navilan Merchants Private Ltd., (2018) 11 SCC 780 which was again followed in Madhav Prasad Aggarwal vs. Axis Bank Ltd., (2019) 7 SCC 158.

(viii) In Biswanath Banik vs. Sulanga Bose, (2022) 7 SCC 731, this Court discussed the issue whether the suit can be said to be barred by limitation or not, and observed that at this stage, what is required to be considered is the averments in the plaint. Only in a case where on the face of it, it is seen that the suit is barred by limitation, then and then only a plaint can be rejected under Order VII Rule 11(d) of the Code on the ground of limitation. At this stage what is required to be considered is the averments in the plaint. For the aforesaid purpose, the Court has to consider and read the averments in the plaint as a whole.

Order VII Rule 13 of the Code:

7. Order VII Rule 13 of the Code reads as under:

"13. Where rejection of plaint does not preclude presentation of fresh plaint.- The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action."

7.1 This Court in Delhi Wakf Board vs. Jagdish Kumar Narang (1997) 10 SCC 192 was dealing with a case where an earlier suit had been rejected under Order VII Rule 11 of the Code in the year 1984 and a fresh suit was instituted on the same cause of action in the year 1986. The second suit was not allowed by the trial court as well as by the High Court. This Court set aside the orders of the trial court and the High Court and held that a suit filed on the same cause of action subsequent to rejection of the plaint in the previous suit under Rule 11 is not liable to be dismissed on the ground of being barred by order rejecting the plaint in the earlier suit.

7.2 In A. Nawab John vs. V.N. Subramaniyam, (2012) 7 SCC 738, this Court examined the applicability of Order VII Rule 11 of the Code which requires a plaint to be rejected, inter alia, where the relief claimed is undervalued and/or the plaint is written on a paper insufficiently stamped, and, in either case, the plaintiff fails to either correct the valuation and/or pay the requisite court fee by supplying the stamp paper within the time fixed by the court. Rule 13 categorically declares that the rejection of a plaint shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

It was also observed that under Order VII Rule 11, a plaint, which has not properly valued the relief claimed therein or is insufficiently stamped, is liable to be rejected. However, under Rule 13, such a rejection by itself does not preclude the plaintiff from presenting a fresh plaint. It naturally follows that in a given case where the plaint is rejected under Order VII Rule 11 of the Code and the plaintiff chooses to present a fresh plaint, necessarily the question arises whether such a fresh plaint is within the period of limitation prescribed for the filing of

the suit. If it is to be found by the court that such a suit is barred by limitation, once again it is required to be rejected under Order VII Rule 11 clause (d).

7.3 However, Section 149 of the Code, as interpreted by this Court in Mannan Lal vs. Mst. Chhotaka Bibi, (Dead) by LRs., (1970) 1 SCC 769, confers power on the court to accept the payment of deficit court fee even beyond the period of limitation prescribed for the filing of a suit, if the plaint is otherwise filed within the period of limitation.

7.4 The case of Patil Automation Private Ltd. vs. Rakheja Engineers Private Ltd., (2022) 10 SCC 1 further discussed that under Order VII Rule 11 of the Code, the plaint can be rejected on six grounds. They include failure to disclose the cause of action, and where the suit appears from the statement in the plaint to be barred. Order VII Rule 12 of the Code provides that when a plaint is rejected, an order to that effect with reasons must be recorded.

Order VII Rule 13 provides that rejection of the plaint mentioned in Order VII Rule 11 does not by itself preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. Order VII of the Code deals with various aspects about what is to be pleaded in a plaint, the documents that should accompany and other details. Order IV Rule 1 provides that a suit is instituted by presentation of the plaint to the court or such officer as the court appoints.

By virtue of Order IV Rule 1(3), a plaint is to be deemed as duly instituted only when it complies with the requirements under Order VI and Order VII. Order V Rule 1 declares that when a suit has been duly instituted, a summon may be issued to the defendant to answer the claim on a date specified therein. It was therefore held that rejection of earlier suit under Order VII Rule 11 does not bar fresh suit on the same cause of action provided the right of action is not barred by the law of limitation.

Averments in the plaint:

8. Since the plaint has to be read holistically in order to ascertain whether it is barred by limitation and consequently, to decide if the suit itself is not maintainable, we now embark on a meaningful reading of the plaint in O.S. No.49/2007 which is sought to be rejected by the appellant herein, as under:

(i) Paragraphs 1 and 2 of the plaint give details of the plaintiff and defendant.

(ii) In paragraph 3 of the plaint, it has been averred that there was a written agreement of sale executed on 26th April, 1991 with regard to the suit scheduled property by the defendant/vendor as the absolute owner of the property with the plaintiff/purchaser. The sale price mutually agreed upon was Rs.3,02,00,000/- (Rupees Three Crores and Two Lakhs only) and an advance amount of

Rs.10,00,000/- (Rupees Ten Lakhs only) was paid earlier on 26th March, 1991, a month prior to the written agreement being executed, wherein a payment of Rs.9,00,000/- (Rupees Nine Lakhs only) was made by demand draft of Canara Bank dated 23.03.1991 payable at Nagerkoil and Rs.1,00,000/- (Rupees One Lakh only) by way of an account payee cheque of City Union Bank, Madras.

(iii) Paragraph 4 of the plaint gives the time schedule for receipt balance sale consideration of Rs.2,92,00,000/- (Rupees Two Crores ninety-two lakhs only) in the following manner:

"(a) Rs.10,00,000/-, (Rupees Ten lakhs only) to be paid within 3 months from the date this agreement subject to the condition that the vacant possession of the properties occupied by tenants are handed over to the plaintiff on or before 1.6.1991.

(b) Rs.20,00,000/- (Rupees Twenty lakhs) to be paid within 9 months from the date of the agreement.

(c) Rs.30,00,000/- (Rupees Thirty lakhs) to be paid within 9 months from the date of the agreement.

(d) Rs.30,00,000/- (Rupees Thirty lakhs) to be paid within 12 months from the date of the agreement.

(e) Rs.40,00,000/- (Rupees Forty lakhs) to be paid within 15 months from the date of the agreement.

(f) Rs.40,00,000/- (Rupees Forty lakhs) to be paid within 15 months from the date of the agreement.

(g) Rs.40,00,000/- (Rupees Forty lakhs) to be paid within 21 months from the date of the agreement.

(h) Rs.40,00,000/- (Rupees Forty lakhs) to be paid within 24 months from the date of the agreement.

(i) Rs.42,00,000/- (Rupees Forty two lakhs) paid within 27 Months from the date of the agreement. The true copy of the sale deed is submitted herewith and it may be read as part of the plaint allegations."

(iv) Paragraph 5 of the plaint avers that the entire balance consideration has to be paid within 27 months, i.e., before 25.07.1993 but time is not the essence of the contract. Further, there is a condition precedent that the vacant possession of the properties occupied by the tenant are to be handed over to the plaintiffs on or before 01.06.1991.

(v) In paragraph 6 it is stated that the suit scheduled property and the adjacent property are popularly known as Loch End property wherein there are 15 buildings in an extent of 6.48 acres, out of which the defendant agreed to sell 5.05 acres consisting of 12 buildings. That at the time of agreement the tenant was in occupation of three buildings and on the date of the agreement the plaintiff was put in possession of nine buildings detailed therein.

(vi) Paragraph 7 of the plaint states that at the time of the agreement to sell, one Rev. J. Isaac Moon was the President of the defendant company and the Board of Directors by its Resolution/Proceedings, authorised the Secretary Treasurer Rev. A. Sundharam to execute the agreement to sell and the same was later ratified by the Board of Directors of the defendant company.

(vii) Paragraphs 8 to 16, 18 and 20 of the plaint are extracted as under:

"8. Rev. J. Isaac Moon for the reasons best known to him did not like the suit property being sold to the plaintiff. Therefore, he whipped up the religious sentiments. As per the agreement to sell, the plaintiff was put in the possession of the tenanted premises also on 1.7.1991 by the defendant. Bin Rev. J. Isaac Moon instigated the tenant to proffer a false complaint against the personnel of the defendant and the plaintiff and her husband before the police as though the tenant was evicted by force Therefore proceedings were initiated u/s 145 of the code of Criminal Procedure in M.C. No. 1/1991 on the file of the Sub-Divisional Magistrate-Cum-Revenue Divisional Officer Kodaikanal.

9. The plaintiff was forced to file a suit for permanent injunction against the tenant to protect possession in O.S.No.66 of 1991 on the file of the District Munsif Court Kodaikkanal and obtained ad-interim orders in I.A.No.75/1991 also. Again the tenant file a Writ petition before Hon'ble High Court in W.P.No.9551/ 1991 seeing protection further against the ad interim order in I.A.No.75/1991 the tenant also filed Revision before Hon'ble High Court in C.R.No.1846/1991 and obtained stay of operation of the order. In the meantime, the Sub Divisional Magistrate-cum- Revenue Divisional Office Kodaikanal on 9.12.1991 found possession only with the plaintiff and against which also the tenant filed a Revision before the Hon'ble High Court in Court in Crl. R.C. No.113/1992.

10. Since the defendant's president Rev. J. Issac Moon, without any authority was acting against the decisions / resolutions / proceedings of the Board of Directors, the defendant extended the time for performance of the contract till the disposal of the all litigations on 15.07.1991. The true of copy, of the letter extending the time for performance is also submitted herewith for better appreciation of facts.

11. In the meantime, the plaintiff also filed a suit with deficit court fee for specific performance of the contract and the same was allowed to be rejected for non-payment of dealt court fee by the Hon'ble sub-court Palani. In the meantime the tenant also filed several applications in O.P.No. 101/1975 in 1.A.No. 1500/92 and 1.A.No. 1501/92 on the file of the District Court Dindigul questioning the validity of the agreement to sell and also filed various suits in O.S.No 13/93 and in O.S.No. 108/93 on the file of the District Munsif court Kodaikkanal for taking inventory and for permanent injunction against the defendant from alienating the suit property. In view of multiplicity of proceedings initiated by the tenant, the plaintiff was advised not to proceed with the suit for specific performance on the file of the Sub-Court Palani at that time. It is needless to submit that under order 7. Rule 13 of C.P.C. rejection of earlier plaint is not a bar to the suit.

12. Subsequently the Hon'ble High Court passed a common order setting aside the ad-interim orders passed in I.A. No. 75/91 in O.S.No. 66/91 on the file of District Munsif Court Kodaikanal and the order passed by SDK cum RDO/ Kodaikkanal in MC 1/1991 in C.R.P, No. 1846/91 and Crl.R.C.No. 113/92 respectively, In view of the order of the High court, the tenant with the help of police took possession of not only the three tenanted premised but also the other 9 buildings in the occupation of the plaintiff, on 24.07.1997 with the help of Rev. Isaac Moon and the local police.

13. The plaintiff preferred special Leave Petitions against the orders of the Hon'ble High Court in W.P. No. 9551/1991, C.R.P. No. 1846/1991 and Cri. R.C.No, 113/1992: The Hon'ble Supreme Court in SI.O. (Crl) No.2037/97 (C) No. 2038/97 and 2039/97 set aside the order of the Hon'ble High Court and remanded the same an 24.3.1998.

14. In the meantime, the tenant not pressed that suit in O.S.No.13/93 and 108/96 on the file of the District: Munsif Court Kodaikkanal besides 1.A. No.1501/92 in O.P.101/1975 on the file of the District Court Dindigul.

15. Again, SUM Cum RDO Kodailcanal found the tenant to be in possession in M.C.No. 1/1991 after remand of the matter by the Hon'ble Supreme court of India, without hearing the plaintiff. Against which the plaintiff also preferred a Revision before Hon'ble High Court in Crl. R.C.No.511/1999. The Hon'ble High Court dismissed the Revision and titt7-51aintiff has also preferred, a special Leave Petition before Hon'ble supreme Court of India in SLP.No.1239/2005 and the same is still, pending along with other SLPs filed by the plaintiff arising out of orders dated 29.04.2003 in CRP.No.232/2003 by the Hon'ble High Court against the orders in I.A. No. 59/2002 in O.S.No. 66/1991 on the file of the District Munsif Court Kodaikanal and against the orders in CRP No.649/2003 which was filed against taking on file IA.55/2003 in O.S. No.66 of 1991 on the file of the District Munsif Court Kodaikkanal.

16. In the meantime, on 25.4.2003 the Hon'ble District Judge Dindigul dismissed I.A.No. 1500/1992 in O.P.No. 101/1975 holding that the agreement to sell dated 26.4.1991 between the plaintiff and the defendant is valid and enforceable. The tenant also filed a memo exonerating, the plaintiff and the tenant even filed I.A.No. 1500/2012 to delete the name of the plaintiff from the decretal and orders in I.A. No. 1500/1992 after its dismissal. The Hon'ble District, Judge dismissed 1.A. No.1575/2005 on 5.4.2007.

18. Further, there were various litigations over the election of conveners of three Synods, and board of Directors to the defendant company froth July 1992. An advocate - Commissioner was appointed by the Hon'ble High Court to conduct election to the defendant company. Therefore, the plaintiff could not negotiate or deal with the defendant for enforcement of the contract for sale as there was confusion in the part of the plaintiff filing this suit. Even not there is no clear picture as to the election of Directors to the Board of the defendant company, and the secretary of the company.

20. As for as the suit for permanent injunction in O.S. No. 66 of 1991 on the file of the District Munsif Court Kodaikkanal now stands transferred to the file of the District Munsif chuft Dindigul and the same is still pending in O.S. No. 76/2005."

The aforesaid paragraphs refer to various proceedings initiated in the years 1991, 1992, 1993 and give the details of those proceedings, some of which had been disposed while other/s were pending on the date of the filing of the plaint or suit.

(viii) Paragraph 17 of the plaint reads as under:

"17. In view of the cantankerous attitude of the tenant and vexatious litigation of the tenant, the plaintiff could not file the suit for specific performance of contract earlier. The plaintiff was always ready and willing to perform her part of the contract."

(ix) Paragraphs 19 and 21 of the plaint are extracted as under with regard to the filing of the suit for specific performance and cause of action for the same.

"19. Any how, the plaintiff has not been advised to file this suit for specific performance. The plaintiff has paid urban land Tax to the tune of Rs.35,670/- and property Tax for Rs.6652/-.for the suit property. Further, the suit property had been attached for the Income Tax due to the govt. by the plaintiff.

21. Cause of action for the suite arose on 26.4.1991 when the plaintiff and the Defendant entered into an agreement of sale with regard to the schedule mentioned property herein under on 15.07.1991 when the time for performance of contract is extended till the disposal of litigations launched at the instance of

the president of the company through the tenant, on 25.4.2003 when the Hon'ble District Judge upheld the validity of the sale agreement dated 26.4.1991 and on 5.4.2007 when I.A.No.1515/2003 was dismissed to delete the name of the plaintiff and at Kodaikanal Township where the suit property situate within the jurisdiction of this Hon'ble Court."

8.1 What is significant to note is that in paragraphs 10 and 21, there is a reference to a letter dated 15.07.1991 said to have been issued by the defendant which is contended to be for the purpose of extending the time for performance of the contract till the disposal of litigation launched at the instance of the President of the defendant through the tenant. Hence, it is averred that the plaintiff was not advised to file the suit for specific performance which was ultimately filed in the year 2007, being the second suit for the same cause of action, when initially, (on the very same cause of action,) the unnumbered suit was filed on 21.07.1993 wherein the plaint was rejected on the ground that the court fee had not been tendered despite several opportunities being given.

8.2 Further, in paragraph 17 of the plaint, it has been averred that due to the cantankerous attitude and vexatious litigation of the tenant, the plaintiff could not file the suit for specific performance of the contract earlier, although the plaintiff was ready and willing to perform her part of the contract. This averment is totally alien to the filing of the second suit and has no bearing on the relief sought inasmuch as the tenant is not a party to the agreement dated 26.04.1991 and the filing and pendency of litigation vis-à-vis the tenant was not an impediment at all to file the earlier suit for specific performance of the aforesaid agreement.

8.3 We are conscious and mindful of the fact that while considering the question of rejection of the plaint, it is the plaint alone which has to be read meaningfully and not any averment in the written statement. It is also necessary sometimes to consider the documents annexed to the plaint for a holistic and comprehensive reading of the plaint in order to decide whether the plaint ought to be rejected or not.

But the present case is not a case where there is only one suit which has been filed by the respondent/plaintiff on the same cause of action and therefore, only a single plaint ought to be considered while deciding the issue of rejection of the plaint. This is a case where a second suit has been filed after the rejection of the plaint in the earlier suit filed on the very same cause of action and for the very same relief of seeking specific performance of agreement to sell dated 26.04.1991.

In order to ascertain whether the plaint in the second suit ought to be rejected on the ground that it is barred by law such as the suit being filed beyond the prescribed period of limitation and therefore, is barred within the meaning of

Order VII Rule 11(d) of the Code, we think it is useful to consider the fact that an earlier suit was filed by the respondent/plaintiff on the very same cause of action in the year 1993 itself which resulted in the rejection of the plaint in the said suit owing to non-payment of the court fee. This fact is pertinent when the contention of the defendant/appellant herein is that the second suit filed on the basis of Order VII Rule 13 of the Code is barred as it has been filed beyond the prescribed period of limitation.

8.4 It is nobody's case that the earlier suit was not filed in time. The said suit was filed on 21.07.1993, on the basis of the cause of action that arose for seeking the relief of specific performance of the agreement to sell dated 26.04.1991. According to the appellant/defendant, if the cause of action had occurred in the year 1993 and therefore, the earlier suit was filed in time, without any reference to the so-called letter dated 15.07.1991 (on the basis of which extension of time for performance of the contract is pleaded in the second suit), the rejection of the plaint in the earlier suit, at best, could have extended the limitation period by three years from the date of the rejection of the plaint in the earlier suit so as to maintain a continuity in the cause of action for filing the second suit.

Significantly, in the earlier suit, the plaintiff did not aver that time for performance of the contract had been extended on the basis of the letter dated 15.07.1991 said to have been issued by the defendant. In fact, the stand of the respondent/plaintiff was to the contrary. It was to the effect that in the absence of performance of the agreement to sell dated 26.04.1991 by the defendant, the plaintiff had a cause of action to seek specific performance of the said agreement.

Therefore, the earlier suit was filed in July, 1993 itself on the basis that the plaintiff had a cause of action to seek specific performance of the agreement to sell dated 26.04.1991. But owing to non-payment of requisite court fee, the plaint in the said suit was rejected on 12.01.1998. There was also no reference to any of the litigations which were pending between the parties prior to the filing of the earlier suit which is said to have resulted in postponement of the performance of the contract.

8.5 Thus, if really, the cause of action had arisen for the plaintiff to file the earlier suit on 01.07.1993 and the plaint in the said suit was rejected on 12.01.1998 owing to non-payment of the requisite court fee, then, at best, a second suit on the very same cause of action could have been filed by 12.01.2001 which would have been within three years from the date of rejection of the plaint in the earlier suit.

Therefore, the second suit, namely O.S. No.49/2007, could not have been filed in the year 2007 i.e., nine years after the rejection of the plaint in the earlier suit. The second suit not having been filed within a period of three years from 12.01.1998, which could be construed to be within the meaning of the Limitation

Act, we are of the view that the second suit filed by the respondent/plaintiff is barred by the law of limitation and is thus not maintainable.

8.6 To get over this lacuna, the respondent/plaintiff has introduced the so-called communication/letter dated 12.07.1991 said to have been issued by the defendant by stating that time for performance of the contract had been extended till the conclusion of all other litigations between the parties herein and with the tenant.

If reliance is now placed on the said letter by the respondent/plaintiff so as to seek a continuity in the cause of action, then the earlier suit could not have been filed at all in the year 1993 as then no cause of action had arisen to the plaintiff to file the earlier suit! But the fact remains that the plaintiff/respondent herein did file the earlier suit in the year 1993 on the ground that they had a cause of action to do so and for the very same relief of specific performance of the agreement to sell dated 26.04.1991 was sought but the plaint in the earlier suit came to be rejected owing to non-payment of the requisite court fee.

Even after the rejection of the plaint in the earlier suit, steps were not taken on time, i.e., prior to 12.01.2001 to file the second suit on the basis of Order VII Rule 13 of the Code. Instead, the second suit has been filed only in the year 2007 belatedly and possibly only to keep the litigation alive between the parties which, in our view, is to make an unlawful gain from the speculative second suit by a settlement or in any other manner.

8.7 We do not appreciate the conduct of the respondent/plaintiff in filing of the second suit belatedly in the year 2007 when they could have done so prior to 12.01.2001, if they were really serious in seeking enforcement of the agreement to sell dated 26.04.1991. We say so on the basis of the action of the plaintiff in seeking the relief of specific performance of the agreement to sell dated 26.04.1991 by filing the earlier suit in the year 1993 itself. In the said suit there was no reference to the letter dated 26.07.1991. Moreover, litigation concerning the suit scheduled property was not an impediment to file the earlier suit in the year 1993.

0Then, we ask, how could it become an impediment for postponing the filing of the second suit till the year 2007? We think that the reliance placed on the letter dated 26.07.1991 in the second suit filed in the year 2007 (and the glaring omission of any reference to the said letter in the earlier plaint filed in the year 1993) is mischievous and cannot be considered to hold that there was an extension of time for performance of the contract. Therefore, the second suit filed by the respondent in the year 2007 is not within the prescribed period of limitation and not as sought to be contended by the plaintiff.

8.8 Thus, on a holistic reading of the plaint it could be rejected as being barred by law of limitation. However, it is stated that normally the question of limitation would be a mixed question of law and fact. Hence, usually, on a reading of the plaint it is not rejected as being barred by the law of limitation. However, the above is not an inflexible rule. We wish to discuss the relevant Article under the Limitation Act applicable to the facts of the present case which is Article 113 for the second suit with a preface on the law of limitation.

9. The Limitation Act, 1963 consolidates and amends the law of limitation of suits, appeals and applications and for purposes connected therewith. The law of limitation is an adjective law containing procedural rules and does not create any right in favour of any person, but simply prescribes that the remedy can be exercised only up to a certain period and not beyond.

The Limitation Act therefore does not confer any substantive right, nor defines any right or cause of action. The law of limitation is based on delay and laches. Unless there is a complete cause of action, limitation cannot run and there cannot be a complete cause of action unless there is a person who can sue and a person who can be sued. There is also another important principle under the Law of Limitation which is crystallized in the form of maxim that "when once the time has begun to run, nothing stops it".

9.1 In "Limitation Periods" by Andrew McGee, Barrister of Lincoln's Inn, published in 2002, the author says that, - "Once time has begun to run it will run continuously, except in certain situations. Time ceases to run when the plaintiff commences legal proceedings in respect of the cause of action in question. It is a general principle of some importance that the bringing of an action stops the running of time for the purposes of that action only."

9.2 It is further observed that the barring of the remedy under the law of limitation on the expiry of the limitation period would not imply plaintiff's right being extinguished. Only the possibility of obtaining a judicial remedy to enforce the right is taken away. However, in certain cases, the expiry of the period of limitation would extinguish the plaintiff's right to seek remedy entirely. Further, according to Andrew McGee, the policy and justification for having a statute of limitation has been explained in the following words:

"Policy issues arise in two major contexts. The first concerns the justification for having statutes of limitation at all and the particular limits that presently exist. The second concerns the procedural rules that apply after an action has been commenced. Arguments with regard to the policy underlying statutes of limitation fall into three main types. The first relates to the position of the defendant. It is said to be unfair that a defendant should have a claim hanging

over him for an indefinite period and it is in this context that such enactments are sometimes described as "statutes of peace".

The second looks at the matter from a more objective point of view. It suggests that a time-limit is necessary because with the lapse of time, proof of a claim becomes more difficult-documentary evidence is likely to have been destroyed and the memories of witnesses will fade. The third relates to the conduct of the plaintiff, it being thought right that a person who does not promptly act to enforce his rights should lose them. All these justifications have been considered by the courts."

9.3 Further, to say that a suit is not governed by the law of limitation runs foul of the Limitation Act. The statute of limitation was intended to provide a time limit for all suits conceivable. Section 3 of the Limitation Act provides that a suit, appeal or application instituted after the prescribed "period of limitation" must, subject to the provisions of Sections 4 to 24, be dismissed, although limitation has not been set up as a defence. Section 2(j) defines the expression "period of limitation" to mean the period of limitation prescribed in the Schedule for suit, appeal or application.

Section 2(j) also defines "prescribed period" to mean the period of limitation computed in accordance with the provisions of the Limitation Act. The court's function on the presentation of plaint is simply to examine, whether, on the assumed facts, the plaintiff is within time. The court has to find out when the "right to sue" accrued to the plaintiff.

9.4 Further, if a suit is not covered by any of the specific articles prescribing a period of limitation, it must fall within the residuary article. The purpose of the residuary article is to provide for cases which could not be covered by any other provision in the Limitation Act. The residuary article is applicable to every variety of suits not otherwise provided for under the Limitation Act. It prescribes a period of three years from the date when the "right to sue" accrues. Under Article 120 of the erstwhile Limitation Act, 1908, it was six years, which has been reduced to three years under Article 113 of the present Act.

According to the third column in Article 113, time commences to run when the right to sue accrues. The words "right to sue" ordinarily mean the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted [State of Punjab vs. Gurdev Singh, (1991) 4 SCC 1].

9.5 This Court in Shakti Bhog Food Industries Ltd. vs. Central Bank of India, (2020) 17 SCC 260, stated that the expression used in Article 113 of the 1963 Act is "when the right to sue accrues", which is markedly distinct from the expression used in other Articles in First Division of the Schedule dealing with suits, which unambiguously refer to the happening of a specified event. Whereas Article 113, being a residuary clause, does not specify happening of particular event as such, but merely refers to the accrual of cause of action on the basis of which the right to sue would accrue. 9.6 Article 113 of the Limitation Act reads as under:

"PART X - SUITS FOR WHICH THERE IS NO PRESCRIBED PERIOD

	Description of suit	**Period of limitation**	**Time from which period begins to run**
113.	Any suit for which no period of limitation is provided elsewhere in the Schedule.	Three years	When the right to sue accrues."

Article 113 of the Limitation Act is an omnibus Article providing for a period of limitation not covered by any of the specific Articles. No doubt, Article 54 of the Schedule to the Limitation Act is the Article providing for a limitation period for filing a suit for specific performance of a contract. For immediate reference, the said Article is extracted as under:

	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.

9.7 In the present case, the earlier suit was filed by the respondent/plaintiff in July, 1993 on the basis of Article 54 referred to above and the plaint in the said suit was rejected on 12.01.1998. The second suit being O.S. No.49/2007 was filed on the strength of Order VII Rule 13 of the Code for the very same cause of action and for seeking the very same relief of specific performance of the agreement dated 26.04.1991 as the plaint in the earlier suit was rejected on 12.01.1998.

Therefore, it cannot be said that the second suit namely O.S. No.49/2007 was filed as per Article 54 of the Limitation Act. Since this is a suit filed for the second time after the rejection of the plaint in the earlier suit, in our view, Article 54 of the Limitation Act does not apply to a second suit filed for seeking specific

performance of a contract. Then, the question is, what is the limitation period for the filing of O.S. No.49/2007. We have to fall back on Article 113 of the Limitation Act.

9.8 Under Article 113 of the Limitation Act, time commences to run when the right to sue accrues. This is in contradistinction to Article 54 of the Limitation Act relating to a suit for specific performance of a contract which is on the happening of an event. No doubt, the second suit which is the present suit filed by the respondent/plaintiff is also for specific performance of the contract but the right to sue accrued to file the second suit is on the basis of Order VII Rule 13 of the Code subsequent to the rejection of the plaint in the earlier suit on 12.01.1998. Therefore, the right to sue by means of a fresh suit was only after 12.01.1998.

The expression "when the right to sue accrues" in Article 113 of the Limitation Act need not always mean "when the right to sue first accrues". For the right to sue to accrue, the right sought to be vindicated in the suit should have already come into existence and there should be an infringement of it or at least a serious threat to infringe the same vide M.V.S. Manikyala Rao vs. M. Narasimhaswami, AIR 1966 SC 470. Thus, the right to sue under Article 113 of the Limitation Act accrues when there is an accrual of rights asserted in the suit and an unequivocal threat by the defendant to infringe the right asserted by the plaintiff in the suit.

Thus, "right to sue" means the right to seek relief by means of legal procedure when the person suing has a substantive and exclusive right to the claim asserted by him and there is an invasion of it or a threat of invasion. When the right to sue accrues, depends, to a large extent on the facts and circumstances of a particular case keeping in view the relief sought. It accrues only when a cause of action arises and for a cause of action to arise, it must be clear that the averments in the plaint, if found correct, should lead to a successful issue.

The use of the phrase "right to sue" is synonymous with the phrase "cause of action" and would be in consonance when one uses the word "arises" or "accrues" with it. In the instant case, the right to sue first occurred in the year 1993 as the respondent/plaintiff had filed the first suit then, which is on the premise that it had a cause of action to do so. The said suit was filed within the period of limitation as per Article 54 of the Schedule to the Limitation Act.

9.9 Thus, generally speaking, the right to sue accrues only when the cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted. Article 113 of the Schedule to the Limitation Act provides for a suit to be instituted within three years from the date when the

right to sue accrues and not on the happening of an event as stated in Article 54 of the Schedule to the Limitation Act.

9.10 In the facts and circumstances of the present case, it is also necessary to apply Section 9 of the Limitation Act while applying Article 113 thereto. Section 9 reads as under:

"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."

Section 9 is based on the general principle that when once limitation has started to run, it will continue to do so unless it is arrested by reason of any express statutory provision. Period of limitation can be extended, inter alia, when cause of action was cancelled such as by dismissal of a suit. Ordinarily, limitation runs from the earliest time at which an action can be brought and after it has commenced to run, there may be revival of a right to sue where a previous satisfaction of a claim is nullified with the result that the right to sue which has been suspended is reanimated [Pioneer Bank Ltd vs. Ramdev Banerjee, (1950) 54 Cal WN 710]. In that case, the court distinguished between suspension and interruption of limitation period.

9.11 Once time has begun to run, it will run continuously but time ceases to run when the plaintiff commences legal proceedings in respect of the cause of action in question. It is a general principle of some importance that bringing an action stops running of time for the purpose of that action only [Andrew McGee, Limitation Periods, 4th Edn., Sweet & Maxwell, chapter 2, para1].

The Indian law also follows the English law [James Skinner vs. Kunwar Naunihal Singh, ILR (1929) 51 All 367, (PC)]. Intervention of court in proceedings would prevent the period of limitation from running and date of courts' final order would be the date for start of limitation [N Narasimhiah vs. State of Karnataka, (1996) 3 SCC 88].

[Source: Tagore Law Lectures, U N Mitra, Law of Limitation and Prescription, Sixteenth Edition, Volume 1, Sections 1-32 & Articles 1-52]

9.12 Applying the aforesaid dictum to the facts of the present case, it is observed that the respondent/plaintiff had filed the suit for specific performance of the agreement to sell dated 26.04.1991 in the year 1993 itself. The plaint in the said

suit was rejected on 12.01.1998. The plaintiff could have filed the second suit on or before 12.01.2001 as it got right to file the suit on 12.01.1998 on the rejection of the plaint in the earlier suit filed by it.

This is on the basis of Order VII Rule 13 of the Code. However, the limitation period expired in January, 2001 itself and the second suit was filed belatedly in the year 2007. The cause of action by then faded and paled into oblivion. The right to sue stood extinguished. The suit was barred in law as being filed beyond the prescribed period of limitation as per Article 113 to the Schedule to the Limitation Act. Hence the second suit is barred under Order VII Rule 11(d) of the Code.

We therefore have no hesitation in rejecting the plaint in O.S No.49/2007 filed by the respondent herein even in the absence of any evidence being recorded on the issue of limitation. This is on the admitted facts. Thus, on the basis of Order VII Rule 11(d) of the Code read with Article 113 of the Limitation Act by setting aside the impugned orders of the High Court and the trial court and by allowing the application filed under Order VII Rule 11(d) of the Code. Consequently, this appeal is allowed.

Parties to bear their respective costs.

.....J. (B.V. Nagarathna)

.....J. (Nongmeikapam Kotiswar Singh)

New Delhi;

January 08, 2025

IN THE SUPREME COURT OF INDIA

State of West Bengal & Ors.
Vs.
Pam Developments Pvt. Ltd. & Anr.

[Civil Appeal No._____ of 2025
arising out of SLP (C) No. 11392 of 2024]

HEADNOTE - When an application seeking an amendment to plaint is filed due to subsequent developments intrinsically linked to the main cause of action, it constitutes a continuous cause of action, and no notice to the government is required under Section 80 CPC.

JUDGMENT

Satish Chandra Sharma, J.

1. Leave granted.

2. The Appellants challenge order dated 08.01.2024 in G.A. No. 11 of 2022 in C.S. No. 102 of 2016 whereby and whereunder the Ld. Single Judge of the High Court at Calcutta allowed the application filed by the present Respondent/original Applicant seeking amendment of plaint and dispensed with the requirement of issuance of notice under Section 80 of the Code of Civil Procedure, 1908 [hereinafter "CPC"] for incorporating the amendment and prayer by way of amendment in the original plaint.

3. At the outset, it is imperative to take note of the relevant background facts and the chequered litigation history between the parties that are germane to the present dispute.

BACKGROUND

4. Appellant No. 4 / Superintending Engineer, Public Works Department [hereinafter "PWD"], Kolkata floated a tender on 04.12.2013 for the strengthening of the Howrah-Amta Road from 7.90 Km to 11.80 Km [hereinafter "the Project"]. The Respondent emerged as the successful applicant and accordingly, an agreement was entered into by Appellant No. 4 and the Respondent on 23.04.2014, wherein the stipulated date for completion was 19.08.2014. The work was not completed by the stipulated date, and accordingly the Appellant No. 4 extended the timeline for the project while imposing a

penalty rate. Ultimately, on 14.05.2015 Respondent's security deposit came to be forfeited in light of non-completion of work.

5. Vide order dated 07.07.2015, Appellant No. 4 debarred the Respondent from participating in any tender floated by it for the next two years [hereinafter "the First Debarment Order"]. The First Debarment Order was set aside by the High Court at Calcutta1 on the consideration that the Respondent was not put on notice. Consequently, Appellant No. 4 issued a show-cause notice dated 18.09.2015 for debarment to the Respondent and issued a memo dated 08.03.2016, requesting the latter to appear before the Debarment Committee.

6. Aggrieved by memo dated 08.03.2016, Respondent preferred a civil suit, being C.S. No. 102 of 2016 [hereinafter "Civil Suit"], along with an application for an injunction, being G.A. No. 1339/2016, before the High Court at Calcutta. In the Civil Suit, the Respondent challenged the authority of the Appellants in issuing the memo requesting appearance in the debarment proceedings on the ground that the penalty for debarment is outside the scope of the contract in question and dehors the same.

The Respondent also relied on the penalty amount imposed by the Appellants for the same cause of action to buttress its position. Further, and more critically, the Respondent claims that it has suffered a loss of around Rs. 2,21,61,296/- on account of the First Order of Debarment, which was wrongfully imposed. The Respondent has made several other claims which are not important to go into in this appeal.

7. The High Court at Calcutta disposed of G.A. No. 1339/2016 while granting liberty to the Respondent to contest all grounds, including that of jurisdiction and composition before the Debarment Committee itself. Thereafter, for the next two years the Committee issued orders dated 01.12.2016, 06.03.2017, 22.05.2017, and finally on 31.10.2017 [hereinafter "Underlying Debarment Order"], debarring the Respondent from participating in any tender floated by it for the next two years.

Orders dated 01.12.2016, 06.03.2017, and 22.05.2017, were respectively set aside by the High Court at Calcutta vide orders dated 06.02.20172, 22.03.20173, and 02.08.20174 on the ground of procedural lapses on the part of the Appellants in conducting the Debarment proceedings. Finally, against the Underlying Debarment Order, the Respondent preferred G.A. No. 173 of 2018 in C.S. No. 102 of 2016 which came to be rejected vide order dated 24.01.2020, wherein the High Court at Calcutta observed -

"It is not for the Court at this stage to speculate on the effect of that debarment already suffered by the plaintiffs on a tender process which is yet to happen. The

issue as to whether or not the petitioner was correctly debarred as sought to be done in the present case, is an issue which need not to be decided in this application. Such issue is kept open."

8. At the close of this litigation history, the Respondent filed an application, being G.A. No. 7 of 2019 in C.S. No. 102 of 2016 seeking to amend the plaint in order to bring on record subsequent facts necessary for effective adjudication. While this application was dismissed as "not pressed", the Respondent filed another application for amendment of the plaint, being G.A. No. 11 of 2022 in C.S. No. 102 of 2016 [hereinafter "the Underlying Application"].

The Respondent prayed to amend the plaint and the prayer on the ground that several facts had taken place after the Civil Suit was filed resulting in a continuous cause of action, whereby it is pertinent to bring those facts on record in order to adjudicate upon the dispute. The Appellants strongly contested the Underlying Application by stating that it is identical to G.A. No. 7 of 2019, i.e. the first amendment application, which was dismissed.

9. Vide order dated 08.01.2024 [hereinafter the "Impugned Order"], the High Court categorically held that the amendment sought for by the Respondent amounts to a continuous cause of action and will not change the nature and character of the Civil Suit. In fact, the memo dated 08.03.2016 forms the subject matter of the Civil Suit between the parties, and is a continuation to the show-cause notice dated 18.09.2015. Further, it noted that the issue of whether the Respondent has been correctly debarred or not by the Appellants has been kept open vide order dated 24.01.2020. Consequently, the impugned order concludes that the entire circumstances are in continuation to the memo dated 08.03.2016.

SUBMISSIONS BY THE PARTIES

10. Challenging the Impugned Order, the Appellants submit that subsequent events of debarment give rise to a fresh cause of action for which a fresh suit is to be filed, regardless of the parties being the same. Accordingly, it is their case that the Underlying Debarment Order dated 31.10.2017 gave rise to a fresh cause of action for which the Respondent did not take any steps for initiating action, resulting in now being time-barred. Therefore, the proposed amendment changes the character and the nature of the suit.

11. The Appellants' next submission is that the first application for amendment was dismissed as not pressed while no liberty was given to file afresh. Accordingly, as per Order XXIII Rule 1 and 4 of the CPC, the Respondent has abandoned its claim which formed a part of the first application and it cannot be permitted to amend its claim on the same grounds.

12. The Appellants also urge this Court to consider that the Respondent has not issued a notice to the Appellants under Section 80 of the CPC as a fresh cause of action has been introduced. In order to buttress the same, the Appellants rely upon Bishandayal & Sons v. State of Orissa & Ors.5.

13. The counsel for the Appellants has further relied upon the Limitation Act, 1963 [hereinafter "the Limitation Act"] to submit that the prescribed limitation period of three years started running from 31.10.2017, i.e. the date of the Underlying Debarment Order, and expired on 13.10.2022 considering the COVID-19 exclusion. Whereas, the amendment was filed on 05.12.2022, which is beyond the limitation period.

14. Per Contra, the Respondent has submitted that it has severely suffered on account of erroneous blacklisting orders for the period of two years starting on 07.07.2015 up until 22.05.2017. Thereby, the Respondent has not been able to participate in any tender during that period, facing financial, business, and reputational losses. Further, the Respondent argues that it has the legal right to amend the plaint as the cause of action is continuous on account of the fact that G.A. No. 173 of 2018 was disposed of by order dated 24.01.2020, while keeping the issue open between the parties.

15. The counsel for Respondent argued that there are three vital dates to consider whether the amendment application is barred by the laws of res judicata. The first amendment application was filed in July, 2019 and was dismissed as withdrawn on 13.01.2021. Subsequent facts that arose pursuant to the order dated 24.01.2020 were incorporated in the Underlying Application. Pertinently, all subsequent events transpired in the Civil Suit itself by way of several interlocutory applications. In fact, all other debarment orders were set aside, and only the issue of the legality of the Underlying Debarment Order was kept open. Finally, the Respondent urges that all the subsequent facts sought to be brought on record is a replica of all the facts in the several applications.

DISCUSSIONS AND FINDINGS

16. We have heard learned counsels for both the parties and perused the record in detail. While expressing no opinion on the merits of the Civil Suit itself, we have no hesitation in holding that the Impugned Order is valid and the Underlying Application is to be allowed.

17. The short points that fall to our consideration are, first, whether the Underlying Application is legally sustainable; and second, whether the Respondent ought to serve notice upon the Appellants under Section 80 of the CPC. We will deal with each issue in turn.

18. It is evident from the record that all debarment orders have arisen from the memo for appearance dated 08.03.2016, which is the genesis of the Debarment Committee. Consequently, the High Court has permitted the Committee to conduct a legal hearing, while concomitantly allowing the Civil Suit, being C.S. No. 102 of 2016, to be heard. Accordingly, the Debarment Committee issued several orders debarring the Respondent from participating in any tender floated by it for the next two years. As the process was permitted to take place side-by-side with the Civil Suit, the Respondent challenged the debarment orders by preferring interlocutory applications in the same Civil Suit.

19. The Underlying Debarment Order was issued on 31.10.2017, and challenged in G.A. No. 173/2018 in the Civil Suit. Vide order dated 24.01.2020, the High Court dismissed G.A. No. 173/2018 while keeping the issue of validity open. Specifically, the High Court held:

"The order of debarment is subsequent to the filing of the suit. The order of debarment under challenge is pursuant to an order passed by the High Court in the suit. The fact that the petitioner is no longer in the list of debarred candidates is not disputed. It is not for the Court at this stage to speculate on the effect of the debarment already suffered by the petitioner on a tender process which is yet to happen. The issue as to whether or not the petitioner was correctly debarred as sought to be done in the present case is an issue which need not be decided in this application. Such issue is kept open."

20. What falls from the aforementioned extraction is that two years had already passed since the Underlying Debarment Order when the High Court passed the order dated 24.01.2020. Therefore, it was inconsequential as the Respondent was no longer blacklisted. However, the High Court kept the larger issue, i.e. what is the effect and legality of the Underlying Debarment Order, open.

21. The noteworthy takeaway from the above is that the debarment orders form a continuous cause of action as they are a continuation of the memo dated 08.03.2016, which came to be impugned in the Civil Suit. A cause of action is continuing when the act alleged to be wrongful is repeating over a period of time, and consequently extending the limitation period. Cause of action is a bundle of facts giving rise to a legal right; where in the present case the cause of action is the termination of the agreement, the First Debarment Order, and the memo dated 08.03.2016.

22. We have carefully perused the Underlying Application preferred by the Respondent before the High Court. The facts sought to be brought on record relate to the subsequent debarment orders and their respective challenges. Adjudication in the Civil Suit will be incomplete and ineffective if the consequent facts are not brought on record. This is due to the fact that the

subsequent debarment orders and related events form a continuous chain finding its genesis in the memo dated 08.03.2016.

For instance, the Respondent has made a claim for an amount to be paid to it by penalising the Appellants for wrongfully issuing the First Debarment Order. The subsequent debarment orders all arise as a part of the same event and hence, its effect on the claim of the Respondent, if any, must be adjudicated together. Accordingly, we hold that the subsequent events form a continuous cause of action for which a fresh suit is not to be filed, as it does not change the nature and character of the Civil Suit.

23. The learned counsel for the Appellants has strongly urged that even considering the COVID-19 relaxation, the limitation period for challenging the Underlying Debarment Order expires on 14.10.2022. We find ourselves unable to agree with the said submission. The issue regarding the legality of the Underlying Debarment Order was kept open vide order dated 24.01.2020; hence forming the last event in the continuous cause of action. Accordingly, the Underlying Application is well within the limitation period taking into account the continuous cause of action.

24. The learned counsel for the Appellants has further urged that the dismissal of the first amendment application as withdrawn vide order dated 13.01.2021 precludes the Respondent from filing the Underlying Application as under Order XXIII Rule 1 of the CPC, the same amounts to an abandonment of claim. The core of Section 12 of the CPC read with Order XXIII Rule 1 is that no suit lies on the same cause of action if the plaintiff has abandoned their claim. In the present case, the same is not attracted as the circumstances give rise to a continuous cause of action resulting in a situation where both the amendment applications were filed at different points of time and the former was not adjudicated on merits.

25. Lastly, we consider the submission made by the Appellants regarding the non-issuance of a notice as per Section 80 of the CPC prior to the filing of the Underlying Application. It is apposite to reproduce the relevant portion of Section 80 of the CPC as relied on by the Appellants:

"80. Notice.- Save as otherwise provided in subsection (2), no suits shall be instituted against the Government (including the Government of the State of Jammu and Kashmir)] or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at the office of."

26. We have already observed that the amendment sought amounts to a continuous cause of action and maintains the nature and character of the suit and to that extent, Section 80 of the CPC is irrelevant to the case at hand.

27. In view of the above, no good reasons are seen to interfere with the impugned order. The appeal stands dismissed without any order on costs.

.....J. [Bela M. Trivedi]

.....J. [Satish Chandra Sharma]

New Delhi

January 09, 2025

1 WP(C) No. 1043 of 2015

2 GA No. 84 of 2017 in CS No. 102 of 2016.

3 GA No. 877 of 2017 in CS No. 102 of 2016.

4 GA No. 2416 of 2017 in CS No. 102 of 2016.

5 (2001) 1 SCC 555

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IN THE SUPREME COURT OF INDIA

Rina Kumari @ Rina Devi @ Reena
Vs.
Dinesh Kumar Mahto @ Dinesh Kumar Mahato and Anr.

[Criminal Appeal No._____ of 2025
@ SLP (Crl.) No. 5896 of 2024]

HEADNOTE - A wife, even if she refuses to live with her husband despite a decree of restitution of conjugal rights against her, is entitled to claim maintenance under Section 125 of the Cr.P.C.

JUDGMENT

Sanjay Kumar, J.

1. Leave granted.

2. Will a husband, who secures a decree for restitution of conjugal rights, stand absolved of paying maintenance to his wife by virtue of Section 125(4) of the Code of Criminal Procedure, 1973, if his wife refuses to abide by the said decree and return to the matrimonial home?

3. This intriguing question was answered in the affirmative by a learned Judge of the Jharkhand High Court, vide order dated 04.08.2023 in Criminal Revision No. 440 of 2022. Aggrieved, Rina Kumari @ Rina Devi @ Reena, the wife, is in appeal.

4. The appellant, Reena, and respondent No. 1, Dinesh Kumar Mahto @ Dinesh Kumar Mahato, were married on 01.05.2014. They parted ways in August, 2015, and Reena started living at her parental home. Original (MTS) Suit No. 495 of 2018 was instituted by Dinesh on 20.07.2018 before the Family Court, Ranchi, under Section 9 of the Hindu Marriage Act, 1955, for restitution of conjugal rights. Reena contested the suit by filing her written statement on 25.04.2019. Dinesh claimed that Reena left the matrimonial home on 21.08.2015 and did not return thereafter. According to him, attempts were made during August and October, 2017, to bring her back but she refused to come.

He stated that his parents were very old and needed to be taken care of but Reena was not there to do so. On the contrary, Reena asserted that she was subjected to torture and mental agony by Dinesh, who demanded ₹5 lakh to purchase a four-wheeler. She alleged that he had extramarital relations. Further, she stated that she suffered a miscarriage on 28.01.2015 but Dinesh did not even come to see her from his workplace at Ranchi and it was her brother who took her to Dhanbad for

medical care. She claimed that it was Dinesh who persuaded her to go to her parental home in August, 2015, on the occasion of Raksha Bandhan and he never truly tried to bring her back thereafter.

She claimed that it was she who had gone to her matrimonial home in the year 2017 along with her relations but they were forced to return as Dinesh and his family members treated them badly. She stated that she was ready to return to her matrimonial home if Dinesh did not demand money to purchase a car and if she was not ill-treated by him and his family members. Her further conditions were that she should be allowed to use the washroom/toilet in the house, as she was not allowed to do so earlier, and she should also be allowed to use an LPG stove to prepare food, as she had to do so by using wood and coal hitherto.

She concluded her written statement by asserting that the suit for restitution filed by Dinesh was nothing but a tool to save himself from the effect of laws which were put in place for women's safety and prayed that the suit be dismissed with costs. Reena, despite filing the above written statement, failed to appear thereafter before the Family Court.

5. By judgment dated 23.04.2022, the learned Additional Principal Judge-II, Additional Family Court, Ranchi, decreed Dinesh's suit for restitution of conjugal rights. Therein, it was noted that Dinesh had attempted to bring his wife back only once but, relying on the evidence of his witnesses, the Family Court concluded that he wanted to live with her as husband and wife.

As no evidence was adduced by Reena, the Family Court held against her as regards her allegation that Dinesh demanded 5 lakh to purchase a car and her ₹ allegation of ill treatment and torture by him and his family members. As to her two conditions, the Family Court noted that Dinesh was a Junior Lineman in Jharkhand State Electricity Board and observed that he would be expected to provide an LPG stove to his wife to prepare food.

Opining that there must be something more serious than the ordinary wear and tear of married life for a wife to withdraw from the society of her husband, the Family Court held in Dinesh's favour. He was, however, directed to ensure the respect and dignity of his wife and to see that her conditions with regard to cooking and toilet facilities were complied with. Reena was directed to resume conjugal life with Dinesh within two months. Admittedly, Reena did not abide by this decree.

6. Significantly, in the meanwhile, on 10.08.2018, Reena lodged a complaint under Section 498A IPC against Dinesh, in C.P. Case No. 3270 of 2018. As a result of this, he was sent to prison and was consequently suspended from service for some time. The case is stated to be pending. Thereafter, on 03.08.2019, Reena

instituted Original Maintenance Case No. 454 of 2019 against Dinesh seeking maintenance under Section 125 of the Code of Criminal Procedure, 1973 (for brevity, 'the Cr.P.C.').

This case was allowed by the learned Principal Judge, Family Court, Dhanbad, vide order dated 15.02.2022, i.e., before the decretal of Dinesh's suit for restitution. Therein, the Family Court noted Dinesh's stand that he was ready and willing to keep Reena with full dignity but held, on the evidence adduced, that she was entitled to maintenance. Dinesh's pay-slip (Ex-3) revealed that he was working as a Junior Engineer in the Electricity Board and his net salary, after deductions from the gross salary of ₹62,000/-, was ₹43,211/-.

The Family Court held that Dinesh, despite having sufficient means, had neglected to maintain his wife, who was unable make ends meet on her own. The petition was accordingly allowed and Dinesh was directed to pay ₹10,000/- per month to Reena towards maintenance. Such maintenance was held payable from the date of the application, i.e., 03.08.2019, and the arrears were directed to be paid within two months.

7. Challenging this order, Dinesh filed Criminal Revision No. 440 of 2022 before the Jharkhand High Court. A learned Judge allowed the revision by the impugned judgment dated 04.08.2023. Therein, the learned Judge noted that Reena, who deposed as PW-1, was not even cross-examined by Dinesh. Similarly, the other two witnesses who appeared on her behalf were also not subjected to cross-examination.

In her deposition, Reena asserted that she was not working and this was confirmed by her brother, Dilip Kumar Mahato (PW-3), who stated that she was completely dependent upon him. Dinesh, in his own crossexamination, denied that it was due to his assault that his wife suffered a miscarriage. He also denied that he had demanded ₹5 lakh in dowry.

He, however, admitted that Reena suffered an abortion and that he did not bear any expense in that regard. It was submitted on behalf of Dinesh, that he was ready to pay ₹5,000/- per month to Reena, but not from the date of filing of the maintenance petition, as he was suspended from service during that period owing to his being in judicial custody in relation to the Section 498A IPC case instituted by her.

The learned Judge, however, noted that there was a specific finding in the judgment dated 23.04.2022 in Original (MTS) Suit No. 495 of 2018 that Reena had withdrawn from her husband's society without reasonable excuse and that she had not returned to the matrimonial home despite the said decree for restitution of conjugal rights, which she had not even chosen to challenge by way of appeal.

The learned Judge, therefore, reasoned that Section 125(4) Cr.P.C. would come to Dinesh's aid and, in consequence, Reena would not be entitled to maintenance. Hence, the learned Judge allowed the revision.

8. Before proceeding to consider the matter on merits, it would be apposite to take note of the statutory scheme. Chapter IX of the Code of Criminal Procedure, 1973, is titled 'Order for Maintenance of Wives, Children and Parents' and comprises Sections 125 to 128. Section 125(1) Cr.P.C. provides to the effect that, if any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate children, falling in the prescribed categories, or his parents, who are all unable to maintain themselves, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to pay a monthly allowance, as thought fit, for their maintenance. Notably, Section 125 Cr.P.C. is not of recent origin. It is analogous to and in continuance of Section 488 of the erstwhile Code of Criminal Procedure, 1898.

9. In its 41st Report submitted on 24th September, 1969, the Law Commission of India, while adverting to Section 488 of the Code of Criminal Procedure, 1898, observed that the primary justification for placing provisions relating to maintenance of wives and children, which is a civil matter, in the Criminal Procedure Code was that a remedy, speedier and more economical than that available in the Civil Courts, is provided to them. The Law Commission noted that the provision was aimed at preventing starvation and vagrancy, leading to commission of crime.

10. On the same lines, in Chaturbhuj vs. Sita Bai[1], this Court observed that the object of maintenance proceedings is not to punish a person for his neglect but to prevent the vagrancy and destitution of a deserted wife, by providing her food, clothing and shelter by a speedy remedy. It was held that Section 125 Cr.P.C. is a measure of social justice, especially enacted to protect women and children, falling within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution. Thus, the objective of the provision, then and now, is to alleviate the financial plight of destitute wives, children and now, parents, who are left to fend for themselves.

11. In Bhuwan Mohan Singh vs. Meena and others[2], this Court observed that Section 125 Cr.P.C. was conceived to ameliorate the agony, anguish and financial suffering of a woman, who left her matrimonial home for the reasons provided in the provision, so that some suitable arrangement can be made by the Court and she can sustain herself and also her children, if they are with her.

It was held that the concept of sustenance did not necessarily mean 'to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else' and the wife would be entitled in law

to lead a life in a similar manner as she would have lived in the house of her husband.

This Court further cautioned that, in a proceeding of this nature, the husband cannot be permitted to take subterfuge to deprive the wife of the benefits of living with dignity and there could be no escape route, unless there is an order from the Court that the wife is not entitled to get maintenance from the husband on legally permissible grounds.

12. Earlier, in Badshah vs. Urmila Badshah Godse and another[3], this Court held that the provision of maintenance aims at empowering the destitute and achieving social justice or equality and dignity of the individual and while dealing with cases thereunder, the drift in the approach from adversarial litigation to social context adjudication is the need of the hour. More recently, in Rajnesh vs. Neha and another[4], this Court emphasized that maintenance laws were enacted as a measure of social justice to provide recourse to dependent wives and children for their financial support, so as to prevent them from falling into destitution and vagrancy.

13. In Shamima Farooqui vs. Shahid Khan[5], this Court noted that the inherent and fundamental principle behind Section 125 Cr.P.C. is the amelioration of the financial state of affairs as well as the mental agony and anguish that a woman suffers when she is compelled to leave her matrimonial home. It was further observed that, as per law, she is entitled to lead life in a similar manner as she would have lived in the house of her husband and as long as she is held entitled to grant of maintenance within the parameters of Section 125 Cr.P.C., it has to be adequate so that she can live with dignity.

Lastly, it was noted that, a plea is sometimes advanced by the husband that he does not have the means to pay as he does not have a job or his business is not doing well, but these are only bald excuses and, in fact, they have no acceptability in law as a husband, who is healthy, able-bodied and in a position to support himself is under a legal obligation to support his wife and her right to receive maintenance under Section 125 Cr.P.C., unless disqualified, is an absolute right.

14. Such disqualification, by way of an exception, was envisaged under Section 488(4) of the old Code, which is replicated, almost verbatim, in Section 125(4) Cr.P.C. It reads thus: "Section 125 (4) No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] [Substituted by Act 50 of 2001, Section 2 for "allowance" (w.e.f. 24-9-2001)] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent."

15. The issue, presently, turns upon the applicability of Section 125(4) Cr.P.C. to the case on hand. The question as to whether noncompliance with a decree for restitution of conjugal rights by a wife would be sufficient in itself to deny her maintenance, owing to Section 125(4) Cr.P.C, has been addressed by several High Courts but no consistent view is forthcoming, as their opinions were varied and conflicting.

16. In K. Narayana Rao vs. Bhagyalakshmi[6], the Karnataka High Court observed that the Court dealing with a maintenance claim under Section 125 Cr.P.C. has to carefully examine and take into consideration the decree for restitution of conjugal rights which has not been complied with by the wife but it would not be bound by all the findings therein, including findings on questions, such as, whether the wife withdrew from the society of the husband; desertion on her part; or her leading an adulterous life. Reference was made to Fakruddin Shamsuddin Saiyed vs. Bai Jenab[7], wherein the Bombay High Court had held that the Magistrate should not 'surrender his own discretion' simply because the husband was armed with a decree for restitution of conjugal rights.

17. In Sampuran Singh vs. Gurdev Kaur and another[8], the Punjab & Haryana High Court observed that a wife can still claim maintenance in the presence of a decree for restitution of conjugal rights if the conduct of the husband is such that it obstructs her from obeying the decree.

18. In Amina Mohammedali Khoja vs. Mohammedali Ramjanali Khoja and another[9], the Bombay High Court noted that an order of maintenance can always be passed in favour of a wife even if her husband obtained a decree for restitution of conjugal rights, unless it is established that she willfully deserted her husband and was not willing to stay with him without reasonable cause or sufficient reason.

On facts, it was found that the record did not show that the wife had deserted the husband and was unwilling to stay with him without reasonable cause or sufficient reasons. It was further noted that, after obtaining the decree, the husband had not taken any effective steps to get the decree satisfied as he had made no genuine, honest and sincere efforts to see that his wife comes back to him. It was, therefore, held that he was only interested in a paper decree for restitution of conjugal rights, which he had gotten ex parte.

19. In Kavungal Kooppakkattu Zeenath vs. Mundakkattu SulfikerAli[10], the Kerala High Court noted that the expression used in Section 125(4) Cr.P.C. is 'refusal' and not 'failure' to live with the husband and that there is evidently some difference between the two. It was held that 'failure' would mean not doing something that one is expected to do but 'refusal' would mean saying or showing that one would not do or accept something which is offered. In effect, if a

husband says he is willing to do something for the wife but she states or shows that she does not want or accept that something which is offered to her, then only there is refusal.

20. In Subal Das vs. Mousumi Saha (Das) and another[11], the Tripura High Court held that a wife who refuses to comply with a decree for restitution of conjugal rights cannot be deprived of maintenance under Section 125(4) Cr.P.C. It was observed that it would be incongruent to assume that a wife against whom a decree for restitution has been passed is disentitled to maintenance while a wife who has been divorced can still claim the same.

It was further observed that the Civil Court's judgment for restitution can only be treated as relevant evidentiary material but the conduct of the wife, i.e., whether she had sufficient reason to refuse to live with the husband, has to be assessed by the Magistrate and only thereafter, it could be decided whether she would be entitled to maintenance or not. It was concluded that the restriction imposed by Section 125(4) Cr.P.C. had been substantially diluted, if not virtually negated.

21. In Babita vs. Munna Lal[12], the Delhi High Court opined that an ex parte decree for restitution of conjugal rights would not automatically put an end to the wife's right to maintenance under Section 125 Cr.P.C. It was held that, even if such a case is contested by the wife and is decided in the husband's favour, non-compliance therewith could be taken to be a ground to deny maintenance, provided the Court is satisfied on the strength of evidence that the wife had no justifiable grounds to stay away from the husband.

The mere presence of a decree for restitution of conjugal rights was, therefore, held insufficient to disentitle a wife from claiming maintenance, if the conduct of the husband is such that she is unable to obey such a decree or if the husband creates such circumstances that she cannot stay with him. It was noted that even a divorced wife is entitled to maintenance under Section 125 Cr.P.C. and it would be improper and unfair to deny maintenance to a wife merely because she refused to cohabit with the husband, despite having sufficient grounds therefor.

22. In Shri Mudassir vs. Shirin and others[13], the Bombay High Court noted that mere readiness and willingness on the part of the husband to cohabit with the wife would not be sufficient to absolve him of the liability to pay maintenance, by projecting that the wife left his company without sufficient reason. It was held that if the grounds justified the wife and children staying away from the husband, Section 125(4) Cr.P.C. would have no application.

23. In its recent judgment in Smt. S.R. Ashwini vs. G. Harish[14], the Karnataka High Court held that there is nothing in law to bar the grant of maintenance under Section 125 Cr.P.C. even if a decree for restitution of conjugal rights is secured

by the husband. It was noted that, at the most, such a decree would enable the husband to take that defence in the maintenance proceedings initiated by the wife but, for the Court, it would not be the sole factor to refuse maintenance to her.

In the result, it was held that a petition under Section 125 Cr.P.C. could be considered on its own merits independently, without being influenced by the decree for restitution of conjugal rights. It was further held that, even if there is a decree for restitution of conjugal rights, and the wife still does not choose to join the matrimonial home that would not amount to voluntary refusal/desertion which would bar her claim to maintenance under Section 125 Cr.P.C.

24. On the other hand, the Gujarat High Court, in Girishbhai Babubhai Raja vs. Smt. Hansaben Girishchandra and another[15], observed that when the Civil Court orders the wife to go and stay with her husband and fulfil her marital obligations, it presupposes that she has no justification to be away from the husband and refuse to perform her corresponding marital obligations.

25. A similar view was taken by the Himachal Pradesh High Court in Hem Raj vs. Urmila Devi and others[16], wherein it was held that, once a Civil Court found in a contested proceeding that the wife had no just or reasonable cause to withdraw her society from the husband, she cannot claim maintenance under Section 125 Cr.P.C. It was observed, on facts, that the wife had not pleaded any subsequent event or circumstance which justified her staying away from her husband in spite of the decree for restitution of conjugal rights passed against her.

26. On the same lines, in Ravi Kumar vs. Santosh Kumari[17], a Division Bench of the Punjab & Haryana High Court held that a wife against whom a decree for restitution of conjugal rights has been passed by the Civil Court would not be entitled to claim maintenance under Section 125 Cr.P.C. if, in the proceedings of restitution, a specific issue was framed as to whether the wife refused to live with her husband without sufficient reason and the parties were given an opportunity to lead evidence, whereupon specific findings were recorded by the Civil Court against the wife on the issue.

It was, however, added that in the event the husband got an ex parte decree for restitution, such a decree would not be binding on the Criminal Court exercising jurisdiction under Section 125 Cr.P.C. It was also clarified that if the decree for restitution of conjugal rights was obtained by the husband subsequent to the order for maintenance passed by the Magistrate under Section 125 Cr.P.C., then the decree would not ipso facto disentitle the wife to her right to maintenance and the husband would have to approach the Magistrate to get the order granting maintenance cancelled.

27. Now, turning to the decisions of this Court on the point, in Kirtikant D. Vadodaria vs. State of Gujarat and another[18], it was held that Section 125 Cr.P.C. has to be given a liberal construction to fulfil and achieve the intention of the legislature and, therefore, the passing of a decree for restitution of conjugal rights against the wife would not, by itself, defeat her right to maintenance under Section 125(1) Cr.P.C. It was further observed that the mere 'failure' of the wife to live with her husband would not be sufficient to disentitle her from receiving maintenance from him, especially as the crucial word carefully chosen in the relevant provision is 'refusal'.

28. In Amrita Singh vs. Ratan Singh and another[19], this Court held, on facts, that the plea of the husband that his wife had deserted him without reasonable cause and that he was ready to take her back was falsified by the fact that the wife was treated with cruelty and subjected to persistent demands for dowry, resulting in her being ousted from the matrimonial house, whereupon she was compelled to file a criminal complaint under Section 498A IPC ending in the conviction of the husband and his father. The wife was held to have reasonable grounds not to join the husband, thereby entitling her to maintenance.

29. Thus, the preponderance of judicial thought weighs in favour of upholding the wife's right to maintenance under Section 125 Cr.P.C. and the mere passing of a decree for restitution of conjugal rights at the husband's behest and non-compliance therewith by the wife would not, by itself, be sufficient to attract the disqualification under Section 125(4) Cr.P.C. It would depend on the facts of the individual case and it would have to be decided, on the strength of the material and evidence available, whether the wife still had valid and sufficient reason to refuse to live with her husband, despite such a decree.

There can be no hard and fast rule in this regard and it must invariably depend on the distinctive facts and circumstances obtaining in each particular case. In any event, a decree for restitution of conjugal rights secured by a husband coupled with non-compliance therewith by the wife would not be determinative straightaway either of her right to maintenance or the applicability of the disqualification under Section 125(4) Cr.P.C.

30. Another contention that was urged before us is that the findings in the judgment for restitution of conjugal rights by the Family Court, being a Civil Court, would be binding on the Court seized of the petition under Section 125 Cr.P.C, as they are to be treated as criminal proceedings. This specious argument needs mention only to be rejected outright. No doubt, in Shanti Kumar Panda vs. Shakuntala Devi[20], this Court held that a decision by a Criminal Court would not bind the Civil Court while a decision by the Civil Court would bind the Criminal Court.

However, maintenance proceedings are essentially civil in nature and the reason for inclusion of the provisions dealing therewith in the Code of Criminal Procedure was clarified by the Law Commission of India in September, 1969. Significantly, as long back as in the year 1963, in Mst. Jagir Kaur and another vs. Jaswant Singh[21], a 3-Judge Bench of this Court held that proceedings under Section 488 of the Code of Criminal Procedure, 1898, the precursor to Section 125 Cr.P.C., are in the nature of civil proceedings; the remedy, being a summary one; and the person seeking that remedy, ordinarily being a helpless person.

Therefore, even if non-compliance with an order for payment of maintenance entails penal consequences, as may other decrees of a Civil Court, such proceedings would not qualify as or become criminal proceedings. Nomenclature of maintenance proceedings initiated under the Code of Criminal Procedure, as those provisions find place therein, cannot be held to be conclusive as to the nature of such proceedings.

31. Further, in Iqbal Singh Marwah and another vs. Meenakshi Marwah and another[22], while dealing with the contention that an effort should be made to avoid conflict of findings between Civil and Criminal Courts, a Constitution Bench pointed out that there is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein.

32. The Indian Evidence Act, 1872, distinguishes between judgments in rem and judgments in personam and Sections 40 to 43 therein stipulates the relevance of existing judgments, orders or decrees in subsequent proceedings in different situations. The relevant provisions are extracted hereunder for ready reference:

40. Previous judgments relevant to bar a second suit or trial:-

The existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial is a relevant fact when the question is whether such Court ought to take cognizance of a such suit, or to hold such trial.

41. Relevancy of certain judgments in probate, etc., jurisdiction:-

A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial admiralty or insolvency jurisdiction which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof- that any legal character, which it confers accrued at the time when such judgment, order or decree came into operation; that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, [order or decree] declares it to have accrued to that person; that any legal character which it takes away from any such person ceased at the time from which such judgment, [order or decree] declared that it had ceased or should cease; and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, [order or decree] declares that it had been or should be his property.

42. Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 41:-

Judgments, orders or decrees other than those mentioned in section 41, are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.

Illustration:

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies. The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

43. Judgments, etc., other than those mentioned in sections 40 to 42, when relevant.-

Judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provisions of this Act.

Illustrations

(a) A and B separately sue C for a libel which reflects upon each of them. C in each case says, that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither. A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(b) A prosecutes B for adultery with C, A's wife. B denies that C is A's wife, but the Court convicts B of adultery. Afterwards, C is prosecuted for bigamy in

marrying B during A's lifetime. C says that she never was A's wife. The judgment against B is irrelevant as against C.

(c) A prosecutes B for stealing a cow from him, B, is convicted. A afterwards sues C for the cow, which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.

(d) A had obtained a decree for the possession of land against B, C, B's son, murders A in consequence. The existence of the judgment is relevant, as showing motive for a crime.

[(e) A is charged with theft and with having been previously convicted of theft. The previous conviction is relevant as a fact in issue.

(f) A is tried for the murder of B. The fact that B prosecuted A for libel and that A was convicted and sentenced is relevant under section 8 as showing the motive for the fact in issue.

33. Sections 34 to 37 of the Bharata Sakshya Adhiniyam, 2023, correspond to Sections 40 to 43 of the Indian Evidence Act, 1872, with some modifications. Section 41, as is clear from the extraction hereinabove, specifically deals with instances where an earlier judgment, order or decree constitutes conclusive proof whereas Section 42 provides that an earlier judgment is relevant if it relates to matters of public nature relevant to the inquiry, but such judgments, orders or decrees are not conclusive proof of that which they state. These provisions were considered in detail by a 3-Judge Bench of this Court in K.G. Premshankar vs. Inspector of Police and another[23], in the context of when a judgment in a civil proceeding, on the same cause of action, would be relevant in a criminal case, and it was observed thus:

"30. What emerges from the aforesaid discussion is - (1) the previous judgment which is final can be relied upon as provided under Sections 40 to 43 of the Evidence Act; (2)..; (3)..; (4) if the criminal case and the civil proceedings are for the same cause, judgment of the civil court would be relevant if conditions of any of Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in Section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein.

31. Further, the judgment, order or decree passed in previous civil proceeding, if relevant, as provided under Sections 40 and 42 or other provisions of the Evidence Act then in each case, the court has to decide to what extent it is binding or conclusive with regard to the matter(s) decided therein. Hence, in each and every case, the first question which would require consideration is - whether judgment, order or decree is relevant, if relevant - its effect. It may be relevant for

a limited purpose, such as, motive or as a fact in issue. This would depend upon the facts of each case."

Decisions of this Court manifest that judgments passed on merits in civil proceedings have been accepted as sufficient cause to discharge or acquit a person facing prosecution on the same grounds. This dictum is applied especially in cases where civil adjudication proceedings, like in tax cases, lead to initiation of prosecution by the authorities. Such cases are, however, different as there is a direct connect between the civil proceedings and the prosecution which is launched. The facts and allegations leading to the prosecution directly arise as a result of the civil proceedings.

Moreover, the standard of proof in civil proceedings is a preponderance of probabilities whereas, in criminal prosecution, conviction requires proof beyond reasonable doubt. We do not think the said principle can be applied per se to proceedings for maintenance under Section 125 Cr.P.C. by relying upon a judgment passed by a Civil Court on an application for restitution of conjugal rights. Further, the two proceedings are altogether independent and are not directly or even indirectly connected, in the sense that proceedings under Section 125 Cr.P.C. do not arise from proceedings for restitution of conjugal rights.

34. Long ago, in Captain Ramesh Chander Kaushal vs. Mrs. Veena Kaushal and others[24], this Court noted that it is valid to assert that a final determination of a civil right by a Civil Court would prevail against a like decision by a Criminal Court but held that this principle would be inapplicable when it comes to maintenance granted under Section 24 of the Hindu Marriage Act, 1955, as opposed to maintenance granted under Section 125 Cr.P.C. It was noted that the latter provision was a measure of social justice specially enacted to protect women and children falling within the constitutional sweep of Article 15(3) reinforced by Article 39.

35. Viewed thus, the findings in the proceedings for restitution of conjugal rights, which were partly uncontested as Reena did not appear before the Family Court to adduce evidence or advance her case after filing her written statement, did not clinch the issue and the High Court ought not to have given such undue weightage to the said judgment and the findings therein.

In the process, certain crucial factors were overlooked. Particularly, the fact that the witnesses who appeared on behalf of Reena in the Section 125 Cr.P.C. proceedings were not even cross-examined. It was clear therefrom that Dinesh did not even contest or rebut what they had stated. The fact that Reena was fully dependent on her brother was thus admitted. Further, documents were placed on record in proof of Reena's abortion in January, 2015.

In that regard, Dinesh's admission that he did not bear the expenditure for her treatment and her unrebutted assertion that he did not take her to the hospital or even come from Ranchi to see her were clear indicia of the pain and mental cruelty meted out to her. The fact that she was not allowed to use the toilet in the house or avail proper facilities to cook food in the matrimonial home, facts which were accepted in the restitution proceedings, are further indications of her ill-treatment.

36. Pertinently, in Parveen Mehta vs. Inderjit Mehta[25], this Court held that mental cruelty is a state of mind and feeling of one of the spouses due to the behavioral pattern by the other and, unlike physical cruelty, mental cruelty is difficult to establish by direct evidence. It was observed that a feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on cumulatively assessing the attending facts and circumstances in which the two spouses have been living.

In a case of mental cruelty, per this Court, it would not be the correct approach to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the spouse has been subjected to mental cruelty due to the conduct of the other.

37. Applying this standard, Dinesh's conduct in completely ignoring his wife, Reena, after she suffered the miscarriage of their child would have been the proverbial last straw adding to her suffering due to the ill-treatment in her matrimonial home. She, therefore, had just cause to not return to her matrimonial home, despite the restitution decree.

Further, the events thereafter or rather, the lack thereof, is relevant. The restitution decree came to be passed on 23.04.2022. Admittedly, there was no attempt made at reconciliation after 2017. However, having secured the said restitution decree, Dinesh did nothing! He neither sought execution of the decree under Order XXI Rule 32 CPC nor did he seek a decree of divorce under Section 13(1A)(ii) of the Hindu Marriage Act, 1955.

38. The reason for this is not far to gather. In Rohtash Singh vs. Ramendri (Smt.) and others[26], this Court clarified that a wife, who suffered a decree of divorce on the ground of deserting her husband, would not be entitled to maintenance under Section 125 Cr.P.C. as long as the marriage subsisted, but she would be entitled to such maintenance once she attained the status of a divorced wife, in the light of the definition of a 'wife' in Explanation (b) to Section 125(1) Cr.P.C. Dinesh, therefore, sought to protect himself from a claim by Reena for maintenance by

projecting the disobeyed restitution decree as a defence and as long as she did not attain the status of a divorced wife, that protection would endure to his benefit.

This stalemate of sorts created by Dinesh clearly reflects his lack of bonafides and demonstrates his attempt to disown all responsibility towards his wife, Reena. These factors, taken cumulatively, clearly manifest that Reena had more than sufficient reason to stay away from the society of her husband, Dinesh, and her refusal to live with him, notwithstanding the passing of a decree for restitution of conjugal rights, therefore, cannot be held against her. In consequence, the disqualification under Section 125(4) Cr.P.C. was not attracted and the High Court erred grievously in applying the same and holding that Reena was not entitled to the maintenance granted to her by the Family Court.

39. The appeal is accordingly allowed, setting aside the judgment dated 04.08.2023 passed by the High Court of Jharkhand at Ranchi in Criminal Revision No. 440 of 2022. In consequence, the order dated 15.02.2022 passed by the learned Principal Judge, Family Court, Dhanbad, in Original Maintenance Case No. 454 of 2019 shall stand restored.

In furtherance thereof, Dinesh, respondent No. 1 herein, shall pay maintenance @ 10,000/- per month to ₹ Reena, the appellant, on or before the 10th day of each calendar month. Such maintenance would be payable from the date of filing of the maintenance application, i.e., 03.08.2019.

Arrears of the maintenance shall be paid by Dinesh in three equal installments, i.e., the first instalment by 30.04.2025, the second instalment by 31.08.2025 and the third and final instalment by 31.12.2025.

In the circumstances, parties shall bear their own costs.

.....CJI. (Sanjiv Khanna)

.....J. (Sanjay Kumar)

New Delhi.

January 10, 2025;

1 (2008) 2 SCC 316

2 (2015) 6 SCC 353

3 (2014) 1 SCC 188

4 (2021) 2 SCC 324

5 (2015) 5 SCC 705

6 1983 SCC OnLine Kar 190 = (1984) 1 Kant LJ 451 = 1984 Cri LJ 276 (Kant)

7 AIR 1944 Bom 11

8 Criminal Revision No. 1562 of 1983, decided on 17.01.1985 = 1985 Cri LJ 1072 (P&H)

9 1985 SCC OnLine Bom 99 = 1985 Cri LJ 1909

10 2008 SCC OnLine Ker 78 = (2008) 3 KLJ 331

11 2017 SCC OnLine Tri 175 = Criminal Revision Petition No. 89 of 2016, decided on 25.07.2017

12 2022 SCC OnLine Del 4933 = Criminal Revision Petition No. 1001 of 2018, decided on 22.08.2022

13 Criminal Revision Application No. 268 of 2022, decided on 09.02.2023

14 NC: 2024: KHC: 14466 = RPFC No.104 of 2018, decided on 23.02.2024

15 1985 SCC OnLine Guj 161 = (1986) GLH 778

16 1996 SCC OnLine HP 116 = (1997) 1 HLR 702

17 1997 SCC OnLine P&H 529 = (1997) 3 RCR (Cri) 3 (DB)

18 (1996) 4 SCC 479

19 (2018) 17 SCC 737

20 (2004) 1 SCC 438

21 AIR 1963 SC 1521

22 (2005) 4 SCC 370

23 (2002) 8 SCC 87

24 (1978) 4 SCC 70

25 (2002) 5 SCC 706

26 (2000) 3 SCC 180

IN THE SUPREME COURT OF INDIA

Cuddalore Powergen Corporation Ltd.
Vs.
M/S Chemplast Cuddalore Vinyls Limited and Anr.

CIVIL APPEAL NOS. 372-373 OF 2025
(@SLP (C) NOS. 1297-1298 OF 2025)
(@ SLP(C) D. No.13548 of 2017)

HEADNOTE – A subsequent suit filed on a different cause of action would not be subject to the bar under Order II Rule 2 CPC.

JUDGMENT

J.B. Pardiwala, J.:

For the convenience of exposition, this judgment is divided in the following parts:-

Index

V. The "entitlement to" along with the "availability of" the relief as a requisite in determining the applicability of Order II Rule 2. .....

F. CONCLUSION .....

1. Delay condoned in filing SLPs.

2. Leave granted.

3. These appeals arise out of the Judgment and Order passed by the High Court of Madras dated 01.09.2016 in CMP No. 12498 of 2016 in S.A. No. 858 of 2014 and the order dated 30.06.2016 in S.A. No. 858 of 2014 respectively filed by the respondent no. 1 herein (original plaintiff) whereby the High Court allowed the second appeal and restored the plaint in O.S. No. 122 of 2008.

A. FACTUAL MATRIX

4. M/s Chemplast Cuddalore Vinyls Limited (hereinafter, the "respondent no.1/original plaintiff") is said to have entered into an agreement for sale with Mrs. Senthamizh Selvi (hereinafter, the "respondent no.2/original defendant no. 1") on 24.01.2007 whereby the respondent no. 2 agreed to sell the suit property admeasuring 1 acre situated in village Thiyagavalli, Cuddalore to the respondent no. 1 for a total consideration of Rs. 1,50,000. Pursuant to the agreement for sale and after receiving the entire sale consideration, it is the case of the respondent no. 1 that they were also put in possession of the suit property.

In furtherance of the same, the respondent no. 2 is also said to have executed an irrevocable Power of Attorney dated 26.03.2007 to enable the respondent no. 1 to complete the formalities as regards the execution and registration of the sale deed pertaining to the suit property. The Power of Attorney was registered with the Office of the Sub Registrar, Joint I, Chennai Central, on the same day. Consequently, on 07.09.2007, the respondent no. 1 got the agreement for sale in respect of the suit property registered with the Joint Sub Registrar II, Cuddalore.

5. However, on 02.11.2007, the respondent no. 2 issued a letter inter alia revoking the Power of Attorney issued in favour of the respondent no. 1 to which the respondent no. 1 issued a reply on 05.11.2007. After couple of months i.e., on 06.02.2008, the respondent no.2 again issued a letter to the respondent no. 1 in which she enclosed a demand draft of the sum of Rs. 1,50,000.

According to the respondent no. 1, the letter inter alia mentioned that the demand draft was being enclosed in connection with the repayment of money borrowed from the respondent no. 1 for the purchase of a vehicle and there was no indication that the amount sought to be returned was towards the sale

consideration which was received by the respondent no. 2 pursuant to the agreement for sale dated 24.01.2007.

It is the case of the respondent no. 1 that, on 08.02.2008, they had returned the demand draft and issued a reply to the aforementioned letter. Additionally, it is also stated that on 09.02.2008, the respondent no. 1 furnished a notice to the respondent no. 2 asking her to perform her part of the agreement for sale by executing the sale deed and further not to alienate the property in favour of any other person. It appears that the respondent no. 2 has not furnished any reply to the said notice till date.

6. It is the case of the respondent no. 1 that they had visited the office of the subregistrar on multiple occasions for the purpose of registering the sale deed. However, the same was refused. On 14.12.2007, one more attempt was made by the respondent no. 1 to get the sale deed registered, however, the documents were not accepted by the revenue authorities. Aggrieved by such refusal, on 21.01.2008, the respondent no. 1 filed Writ Petition No. 1783 of 2008 before the Madras High Court.

During the pendency of these writ proceedings, it was found out that the revenue authorities had declined to register the sale deed due to the existence of a Government Order (hereinafter, the "GO") dated 08.08.1986 issued by the Government of Tamil Nadu by which certain parcels of land situated at Thiyagavalli (where the suit property is located) and Kudikkadu villages were reserved exclusively for the purpose of a thermal power station to be set up by the Tamil Nadu Electricity Board (hereinafter, the "TNEB"). Furthermore, vide letter dated 23.10.2006, the TNEB had authorized the Cuddalore Powergen Corporation Ltd. (hereinafter, the "appellant/original defendant no.2") to develop a power station and for that purpose an extent of 350 hectares of land is said to have been earmarked.

As a consequence, the general ban against registering the suit property did not operate against the appellant herein. It is pertinent to mention that a petition in public interest being Writ Petition No. 11453 of 2007 was filed by an organization representing the agriculturists namely the Thiyagavalli Panchayathai Serntha Nochikkadu Grama Vivasayigal Pdthukappu Mattrum Makkal Pothunala Sangam, on 20.03.2007, before the Madras High Court challenging the decision of the revenue authorities not to register the sale deeds.

7. On and from the 2nd week of February 2008, as alleged, the appellant along with the respondent no. 2 started to interfere with the peaceful possession and enjoyment of the suit property of the respondent no. 1.

8. Since the threat of dispossession was imminent and in order to prevent further attempts of trespassing into the suit property, on 16.02.2008, the respondent no. 1 filed original suit O.S. No. 28 of 2008 (hereinafter, the "first suit") before the Principal District Judge, Cuddalore for permanent injunction to restrain the appellant and the respondent no.2 from interfering with the peaceful possession and enjoyment of the suit property by the respondent no. 1. The same is still pending before the concerned court.

9. However, the appellant in its written statement put forward altogether a different case in the aforementioned first suit. It is the case of the appellant that it had entered into a bona fide agreement for sale dated 20.02.2007 with the respondent no. 2 in order to purchase the suit property and a sale deed in that regard was registered on 24.01.2008.

It is their case that, at the time of both the sale agreement and the sale deed, it was the respondent no.2 alone who was in possession of the suit property and consequently, the possession was transferred to the appellant on 24.01.2008. Therefore, the appellant contended that the respondent no. 1 cannot seek an injunction against the appellant who was the actual owner in possession of the suit property as on the date of institution of the first suit.

10. Subsequently, on 05.03.2008, a Division Bench of the Madras High Court heard the public interest litigation in Thiyagavalli Panchayathai Serntha Nochikkadu Grama Vivasayigal Pdthukappu Mattrum Makkal Pothunala Sangam, represented by its Secretary, Nochikkadu v. The Chairman, Tamil Nadu Electricity Board reported in (2008) SCC OnLine Mad 188 (Writ Petition No. 11453 of 2007) and quashed the G.O. dated 08.08.1986 along with the letter dated 23.10.2006 by which lands including the suit property were reserved exclusively for the appellant.

In the same breath, the High Court also directed the revenue authorities to receive and register all the documents pertaining to the Thiyagavalli and Kudikkadu villages presented to them, if such documents fulfilled all the stipulations contained in the Registration Act or any other enactment governing such registration. The relevant excerpts of this judgement are as follows:

"11. Taking note of the categorical stand of the third respondent in the impugned proceedings, we are at a loss to understand as to how and under what provision of law such a prohibition came to be imposed by the respondents restraining any individual land owners in the above two villages from transferring their lands either by way of sale or by any other mode to any third party other than "M/s. Cuddalore Power Company Limited" and refuse to register such documents.

12. Under Article 300-A of the Constitution, a right of a citizen to own a property and retain the same has been well protected and such right cannot be deprived of except by authority of law.

15. In this context, it is worthwhile to refer to the decision of the Hon'ble Supreme Court reported in (1982) 1 SCC 39 (Bishambhar Dayal Chandra Mohan and others v. State of Uttar Pradesh and others), wherein, paragraphs 27 and 41 are relevant for our present purpose which read as under:

"27. The quintessence of our Constitution is the rule of law. The State or its executive officers cannot interfere with the rights of others unless they can point to some specific rule of law which authorizes their acts. In State of M.P. v. Thakur Bharat Singh, the Court repelled the contention that by virtue of Article 162, the State or its officers may, in the exercise of executive authority, without any legislation in support thereof, infringe the rights of citizens merely because the legislature of the State has power to legislate in regard to the subject on which the executive order is issued. It was observed:

Every act done by the Government or by its officers must, if it is to operate to the prejudice of any person, be supported by some legislative authority. The same principle was reiterated by the Court in Satwant Singh Sawhney v. Dr. Ramarathnam, Assistant Passport Officer Government of India, New Delhi and Smt. Indira Nehru Gandhi v. Raj Narain.

41. There still remains the question whether the seizure of wheat amounts to deprivation of property without the authority of law. Article 300-A provides that no person shall be deprived of his property save by authority of law. The State Government cannot while taking recourse to the executive power of the State under Article 162, deprive a person of his property. Such power can be exercised only by authority of law and not by a mere executive fiat or order.

Article 162, as is clear from the opening words, is subject to other provisions of the Constitution. It is, therefore, necessarily subject to Article 300-A. The word "law" in the context of Article 300-A must mean an Act of Parliament or of a State Legislature, a rule, or a statutory order, having the force of law, that is positive or Statemade law. The decisions in Wazir Chand v. State of H.P. and Bishan Das v. State of Punjab are an authority for the proposition that an illegal seizure amounts to deprivation of property without the authority of law."

16. The above proposition of law laid down by the Hon'ble Supreme Court was subsequently followed in the reported decisions in 2003 (1) SCC 591 (Hindustan Times and others v. State of U.P. and another) and (2006) 2 SCC 545 (State of Bihar and others v. Project Uchcha Vidya, Sikshak Sangh and others).

17. Applying the above said principle to the fact of this case, we have no hesitation to hold that the impugned proceedings of the respondents are liable to be set aside as non-est in law. Accordingly, setting aside the proceedings, the prayer of the petitioner stands allowed and the respondents are directed to receive and register all the documents present by them for registration pertaining to the villages namely, Thiyagavalli and Kudikkadu, if such documents satisfy the stipulations contained in the Registration Act or any other enactment governing such registration."

(emphasis supplied)

11. Immediately thereafter, the respondent no. 1 contended that they had addressed a letter dated 06.03.2008 to the Tahsildar, Cuddalore, calling upon the authorities not to alter the revenue records in respect of the suit property in anybody's name. As a consequence of the decision rendered in the public interest litigation, vide order dated 25.03.2008, the Writ Petition No. 1783 of 2008 which was filed by the respondent no. 1 was also disposed of by a learned Single Judge of the Madras High Court on similar terms.

12. It is the case of the respondent no. 1 that they acquired knowledge of the sale deed dated 24.01.2008 pertaining to the suit property executed by the respondent no. 2 in favour of the appellant, only after the institution of the first suit. Therefore, the respondent no. 1 filed another Original Suit being O.S. No. 122 of 2008 (hereinafter, the "second suit") in the Court of the First Additional Subordinate Judge, Cuddalore inter alia praying that (a) the respondent no. 2 be directed to specifically perform the terms and conditions of the agreement for sale dated 24.01.2007 which was registered on 07.09.2007 by executing and registering the sale deed in favour of the respondent no. 1; (b) the sale deed dated 24.01.2008 executed by the respondent no. 2 in favour of the appellant be declared as null and void; and (c) permanent injunction restraining the respondent no. 2 and the appellant from interfering with the peaceful possession and enjoyment of the suit property by the respondent no. 1 be granted.

13. Contending that the second suit is hit by the bar under Order II Rule 2 CPC, the appellant moved an I.A. No. 17 of 2009 in the second suit under Order VII Rule 11 read with Section 151 CPC, for the rejection of plaint. On 30.04.2009, the Court of the First Additional Subordinate Judge, Cuddalore, allowed the I.A and consequentially, passed a decree rejecting the plaint in the second suit i.e., O.S. No 122 of 2008. The relevant observation is as follows:

"in the instant case on our hand we have elaborately discussed the entire plaint in both the suits with regard to the subject matter of the cause of actions and we have also recorded the reasons that the causes of action for the present suit were very well available during the filing of the earlier suit and moreover these aspects

are actually admitted by the respondent that the respondent had knowledge about the impugned sale deed even in the 2nd week of February 2008; Thus, in the light of the above discussion the point is answered that the suit is clear bar as it required under order 2 rule 2 r/w order VII rule 11(d) C.P.C. and in result this petition is allowed with cost."

(emphasis supplied)

14. Being aggrieved with the aforesaid, the respondent no. 1 filed Appeal Suit No. 10 of 2009 in the Court of the Principal District Judge, Cuddalore against the order passed in I.A. No. 17 of 2009 in the second suit. However, on 05.10.2009, the same was dismissed as not pressed since the respondent no. 1 conceded to the objection that a regular appeal against an order passed in an I.A. was not maintainable and the proper course of action to challenge an order in allowing an application filed under Order VII Rule 11 CPC would be to file a regular first appeal against the decree which is passed in the original suit. The Court, therefore, observed as thus:

"This appeal coming on the day for final hearing before me in the presence of Thiru P.I.X. Vedamnayagam, Advocate for the appellant and Thiru. M. Balathandayutham Advocate for the respondent, the appellant's counsel made an endorsement appeal may be dismissed as not pressed, in view of filing of fresh appeal on the same judgment and decree, this court doth order and decree as follows:

1. that the appeal be and the same is hereby dismissed as not pressed.

2. that there be no order as in costs."

(emphasis supplied)

15. Thereafter, the respondent no. 1 filed a fresh Appeal Suit No. 1 of 2010 in the Court of the Principal District Judge, Cuddalore against the judgment and decree dated 30.04.2009 by which the plaint in the second suit was rejected and prayed that the same be set aside. The First Appellate Court found no reason to interfere with the order of the Trial Court. Therefore, the First Appeal was dismissed and the Trial Court's order was confirmed.

16. As against the concurrent findings of both the Courts, the respondent no. 1 filed a Second Appeal in S.A No. 858 of 2014 under Section 100 CPC before the High Court. On 30.06.2016, the High Court allowed the second appeal ex-parte and restored the plaint in the second suit. The High Court was of the view that the second suit was not hit by the bar under Order II Rule 2 and that the plaint could not have been rejected. The relevant observations made by the High Court are as follows:

"19. In this case, I do not find any deliberate omission on the part of the plaintiff to make a claim in the earlier suit. Further, in a case of this nature wherein the possession of the suit property is said to have been handed over to the agreement holder, it is not an unusual situation of sudden interference by the land owner warranting the agreement holder to file a suit for bare injunction. Therefore, if any such situation arises, the agreement holder cannot be precluded from claiming or seeking an immediate and emergent relief first in order to prevent further damage or abuse. Therefore, filing of such suit for bare injunction also by reserving the right to file a comprehensive suit later cannot be construed or considered as the one arising out of same cause of action in order to bring it under the hammer of Order 2 Rule 2 C.P.C.

20. Considering the above stated facts and circumstances and considering the case laws discussed as above, I am of the firm view that the rejection of the plaint by the trial Court which was confirmed by the appellate Court is totally erroneous and against law.

21. Accordingly, the substantial question of law raised in the appeal is answered in favour of the appellant. It is made clear that this Court is not expressing any view on the merits as claimed by the appellant as it is for the appellant to establish the same before the trial Court in both the suits.

22. Consequently, the Second Appeal is allowed and the plaint in O.S.No.122 of 2008 is restored. The trial Court is directed to take up the suit in O.S.No.122 of 2008 and try along with O.S.No.90 of 2010 and decide the matter on merits and in accordance with law within a period of six months. Connected miscellaneous petition is closed. No costs."

(emphasis supplied)

17. The appellant thereafter preferred a Civil Misc. Petition in CMP No. 12498 of 2016 before the High Court against the ex-parte judgement and order dated 30.06.2016. It is the case of the appellant that the vakalat nama of their counsel was duly filed with the registry of the High Court on 02.09.2015, however, the same was returned on 07.09.2015 since the vakalat nama did not contain the enrolment number of the counsel in compliance with the new procedure implemented by the registry.

It was contended that the counsel of the appellant never knew about the return of the vakalat nama and that his actions were neither willful nor wanton but a bona fide mistake. Furthermore, when the matter was listed for hearing, the name of the counsel with the endorsement "Vakalat returned" was also not mentioned in the cause list as per usual practice. It was submitted that this was the sole reason

why the matter was taken up for hearing in the absence of the counsel for the appellant.

Therefore, the appellant prayed that the second appeal be re-heard as otherwise they would be subject to serious prejudice. After hearing the counsel for the appellant, the High Court rejected the miscellaneous petition on 01.09.2016 observing that the objections raised by the counsel for the appellant had no merit. Hence, the High Court concluded that setting aside the earlier judgment and order dated 30.06.2016 and reopening the matter would not serve any useful purpose.

18. In such circumstances referred to above, the appellant has filed the present appeals before this Court.

B. SUBMISSIONS ON BEHALF OF THE APPELLANT (ORIGINAL DEFENDANT NO. 2)

19. Mr. V. Prabhakar, the learned senior counsel appearing for the appellant submitted that in order to test whether the second suit would be hit by Order II Rule 2, the averments of the plaint in the first suit would have to be taken note of with a view to ascertain whether the respondent no. 1 had any cause of action for seeking the relief claimed in the second suit, while filing the first suit itself. The counsel highlighted the following averments made by the respondent no. 1 in the plaint of the first suit:

"6. Quite unfortunately, the First Defendant for reasons best known to her, issued a letter on 2nd November 2007 (received by the Plaintiff on 5th November 2007) inter alia revoking the Power of Attorney issued in favour of the Plaintiff.

7. While these are the circumstances, the Defendant with an ulterior design and ill motive issued a letter to the Plaintiff on 06.02.2008 setting forth frivolous and vexatious contentions enclosing a sum of Rs. 1,50,000/- by way of demand draft. A copy of the said letter along with a copy of the demand draft is submitted herewith as document No. 6."

According to the learned counsel, these aforesaid averments as regards the revocation of the Power of Attorney and the alleged return of the entire sale consideration clearly and explicitly indicate the refusal on the part of the respondent no. 2 to have the sale deed executed and registered in favour of the respondent no. 1. Despite being conscious of the explicit refusal of the respondent no. 2 to perform the contract, the respondent no. 1 had chosen to sue only for permanent injunction in the first suit without seeking the relief of specific performance. This omission amounts to a deliberate relinquishment and therefore, attracts Order II Rule 2(2) CPC.

20. The counsel also drew the Court's attention to the averments made as regards the cause of action in the plaint of the second suit:-

"The cause of the action for the suit arose on and from 24th Jan 2008 (sic - 2007) when the first defendant entered into the Agreement for sale with the plaintiff on 25th March, 2007 when the first defendant executed the irrevocable power of Attorney in favour of the plaintiff and when the payments were made under the Agreement for sale.

On 7th September, 2007 when the agreement for sale was registered, on 24th January 2008 when the sale deed was executed by the first defendant in favour of the second defendant, on and from the 2nd week of the Feb, 2008 when the plaintiff came to know of the impugned sale deeds, on and from 24th Jan, 2008 when the first defendant registered the sale deed in respect of the suit property in favour of the second defendant which amounts to deemed refusal on her part to perform her part of the Agreement for sale and on all dates when the first defendant has failed to perform her part of the contract and at Thyagavalli village, Cuddalore District within the jurisdiction of this Honourable court."

(emphasis supplied)

The counsel submitted that the above referred paragraph would indicate that the respondent no. 1 had a cause of action to seek the relief of specific performance in the first suit in view of specific knowledge of the execution of sale deed in favour of the appellant.

21. Furthermore, it was submitted that Order II Rule 2(3) permits the institution of a second suit in respect of a relief which had been omitted to be sought only if the leave of the court is obtained therefor. Although the respondent no. 1 averred that "The Plaintiff reserved its right to file a separate suit for specific performance against the Defendant" in the plaint of the first suit, yet admittedly no such leave was granted by the Court before which the first suit was instituted.

22. As regards the relief for declaration that the sale deed dated 24.01.2008 executed by the respondent no. 2 in favour of the appellant is null and void, which was sought for in the second suit, the counsel submitted that the respondent no. 1 was already aware of the factum of sale and this was sufficiently indicated in the plaint of the first suit through the following averment:

"9. The 2nd Defendant claims to have purchased the property from the first defendant while the first defendant has no right, title or interest in respect of the suit property."

According to the counsel, the aforesaid averment contained in the first suit has been clarified by the respondent no. 1 in the second suit as follows:

"VIII. During the second week of Feb 2008, the second Defendant attempted to interfere with the plaintiff's peaceful possession and enjoyment of the suit property and they demanded possession of the suit property with the help of anti-social elements with a copy of the sale deed said to have been executed by the First Defendant in its favour. Thus, the Plaintiff came to know about the alleged sale of the suit property by the First Defendant to the Second Defendant."

(emphasis supplied)

Based on the aforesaid, the counsel submitted that even while filing the first suit on 16.02.2008, the respondent no. 1 was aware that the appellant had purchased the suit property from the respondent no. 2 on 24.01.2008. Therefore, the relief seeking a declaration that the sale deed dated 24.01.2008 was null and void was also available on the date when the first suit had been filed and an omission to avail this relief would also attract the provisions of Order II Rule 2.

23. It was submitted that the factum of the respondent no. 1 having knowledge of the sale made by the respondent no. 2 in favour of the appellant even before the filing of the first suit stands fortified by the fact that the appellant had been impleaded in the first suit as the second defendant. Otherwise, in the normal course, the respondent no. 1 would have filed the suit for permanent injunction only against the respondent no. 2 praying that she be restrained along with her men, agents and persons claiming through/under her from interfering with the peaceful possession and enjoyment of the suit property.

24. The counsel then submitted that extraneous matters cannot be projected as giving a cause for the second suit, unless such extraneous matters have been set forth in the agreement to sell itself so as to postpone the cause for filing a suit for specific performance. The respondent no. 1 had entered into an agreement with the respondent no. 2 on 24.01.2007 being fully aware of the facts that were prevalent on the said date and therefore, cannot plead extraneous matters for the purpose of saving the second suit. Furthermore, the cause of action paragraph in the second suit has not referred to any extraneous cause for instituting the suit for specific performance.

25. To fortify his submissions, the counsel contended that the facts of the present case are pari materia to those in Vurimi Pullarao v. Vemari Venkata Radharani reported in (2020) 14 SCC 110 wherein this Court had held that the second suit for specific performance was barred under Order II Rule 2. It was also submitted that the decisions in Rathnavati v. Kavita Ganashamdas reported in (2015) 5 SCC 223 and Inbasagaran v. S. Natarajan reported in (2015) 11 SCC 12 which were relied upon by the High Court in the impugned judgment are clearly distinguishable on facts.

26. Finally, as regards the judgment and order dated 01.09.2016 made by the High Court in C.M.P. No. 12498 of 2016 in S.A. No. 858 of 2014, the counsel submitted that the appellant had preferred the aforesaid miscellaneous petition before the High Court since the second appeal had been decided without hearing the counsel for the appellant and this ought not to have been done. However, the High Court had rejected the prayer made by the appellant.

27. In light of all the aforesaid, the counsel prayed that both the impugned orders of the High Court dated 30.06.2016 and 01.09.2016 be set aside, the plaint in the second suit i.e., O.S. No. 122 of 2008 be rejected and the orders of the Trial Court along with that of the First Appellate Court be restored.

C. SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 1 (ORIGINAL PLAINTIFF)

28. On the other hand, Mr. V. Chitambaresh, the learned senior counsel appearing for the respondent no. 1 submitted that the cause of action as pleaded in both the suits are totally different and that the reliefs claimed in the second suit could not have been claimed in the first suit. It was submitted that the respondent no. 1 had to seek immediate protection against the threat of dispossession and therefore, it had instituted the first suit praying for injunction against the respondent no. 2 and the appellant.

The provisions of Order II Rule 2 are based on the principle that no person should be vexed twice for the same cause of action. The rule provides that every suit shall include the whole of the claim and the reliefs which the plaintiff is entitled to make in respect of the cause of action. If the plaintiff fails to do so, they will not be entitled to sue for the portion of the claim or the relief so omitted subsequently. However, if there are different causes of action arising even out of the same transaction, the plaintiff cannot be expected to pray for all the reliefs in a single suit.

29. The counsel set out in brief, the causes of action, dates and events contained in the plaint of the first suit (O.S. No. 28 of 2008) wherein a prayer for the grant of permanent injunction was made as follows:

"The cause of action for the suit arose on 24th January 2007 when the plaintiff entered into an agreement for sale at Cuddalore, on 26th March when the defendant executed an irrevocable power of attorney in favour of the plaintiff, on 7th September, 2007 when the sale agreement was registered, on and from the second week of February 2008 when the defendants have been attempting to interfere with the plaintiff's peaceful possession and enjoyment of the suit property and on all dates when the threat of dispossession continues and at Cuddalore within the jurisdiction of this Court."

All the relevant dates and events set out in the first suit are:

- 24.01.2007: An agreement to sell was executed in favour of the respondent no. 1 by the vendor and the delivery of possession of the property was granted to the respondent no. 1 after receipt of the entire sale consideration.
- 26.03.2007: Registration of the irrevocable Power of Attorney by the vendor in favour of the respondent no.1 for the purpose of completion of all formalities as regards the execution and registration of the sale deed.
- 07.09.2007: Registration of the agreement for sale made by the vendor in favour of the respondent no. 1.
- 02.11.2007: Letter issued by the vendor revoking the Power of Attorney made in favour of the respondent no. 1.
- 05.11.2007: Receipt of the aforesaid letter and reply by the respondent no. 1 that the Power of Attorney could not be revoked.
- January 2008: Refusal by the Registrar to register the sale deed in favour of the respondent no. 1 on several occasions as a consequence of which a writ petition was filed before the Madras High Court.
- 06.02.2008: Another letter issued by the vendor by which a Demand Draft of Rs. 1,50,000 was sent to the respondent no. 1.
- 08.02.2008: Receipt of the aforesaid letter and reply by the respondent no. 1 to the vendor along with the return of the Demand Draft.
- 09.02.2008: Letter issued by the respondent no. 1 to the vendor stating that the property not be alienated in favour of any other person.

The counsel argued that the dates as set out hereinabove clearly indicate that despite all the actions taken by the respondent no. 1 for the execution of the sale deed in its favour, there was a threat of dispossession and that the respondent no. 1 was constrained to approach the Court urgently in order to protect its possession. Furthermore, from the aforementioned dates and events, it was not possible to make a prayer for specific performance in the first suit.

It was submitted that the respondent no. 1 was not aware of the execution of the sale deed dated 24.01.2008 in favour of the appellant and it was also not the case of the appellants that they had informed the respondent no. 1 of the execution of a sale deed in their favour. Therefore, the submissions on behalf of the appellant that the respondent no. 1 was aware of the sale deed dated 24.01.2008 during the institution of the first suit is completely unsustainable and liable to be rejected. Additionally, the respondent no. 1 had also reserved its right to sue for specific performance at a later stage and the same cannot be read against the respondent no. 1.

30. The counsel set out in brief, the causes of action, dates and events contained in the plaint of the second suit (O.S. No. 122 of 2008) wherein a prayer for specific performance of the agreement to sell dated 24.01.2007, declaration of

sale deed dated 24.01.2008 as null and void, and the grant of permanent injunction was made, as follows:

"XXII. The cause of action for the suit arose on and from 24th January, 2007 when the first defendant entered into the agreement for sale with the plaintiff, on 26th March 2007 when the first defendant executed the irrevocable power of attorney in favour of the plaintiff and when the payments were made under the agreement for sale.

On 7th September, 2007 when the agreement for sale was registered, on 24th January, 2008 when the sale deed was executed by the first defendant in favour of the second defendant, on and from the 2nd week of February, 2008 when the plaintiff came to know of the impugned sale deeds, on and from 24th Jan 2008 when the first defendant registered the sale deed in respect of the suit property in favour of the second defendant which amounts to deemed refusal on her part to perform her part of the Agreement for sale and on all dates when the first defendant has failed to perform her part of the contract and at Thyagavalli Village, Cuddalore District within the jurisdiction of this Court."

(emphasis supplied)

All the relevant dates and events set out in the second suit are:

- Various dates and on 14.12.2007: The Registrar had refused registration of the sale deed in favour of the respondent no.1.
- 21.01.2008: Respondent no. 1 filed a Writ Petition No. 1783 of 2008 before the Madras High Court challenging the actions of the Registrar. It came to the knowledge of the respondent no. 1 that the refusal on part of the Registrar was due to a G.O. dated 08.08.1986 issued by the State Government and a notification dated 23.10.2006 issued by the TNEB which reserved the lands including the suit property for a thermal station.
- 05.03.2008: The High Court rendered its judgment in the public interest litigation filed in Writ Petition No. 11453 of 2007 whereby the G.O. of 1986 and the notification of the TNEB dated 23.10.2006 were quashed.
- 06.03.2008: Respondent no. 1 sent a letter to the Tahsildar to not effect any changes to the revenue records. In light of the aforesaid, the counsel submitted that on a mere reading it is evident that the causes of action are different and the reliefs claimed in the second suit could not have been prayed for earlier. It was pointed out that in addition to the dates and events mentioned in the first suit, the respondent no. 1 has brought forth a crucial fact in the second suit, i.e., that the High Court had rendered a decision in the public interest litigation which was filed against the refusal of the Registrar to register the sale deed.

31. It was submitted that the appellant who was the original defendant no. 2 did not make out or establish the principles which were laid down by the Constitution Bench of this Court in Gurbux Singh v. Bhooralal reported in AIR 1964 SC 1810. The principles are as follows:

i. That the second suit was in respect of the same cause of action as on which the previous suit was based;

ii. That in respect of that cause of action, the plaintiff was entitled to more than one relief;

iii. That being thus entitled to more than one relief the plaintiff, without leave obtained from the Court, omitted to sue for the relief for which the second suit had been filed.

Furthermore, the counsel also placed reliance on the decisions of this Court in Rathnavathi (supra), Inbasagaran (supra) and Sucha Singh Sodhi (Dead) through Legal Representatives v. Baldev Raj Walia and Anr. reported in (2018) 6 SCC 733 in order to fortify his submissions as regards the nonapplicability of Order II Rule 2 in the present facts and circumstances.

32. It was submitted that the respondent no. 1 is the original purchaser & is in possession of the suit property. As per the appellant's own submission, the agreement to sell in his favour was dated 20.02.2007 and this was admittedly executed after the agreement to sell dated 24.01.2007 in favour of the respondent no. 1. Therefore, the appellant cannot be said to be a bona fide purchaser of the suit property.

33. The counsel, in the last, submitted that the respondent no. 1 would be left with no remedy in the event the plaint in the second suit is rejected. The High Court in its impugned judgment has rightly acknowledged that the orders of the Trial Court and the First Appellate Court were erroneous and against the law. Even though it was an ex-parte judgment in the first instance, the High Court had heard the appellant subsequently and affirmed its judgment. Therefore, the counsel prayed that the present petition be dismissed and that the order of the High Court may not be interfered with.

D. ISSUES FOR DETERMINATION

34. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is as follows: -

i. Whether in the facts & circumstances of the present case, the principles enumerated under Order II Rule 2 CPC would bar the institution of a second suit

and warrant rejection of the plaint filed by the respondent no. 1 herein in O.S. No. 122 of 2008?

E. ANALYSIS

35. Order II Rule 2 CPC reads as under:

"2. Suit to include the whole claim.-

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim.- Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs.- A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation.-For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action."

(emphasis supplied)

I. General Principles underlying Order II Rule 2 CPC

36. The object of both the Rules 1 and 2 of Order II is to prevent the multiplicity of suits. Order II Rule 2 is founded on the principle that a person should not be vexed twice for one and the same cause. It is a rule which is directed against two evils i.e., the splitting up of claims and the splitting up of remedies. What Order II Rule 2 requires is the inclusion of the whole claim arising in respect of one and the same cause of action, in one suit. However, this must not be misunderstood to mean that every suit shall include every claim or every cause of action which the plaintiff may have against the defendant. Therefore, where the causes of action are different in the two suits, Order II Rule 2 would have no application.

37. On a more careful perusal of the provision, it can be seen that Order II Rule 2(1) reads as - "every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action", whereas the words used in Order II Rule 2(3) are "the same cause of action". Despite being so, the words "the cause of action" used in Order II Rule 2(1) must be read to mean "the

particular cause of action". Only on such a reading one can arrive at the inference that where there are different causes of action, Order II Rule 2 will not apply; and where the causes of action are the same, the bar imposed by Order II Rule 2 may apply.

38. Order II Rule 2(1) requires every suit to include the whole of the claim to which the plaintiff is entitled to in respect of a particular cause of action. However, the plaintiff has an option to relinquish any part of his claim for the purpose of bringing the suit within the jurisdiction of any court. Order II Rule 2(2) contemplates a situation where a plaintiff omits to sue or intentionally relinquishes any portion of the claim which he is entitled to make. If the plaintiff so acts, then he shall not, afterwards, sue for the part or portion of the claim that has been omitted or relinquished.

It must be noticed that Order II Rule 2(2) does not contemplate the omission or relinquishment of any portion of the plaintiff's claim with the leave of the court so as to entitle him to come back later to seek what has been omitted or relinquished. Such leave of the court is contemplated by Order II Rule 2(3) in situations where a plaintiff being entitled to more than one relief on a particular cause of action, omits to sue for all such reliefs. In such a situation, the plaintiff is precluded from bringing a subsequent suit to claim the relief(s) earlier omitted except in a situation where leave of the court had been obtained.

It is, therefore, clear from a conjoint reading of the provisions of Order II Rules 2(2) and (3) CPC that the aforesaid two sub-rules of Order II Rule 2 contemplate two different situations, namely, where a plaintiff omits or relinquishes a part of a claim which he is entitled to make and, secondly, where the plaintiff omits or relinquishes one out of the several reliefs that he could have claimed in the suit. It is only in the latter situation where the plaintiff can file a subsequent suit seeking the relief omitted in the earlier suit, provided that at the time of omission to claim the particular relief, he had obtained the leave of the court in the first suit.

39. In Words and Phrases (4th Edn.), the meaning attributed to the phrase "cause of action" in common legal parlance was stated to be the existence of those facts which give a party the right to judicial interference on his behalf. In Stroud's Judicial Dictionary, a cause of action is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain a judgment.

Black's Law Dictionary states that cause of action is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person. Halsbury's Laws of England (4th Edn.) defined cause of action as

follows: "'Cause of action' has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person.

The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. 'Cause of action' has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of grievance founding the action, not merely the technical cause of action."

40. The phrase "cause of action" has not been legislatively defined in any enactment. However, the meaning of the expression has been the subject of judicial consideration in various decisions. In Mohammad Khalil Khan and Others v. Mahbub Ali Mian and Others reported in AIR 1949 PC 78, the Privy Council agreed that "cause of action" means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court.

It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved. Furthermore, it was stated that the cause of action has no relation whatsoever to the defence that may be set up by the defendant, nor does it depend upon the character of the relief which is prayed for by the plaintiff but refers to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour. The relevant observations are as follows:

"The phrase "cause of action" has not been defined in any enactment, but the meaning of it has been judicially considered in various decisions. In Read v. Brown [22 Q.B.D. 128.], Lord Esher, M.R., accepted the definition given in Cook v. Gill [(1873) 8 C.P. 107.] that it means "every fact which it would be necessary for the Plaintiff to prove, if traversed, in order to support his right to the judgment of the Court.

It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved." Fry, L.J., agreed and said, "Everything which, if not proved, gives the defendant an immediate right to judgment, must be part of the cause of action." Lopes, L.J., said, "I agree with the definition given by the Master of Rolls of a cause of action, and that it includes every fact which it would be necessary to prove, if traversed, in order to enable a Plaintiff to maintain his action." This decision has been followed in India. The term has been considered also by the Board. In Mussammat Chand Kour v. Partab Singh [(1888) L.R. 15 I.A. 156.], Lord Watson delivering the judgment of the Board observed as follows:

"Now the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the grounds set out in the plaint as the cause of action, or in other words, to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour."

(emphasis supplied)

41. The Privy Council in Mohammad Khalil Khan (supra) also discussed the principles governing the applicability of Order II Rule 2 CPC and the several "tests" therefor in detail. On a thorough examination of the reasoning given in several decisions, it was opined that: -

a. The correct test is whether the claim in the new suit is in fact founded upon a cause of action distinct from that which was the foundation of the former suit;

b. Where the question is whether the cause of action in two suits is the same or not, one of the tests that is applied is whether the same evidence would support the claims in both suits. If the evidence required to support the claims is different, then the causes of action are also different;

c. The causes of action in the two suits may be considered to be the same if they are identical in substance and not merely technically identical. Therefore, the application of the rule depends, not upon any technical consideration of the identity of the forms of action, but rather upon a matter of substance.

42. The Court in Mohammad Khalil Khan (supra) acknowledged that what would constitute the cause of action in a suit must always depend on the particular facts of each case and the true difficulty in each instance arises only upon the application of this rule. The relevant observations are reproduced hereinbelow:

"As pointed out in Moonshee Bazloor Ruheem v. Shumsoonnissa Begum (11 M.I.A. 551 at p. 605) "The correct test in all cases of this kind is, whether the claim in the new suit is, in fact, founded on a cause of action distinct from that which was the foundation of the former suit."

The object of the rule is clearly to avoid splitting up of claims and to prevent multiplicity of suits. What would constitute the cause of action in a suit must always depend on the particular facts of the case. It was laid down in Brunsden v. Humphrey (14 Q.B.D. 141)that where the question is whether the cause of action in two suits is the same or not, one of the tests that is applied is whether the same evidence would support the claims in both suits; if the evidence required to support the claims is different, then the causes of action are also different. This appears to be clear from the judgments of both Brett M.R. and Bowen L.J. Brett M.R. observed as follows:

"Different tests have been applied for the purpose of ascertaining whether the judgment recovered in one action is a bar to subsequent action. I do not decide this case on the ground of any test which may be considered applicable to it; but I may mention one of them; it is whether the same sort of evidence would prove the plaintiff's case in the two actions. Apply that test to the present case."

Bowen, L.J., quoted the following words of De Grey, L.J. in Kitchen v. Campbell [(1771) 2 W. B1. 827.]:

"The principal consideration is whether it be precisely the same cause of action in both, appearing by proper averments in a plea, or by proper facts stated in a special verdict, or a special case. And one great criterion of this identity is that the same evidence will maintain both actions."

And applying the test mentioned above the learned L. JJ., came to the conclusion in the case before the court that the causes of action as to damage done to the plaintiff's cab, and to the injury occasioned to the plaintiff's person were distinct; in other words, the cause of action on which the first suit was founded was distinct from the cause of action in the second suit which was founded on different facts. It is important to note that in the course of his judgment Bowen L.J. also pointed out that in considering whether the causes of action in the two suits are the same, it would be enough if the causes of action in the two suits are in substance proved to be identical. After stating that it is a well settled rule of law that damages resulting from one and the same cause of action must be assessed and recovered once for all, the learned Lord Justice observed as follows:

"The difficulty in each instance arises upon the application of this rule, how far is the cause which is being litigated afresh the same cause in substance with that which has been the subject of the previous suit." (14 Q.B.D. 141, 147)

At the end of the paragraph occurs the following observation:

"It is evident therefore that the application of the rule depends, not upon any technical consideration of the identity of forms of action, but upon matter of substance."

Further on, the learned Lord Justice observed, "the point I now have to determine, whether the cause of action arising from damage to the plaintiff's cab is in substance identical with that which accrues in consequence of the damage caused to his person."

These observations show that in considering whether the cause of action in the subsequent suit is the same or not as the cause of action in the previous suit, the test to be applied is, are the causes of action in the two suits in substance-not technically-identical?

Applying this test the learned Judges came to the conclusion that the causes of action in the two suits in Brunsden v. Humphrey[(14 Q.B.D. 141). were distinct. Observations to the same effect appear in certain decisions of this Board. In Soorjomonee Dayee v. Suddanund [12 Beng. [(1873) 12 Beng L.R. 304, 315], their Lordships stated as follows:-

"Their Lordships are of opinion that the term "cause of action" is to be construed with reference rather to the substance than to the form of action."

In Krishna Behari Roy v. Brojeswari Chowdranne [(1875) LR 2.I.A. 283, 285.], Sir Montague Smith in delivering the judgment of the Board observed:- "their Lordships are of opinion that the expression "cause of action" cannot be taken in its literal and most restricted sense. But however that may be."

The decision in the Rajah of Pittapur v. Sri Rajah Venkata Mahipati Surya [(1885) L.R. 12.I.A. 116]does not advance the case of the appellants. In that case the plaintiff sued to recover immovable property in consequence of having been improperly turned out of possession and afterwards sued to recover from the same defendant movable property in consequence of its wrongful detention. Their title to the said estate as well as to the half share of the personality now sued for was under a will of one Bharayamma. On the facts, their Lordships held that the causes of action in the two suits were distinct. They held that:

"The claim in respect of the personality was not a claim arising out of the cause of action which existed in consequence of the defendants having improperly turned the plaintiffs out of possession of Viravaram [Zemindari property]. It was a distinct cause of action altogether, and did not arise at all out of the other.".

Referring to the above case. Lord Buckmaster stated the true principle concisely as follows in Muhammad Hafiz v. Muhammad Zakariya [(1921) L.R. 49.I.A. 9, 15]:

"the cause of action is the cause of action which gives occasion for and forms the foundation of the suit, and if that cause enables a man to ask for larger and wider relief than that to which he limits his claim, he cannot afterwards seek to recover the balance by independent proceedings."

In similar language what was decided in Brunsden v. Humphrey (14 Q.B.D. 141) may be stated as follows, namely, that the cause of action which gave occasion for and formed the foundation for the first suit in that case was different from the cause of action which gave occasion for and formed the foundation for the second suit."

(emphasis supplied)

43. A summary of the principles laid down in Mohammad Khalil Khan (supra) are as under:

"The principles laid down in the cases thus far discussed may be thus summarised:-

(1) The correct test in cases falling under Or.2, r.2, is "whether the claim in the new suit is, in fact, founded upon a cause of action distinct from that which was the foundation for the former suit." [Moonshee Buzloor Ruheem v. Shumsoonnissa Begum [11 M.I.A. 551, 605.]].

(2) The cause of action means every fact which will be necessary for the Plaintiff to prove, if traversed, in order to support his right to the judgment. [Read v. Brown (22 Q.B.D., 128, 131)].

(3) If the evidence to support the two claims is different, then the causes of action are also different. [Brunsden v. Humphrey [14 Q.B.D. 141].

(4) The causes of action in the two suits may be considered to be the same if in substance they are identical. [Brunsden v. Humphrey [14 Q.B.D. 141].

(5) The cause of action has no relation whatever to the defence that may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the Plaintiff. It refers "to the media upon which the Plaintiff asks the Court to arrive at a conclusion in his favour. [Muss. Chand Kour v. Partab Singh [54 L.R. 15 I.A. 156, 157]. This observation was made by Lord Watson in a case under s. 43 of the Act of 1882 (corresponding to Or.2, r.2), where plaintiff made various claims in the same suit."

(emphasis supplied)

44. Therefore, the phrase "cause of action" for the purposes of Order II Rule 2 would mean the cause of action which gives an occasion for and forms the foundation of the suit. If that cause enables a person to ask for a larger and wider relief than that to which he limits his claim, he cannot be permitted to recover the balance reliefs through independent proceedings afterwards, especially when the leave of the court has not been obtained.

45. A Constitutional Bench of this Court in Gurbux Singh (supra) emphasized that the plaint in the former suit would have to be produced in order to sustain a plea of applicability of Order II Rule 2 in the subsequent suit. While stating so, the Court observed that the "cause of action" would be the facts which the plaintiff had then alleged to support the right to the relief that he claimed.

The Court also laid down that the defendant who seeks to take recourse to a successful plea under Order II Rule 2(3) must make out the following: (a) that the second suit was in respect of the same cause of action as that on which the previous suit was based; (b) that in respect of that cause of action, the plaintiff was entitled to more than one relief; and (c) that being thus entitled to more than one relief, the plaintiff, without any leave obtained from the Court, omitted to sue for the relief for which the second suit had been filed. The Court had observed as under:

"6. In order that a plea of a Bar under Order 2 Rule 2(3) of the Civil Procedure Code should succeed the defendant who raises the plea must make out; (i) that the second suit was in respect of the same cause of action as that on which the previous suit was based; (2) that in respect of that cause of action the plaintiff was entitled to more than one relief; (3) that being thus entitled to more than one relief the plaintiff, without leave obtained from the Court omitted to sue for the relief for which the second suit had been filed.

From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed, for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the latter suit is based there would be no scope for the application of the bar. No doubt, a relief which is sought in a plaint could ordinarily be traceable to a particular cause of action but this might, by no means, be the universal rule.

As the plea is a technical bar it has to be established satisfactorily and cannot be presumed merely on basis of inferential reasoning. It is for this reason that we consider that a plea of a bar under Order 2 Rule 2 of the Civil Procedure Code can be established only if the defendant files in evidence the pleadings in the previous suit and thereby proves to the Court the identity of the cause of action in the two suits. It is common ground that the pleadings in CS 28 of 1950 were not filed by the appellant in the present suit as evidence in support of his plea under Order 2 Rule 2 of the Civil Procedure Code.

The learned trial Judge, however, without these pleadings being on the record inferred what the cause of action should have been from the reference to the previous suit contained in the plaint as a matter of deduction. At the stage of the appeal the learned District Judge noticed this lacuna in the appellant's case and pointed out, in our opinion, rightly that without the plaint in the previous suit being on the record, a plea of a bar under Order 2 Rule 2 of the Civil Procedure Code was not maintainable."

(emphasis supplied)

Therefore, there must exist an identity between the cause of action which forms the basis of the former and the subsequent suit. Since the plea taken under Order II Rule 2 is a technical one, it has to be established satisfactorily and it cannot be presumed merely on the basis of inferential reasoning.

46. In S. Nazeer Ahmed v. State Bank of Mysore and Others reported in (2007) 11 SCC 75, this Court categorically held that if the defendant wishes to show that the causes of action were identical in both suits, it is necessary for him to have marked the earlier plaint in evidence and then make out that there was a relinquishment of a relief by the plaintiff, without the leave of the Court.

It was also stated that Order II Rule 2 is directed towards securing an exhaustion of the relief in respect of a cause of action and not to the inclusion in one and the same action of different causes of action, even though they may arise from the same transaction. In other words, a number of causes of action may arise out of the same transaction and it is not the mandate of Order II Rule 2 that they should all be included in one suit. On the other hand, what is required is that every suit shall include the "whole of the claim" arising out of "one and the same cause of action".

47. On a conspectus of the aforesaid discussion, what follows is that:

i. The object of Order II Rule 2 is to prevent the multiplicity of suits and the provision is founded on the principle that a person shall not be vexed twice for one and the same cause.

ii. The mandate of Order II Rule 2 is the inclusion of the whole claim arising in respect of one and the same cause of action, in one suit. It must not be misunderstood to mean that all the different causes of action arising from the same transaction must be included in a single suit.

iii. Several definitions have been given to the phrase "cause of action" and it can safely be said to mean - "every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court". Such a cause of action has no relation whatsoever to the defence that may be set up by the defendant, nor does it depend upon the character of the relief which is prayed for by the plaintiff but refers to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour.

iv. Similarly, several tests have been laid out to determine the applicability of Order II Rule 2 to a suit. While it is acknowledged that the same heavily depends on the particular facts and circumstances of each case, it can be said that a correct and reliable test is to determine whether the claim in the new suit is in fact founded upon a cause of action distinct from that which was the foundation of the former suit. Additionally, if the evidence required to support the claims is

different, then the causes of action can also be considered to be different. Furthermore, it is necessary for the causes of action in the two suits to be identical in substance and not merely technically identical.

v. The defendant who takes shelter under the bar imposed by Order II Rule 2(3) must establish that (a) the second suit was in respect of the same cause of action as that on which the previous suit was based; (b) in respect of that cause of action, the plaintiff was entitled to more than one relief; and (c) being thus entitled to more than one relief, the plaintiff, without any leave obtained from the Court, omitted to sue for the relief for which the second suit had been filed.

vi. The defendant must also have produced the earlier plaint in evidence in order to establish that there is an identity in the causes of action between both the suits and that there was a deliberate relinquishment of a larger relief on the part of the plaintiff. vii. Since the plea is a technical bar, it has to be established satisfactorily and cannot be presumed merely on the basis of inferential reasoning.

II. Status/Stage of the first suit is immaterial for the applicability of Order II Rule 2 CPC

48. A careful perusal of Order II Rule 2 would indicate that it does not impose any restriction on the applicability of the principles therein based on the stage or status of the first suit. In other words, there is no clear requirement that the first suit either be pending or disposed of in order to make a plea of bar under Order II Rule 2 as regards the second or subsequent suit. It is conspicuous by the absence of such a stipulation that the law makers thought fit that the bar under this provision would apply if there is an identity in the causes of action of both suits and irrespective of whether the first suit is disposed or not.

49. Furthermore, the laudable object behind this provision is to prevent the multiplicity of suits and the splitting of claims. If it is held that it is a necessary condition for the first suit to be disposed of, for a plea under Order II Rule 2 to be maintainable, parties would still be able to file multiple suits with the excuse that the first suit is pending. Declaring so would not serve to further the object of Order II Rule 2 in any manner whatsoever. On the contrary, this would run counter to the objective behind the enactment of the provision and only serve to continuously vex the defendants. Therefore, reading such a qualification into the rule which is clearly absent in the letter of the provision would be unjustified.

50. That the disposal of the first suit is not a requirement under Order II Rule 2 was clarified by this Court in Virgo Industries (Eng.) Private Limited v. Venturetech Solutions Private Limited reported in (2013) 1 SCC 625. Herein, the Court held that the principles under Order II Rule 2 would have an application

even when the subsequent suit is filed during the pendency of the first suit. A plea under this provision would be available irrespective of the stage at which the prior suit is at. The relevant observation is as follows:

"17. The learned Single Judge of the High Court had considered, and very rightly, to be bound to follow an earlier Division Bench order in R. Vimalchand v. Ramalingam [(2002) 3 MLJ 177] holding that the provisions of Order 2 Rule 2 CPC would be applicable only when the first suit is disposed of. As in the present case the second set of suits were filed during the pendency of the earlier suits, it was held, on the ratio of the aforesaid decision of the Division Bench of the High Court, that the provisions of Order 2 Rule 2(3) will not be attracted. Judicial discipline required the learned Single Judge of the High Court to come to the aforesaid conclusion. However, we are unable to agree with the same in view of the object behind the enactment of the provisions of Order 2 Rule 2 CPC as already discussed by us, namely, that Order 2 Rule 2 CPC seeks to avoid multiplicity of litigations on the same cause of action.

If that is the true object of the law, on which we do not entertain any doubt, the same would not stand fully subserved by holding that the provisions of Order 2 Rule 2 CPC will apply only if the first suit is disposed of and not in a situation where the second suit has been filed during the pendency of the first suit. Rather, Order 2 Rule 2 CPC will apply to both the aforesaid situations. Though direct judicial pronouncements on the issue are somewhat scarce, we find that a similar view had been taken in a decision of the High Court at Allahabad in Murti v. Bhola Ram [ILR (1894) 16 All 165] and by the Bombay High Court in Krishnaji Ramchandra v. Raghunath Shankar [AIR 1954 Bom 125]."

(emphasis supplied)

51. In light of the aforementioned, it is re-affirmed that the stage at which the first suit is, would not be a material consideration in deciding the applicability of the bar under Order II Rule 2. What needs to be looked into is whether the cause of action in both suits is one and the same in substance, and whether the plaintiff is agitating the second suit for claiming a relief which was very well available to him at the time of filing the first suit. Therefore, the fact that the first suit i.e., O.S. No. 28 of 2008 is still pending before the concerned court would have no material impact in deciding whether the subsequent suit filed as O.S. No. 122 of 2008 is barred by the principles under Order II Rule 2.

III. The plaints have to be read as a whole to determine the applicability of the bar under Order II Rule 2 CPC for the purpose of rejection of plaint under Order VII Rule 11(d) CPC

52. In Saleem Bhai and Others v. State of Maharashtra and Others reported in (2003) 1 SCC 557, the Court was faced with the issue whether the filing of a written statement by the contesting defendant was necessary in order to decide an application for rejection of plaint made under Order VII Rule 11(a) and (d). It was held that, for this purpose, the relevant facts which need to be looked into are the averments in the plaint and it is those averments which are germane. The relevant observations are as under:

"9. A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit - before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial.

For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the court as well as procedural irregularity. The High Court, however, did not advert to these aspects."

(emphasis supplied)

53. In yet another decision of this Court in Ram Prakash Gupta v. Rajiv Kumar Gupta and Others reported in (2007) 10 SCC 59, this Court discussed the approach that Courts must adopt while considering whether the plaint is to be rejected under Order VII Rule 11(d). It was stated that the proper approach would be to verify the entire averments in the plaint. A few lines or a passage must not be read in isolation and the pleadings have to be read as a whole in order to ascertain its true import. The relevant observations are thus:

"21. As observed earlier, before passing an order in an application filed for rejection of the plaint under Order 7 Rule 11(d), it is but proper to verify the entire plaint averments. The abovementioned materials clearly show that the decree passed in Suit No. 183 of 1974 came to the knowledge of the plaintiff in the year 1986, when Suit No. 424 of 1989 titled Assema Architect v. Ram Prakash was filed in which a copy of the earlier decree was placed on record and thereafter he took steps at the earliest and filed the suit for declaration and in the alternative for possession.

It is not in dispute that as per Article 59 of the Limitation Act, 1963, a suit ought to have been filed within a period of three years from the date of the knowledge.

The knowledge mentioned in the plaint cannot be termed as inadequate and incomplete as observed by the High Court. While deciding the application under Order 7 Rule 11, few lines or passage should not be read in isolation and the pleadings have to be read as a whole to ascertain its true import. We are of the view that both the trial court as well as the High Court failed to advert to the relevant averments as stated in the plaint."

(emphasis supplied)

54. The decision of this Court in Coffee Board v. Ramesh Exports Private Limited reported in (2014) 6 SCC 424 held that in order to determine whether a suit is barred by Order II Rule 2, the Courts must examine the cause of action pleaded by the plaintiff in his plaints filed in the relevant suits. However, considering the technicality of the plea under this provision, both the plaints must be read as a whole to identify the cause of action which is necessary for the plaintiff to prove, if traversed. The relevant observations are reproduced hereinbelow:

"12. The courts in order to determine whether a suit is barred by Order 2 Rule 2 must examine the cause of action pleaded by the plaintiff in his plaints filed in the relevant suits (see S. Nazeer Ahmed v. State Bank of Mysore [(2007) 11 SCC 75]). Considering the technicality of the plea of Order 2 Rule 2, both the plaints must be read as a whole to identify the cause of action, which is necessary to establish a claim or necessary for the plaintiff to prove if traversed. Therefore, after identifying the cause of action if it is found that the cause of action pleaded in both the suits is identical and the relief claimed in the subsequent suit could have been pleaded in the earlier suit, then the subsequent suit is barred by Order 2 Rule 2."

(emphasis supplied)

55. In Chhotanben and Another v. Kiritbhai Jalkrushnabhai Thakkar and Others reported in (2018) 6 SCC 422, this Court was of the opinion that for the purpose of rejecting the plaint under Order VII Rule 11(d) CPC, the averments made in the plaint must be looked into and the plaint is required to be read as a whole. It was added that the defence available to the defendants or the plea taken by them in their written statement or any application filed by them cannot be the bases to decide the application under Order VII Rule 11(d). It is only the averments in the plaint that are germane. The relevant observations are as thus:

"15. What is relevant for answering the matter in issue in the context of the application under Order 7 Rule 11(d) CPC, is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any application

filed by them, cannot be the basis to decide the application under Order 7 Rule 11(d). Only the averments in the plaint are germane."

(emphasis supplied)

56. Order VII Rule 11(d) reads as - "where the suit appears from the statement in the plaint to be barred by any law". In light of the aforesaid, it follows that before rejecting the plaint under Order VII Rule 11(d), the Courts must ensure that the plaint is read as a whole and its entire averments are looked into. A few lines or passages must not be read in isolation and it is imperative that the pleadings are read as a whole for ascertaining the true import of the averments therein.

In performing such a holistic reading, it must be deduced whether the causes of action in both the suits are identical in substance in order to sustain a successful plea under Order II Rule 2. It would be a reductive approach to only cull out the cause of action paragraphs from the respective plaints and decide that they disclose the same cause of action on mere comparative overview.

IV. Application of the principles in Order II Rule 2 CPC to the institution of a suit for specific performance when the relief of permanent injunction was sought in a previous suit.

57. In Virgo Industries (supra), initially two suits had been filed by the plaintiffrespondent for permanent injunction in order to restrain the defendantappellant from alienating and encumbering the suit properties on which there were agreements to sell made in favour of the plaintiff-respondent. Subsequently, the plaintiff-respondent filed two more suits seeking the relief of specific performance of the said agreements.

It was held that the bar under Order II Rule 2 would apply to the subsequent set of suits filed for specific performance since the plaintiff itself had claimed in the averments of the first set of plaints that the defendant had no intention to honour the agreement to sell. Therefore, the foundation for the relief of permanent injunction in the initial set of suits had furnished a complete cause of action to also sue for the relief of specific performance. It was opined that since the said relief was omitted and no leave in this regard was obtained or granted by the Court, the second set of suits were not maintainable. The relevant observations are reproduced hereinbelow:

"13. A reading of the plaints filed in CSs Nos. 831 and 833 of 2005 show clear averments to the effect that after execution of the agreements of sale dated 27-7-2005 the plaintiff received a letter dated 1-8-2005 from the defendant conveying the information that the Central Excise Department was contemplating issuance of a notice restraining alienation of the property. The advance amounts paid by the plaintiff to the defendant by cheques were also returned. According to the

plaintiff it was surprised by the aforesaid stand of the defendant who had earlier represented that it had clear and marketable title to the property.

In Para 5 of the plaint, it is stated that the encumbrance certificate dated 22-8-2005 made available to the plaintiff did not inspire confidence of the plaintiff as the same contained an entry dated 1-10-2004. The plaintiff, therefore, seriously doubted the claim made by the defendant regarding the proceedings initiated by the Central Excise Department. In the aforesaid paragraph of the plaint it was averred by the plaintiff that the defendant is "finding an excuse to cancel the sale agreement and sell the property to some other third party". In the aforesaid paragraph of the plaint, it was further stated that "in this background, the plaintiff submits that the defendant is attempting to frustrate the agreement entered into between the parties".

14. The averments made by the plaintiff in CSs Nos. 831 and 833 of 2005, particularly the pleadings extracted above, leave no room for doubt that on the dates when CSs Nos. 831 and 833 of 2005 were instituted, namely, 28-8-2005 and 9- 9-2005, the plaintiff itself had claimed that facts and events have occurred which entitled it to contend that the defendant had no intention to honour the agreements dated 27-7-2005.

In the aforesaid situation it was open for the plaintiff to incorporate the relief of specific performance along with the relief of permanent injunction that formed the subject-matter of the above two suits. The foundation for the relief of permanent injunction claimed in the two suits furnished a complete cause of action to the plaintiff in CSs Nos. 831 and 833 to also sue for the relief of specific performance. Yet, the said relief was omitted and no leave in this regard was obtained or granted by the Court."

(emphasis supplied)

58. Thus, what is discernible from the above is that in Virgo Industries (supra), after the execution of the agreement to sale, the defendant had issued a letter which conveyed that the Central Excise Department was contemplating issuing a notice restraining alienation of the suit property on account of a pending revenue demand. Under this pretext, the advance amount paid by the plaintiff was returned by the defendant. These were all circumstances that were referred to in the plaint of the first suit itself.

Moreover, the plaintiff also made an averment in the plaint of the first suit that the defendant is "finding an excuse to cancel the sale agreement and sell the property to some third party" and also that "the defendant is attempting to frustrate the agreement entered into between the parties". Therefore, this Court had held that there is no doubt regarding the fact that the plaintiff was aware of

the defendant's intention to not honour the agreement which they had entered into and that it was open for the plaintiff to avail the relief of specific performance along with the relief of permanent injunction.

59. This Court in Inbasagaran (supra) was also faced with a similar issue wherein it had to decide the applicability of Order II Rule 2 to the subsequent suit for specific performance. However, the decision herein deals with a slightly different factual situation. The respondent was allotted the suit property as a house site by the Housing Board through a lease-cum-sale agreement, however, on a condition that a sale deed would be executed in favour of the respondent only when he constructs a building in the suit property. In the meantime, the respondent had entered into an agreement for sale with the appellant and obtained a part of the sale consideration as well.

It was agreed that the appellant shall prepare a plan for construction of the building in the suit property, the respondent would get it approved and thereafter, the appellant would undertake the construction at his own cost. The appellant took possession of the suit property and completed the construction. Thereafter, the Housing Board on 18.02.1985 had executed the sale deed in favour of the respondent. The appellant alleged that the respondent attempted to forcefully take possession of the building constructed on the suit property and was therefore, constrained to file a suit for permanent injunction on 11.09.1985. In response to this, the respondent also filed a similar suit for permanent injunction to restrain the appellant from interfering with his possession and enjoyment of the suit property.

It was in this suit for injunction that the respondent disclosed to the appellant that the execution of the sale deed in his favour by the Housing Board was complete. After the said factum of transfer was brought to the notice of the appellant, he had sent a legal notice to the respondent and on 25.04.1986, he filed another suit for specific performance of the agreement to sell. In short, since the plaintiff-appellant only came to know of the sale deed executed by the Housing Board in favour of the respondent after the institution of the first suit, the cause of action was held to be different and distinct in both the suits. There relevant observations are as under:

"18. In the subsequent suit filed by the plaintiff being OS No. 252 of 1986, a decree for specific performance of the agreement was claimed on the ground inter alia that the defendant in the earlier suit took a defence that the sale agreement was allegedly given up or dropped by the plaintiff. The cause of action, as pleaded by the plaintiff in the subsequent suit, arose when the respondent-defendant disclosed the transfer made by the Housing Board in his favour and finally when the defendant was exhibiting an intention of not performing his part

of the sale agreement and in reply to the lawyer's notice the defendant made a false allegation and denied to execute the sale deed as per the agreement.

19. A perusal of the pleadings in the two suits and the cause of action mentioned therein would show that the cause of action and reliefs sought for are quite distinct and are not same.

27. Besides the above, on reading of the plaint of the suit for injunction filed by the plaintiff, there is nothing to show that the plaintiff intentionally relinquished any portion of his claim for the reason that the suit was for only injunction because of the threat from the side of the defendant to dispossess him from the suit property. It was only after the defendant in his suit for injunction disclosed the transfer of the suit property by the Housing Board to the defendant and thereafter denial by the defendant in response to the legal notice by the plaintiff, the cause of action arose for filing the suit for specific performance."

(emphasis supplied)

60. In Inbasagaran (supra), the Court was of the view that the decision adopted in Virgo Industries (supra) cannot be applied since in Inbasagaran (supra) the suit for injunction was filed due to the threat given by the respondent to dispossess him from the suit property and there was no allegation made in the first suit that the respondent was threatening to alienate or transfer the property to a third party in order to frustrate the agreement.

61. Similarly, in Rathnavathi (supra), the Court refused to accept the submission that the second suit for specific performance was barred by the principles underlying Order II Rule 2. Here, an agreement for sale was entered into between the plaintiff and defendant no. 2 for the sale of the suit house and part payment was also made by the plaintiff. Later, on 07.01.2000, the plaintiff had filed the first suit against the defendants for seeking permanent injunction restraining the defendants from interfering with the plaintiff's possession over the suit house since the defendant no. 1 who is a total stranger to the suit house, along with defendant no. 2 who was the vendor, had visited the suit house on 02.01.2000 and threatened to dispossess the plaintiff from the suit property.

In the written statement of this first suit, it was disclosed to the plaintiff that the defendant no. 2 had sold the house to defendant no. 1 on 09.02.1998. Subsequently, a legal notice dated 06.03.2000 was served upon the defendant no. 2 and the plaintiff had filed a second suit seeking the relief of specific performance. Thereafter, the plaintiff sought to add a prayer for the cancellation of the sale deed alleged to have been executed by the defendant no. 2 in favour of the defendant no. 1 in the second suit by way of an amendment and the same was

allowed. It was under such circumstances that this Court had held that the rigours of Order II Rule 2 were not attracted and observed as thus:

"22. Coming first to the legal question as to whether bar contained in Order 2 Rule 2 CPC is attracted so as to nonsuit the plaintiff from filing the suit for specific performance of the agreement, in our considered opinion, the bar is not attracted.

25. In the instant case when we apply the aforementioned principle, we find that the bar contained in Order 2 Rule 2 CPC is not attracted because of the distinction in the cause of action for filing the two suits:

25.1. So far as the suit for permanent injunction is concerned, it was based on a threat given to the plaintiff by the defendants to dispossess her from the suit house on 2-1- 2000 and 9-1-2000. This would be clear from reading Para 17 of the plaint. So far as the cause of action to file suit for specific performance of the agreement is concerned, the same was based on non-performance of agreement dated 15- 2-1989 by Defendant 2 in the plaintiff's favour despite giving legal notice dated 6-3-2000 to Defendant 2 to perform her part.

25.2. In our considered opinion, both the suits were, therefore, founded on different causes of action and hence could be filed simultaneously.

28. We cannot accept the submission of the learned Senior Counsel for the appellants when she contended that since both the suits were based on identical pleadings and when cause of action to sue for relief of specific performance of agreement was available to the plaintiff prior to filing of the first suit, the second suit was hit by bar contained in Order 2 Rule 2 CPC.

29. The submission has a fallacy for two basic reasons. Firstly, as held above, cause of action in two suits being different, a suit for specific performance could not have been instituted on the basis of cause of action of the first suit. Secondly, merely because pleadings of both suits were similar to some extent did not give any right to the defendants to raise the plea of bar contained in Order 2 Rule 2 CPC. It is the cause of action which is material to determine the applicability of bar under Order 2 Rule 2 CPC and not merely the pleadings.

For these reasons, it was not necessary for the plaintiff to obtain any leave from the court as provided in Order 2 Rule 2 CPC for filing the second suit. 30. Since the plea of Order 2 Rule 2 CPC, if upheld, results in depriving the plaintiff to file the second suit, it is necessary for the court to carefully examine the entire factual matrix of both the suits, the cause of action on which the suits are founded, the reliefs claimed in both the suits and lastly, the legal provisions applicable for grant of reliefs in both the suits."

(emphasis supplied)

62. The Court in Rathnavathi (supra) had added that the defendants would not be justified in raising a plea of bar under Order II Rule 2 merely on account of the pleadings of both the suits being similar to some extent. It is the identity of the cause of action which must be a material consideration for the Courts and not the pleadings alone. Additionally, since a successful plea under this provision would result in depriving the plaintiff of his right to file the second suit, Courts must be careful and should examine the entire factual matrix of both the suits, the causes of action on which they are founded, the reliefs which are claimed in both suits and the legal provisions applicable for the grant of reliefs.

63. In Vurimi Pullarao (supra), it was observed by this Court that the plaint of the first suit filed for injunction contained a recital of the agreement to sell; the price fixed for the bargain between the parties; the payment of earnest money; the handing over of possession; the demand for performance and the failure of the defendant to perform the contract. It was held that the cause of action for the suit for specific performance had arisen when the plaintiff had notice of denial by the defendant to perform the contract.

This notice of denial was much prior to the date of institution of the first suit. Therefore, the plaintiff was entitled to sue for specific performance but however, omitted to sue for such relief in the initial suit. There was also a complete identity of the causes of action between the two suits. Hence, this Court had arrived at the conclusion that in the absence of any leave obtained from the court for having omitted the claim for the relief of specific performance, the second suit would be hit by the provisions of Order II Rule 2(3). The relevant observations are reproduced hereinbelow:

"20. In the present case, the earlier suit for injunction was instituted on 30-10-1996. Para 2 of the plaint in the suit for injunction contained a recital of the agreement to sell dated 26-10-1995; the price fixed for the bargain between the parties; the payment of earnest money; the handing over of possession; the demand for performance and the failure of the defendant to perform the contract. Indeed, the plaintiff also asserted that she was going to institute a suit for specific performance of the agreement dated 26-10-1995. Under the agreement dated 26-10-1995, time for completion of the sale was reserved until 25-10-1996. Notice of performance was issued on 11-10-1996 to which the defendant had replied on 13-10-1996.

The cause of action for the suit for specific performance had arisen when the plaintiff had notice of the denial by the defendant to perform the contract. On 30-10- 1996 when the suit for injunction was instituted, the plaintiff was entitled to sue for specific performance. There was a complete identity of the cause of action

between the earlier suit (of which para 2 of the plaint has been reproduced in the earlier part of the judgment) and the cause of action for the subsequent suit. Yet, as the record indicates, the plaintiff omitted to sue for specific performance. This is a relief for which the plaintiff was entitled to sue when the earlier suit for injunction was instituted. Having omitted the claim for relief without the leave of the Court, the bar under Order 2 Rule 2(3) would stand attracted."

(emphasis supplied)

64. On a detailed examination of the aforementioned decisions, it can be seen that the variance in opinion that can observed as regards the applicability of the bar contained in Order II Rule 2 is due to a pertinent factual distinction i.e., the date when the refusal to perform the agreement for sale on part of the defendant was brought to the notice of the plaintiff.

While in Virgo Industries (supra) and Vurimi Pullarao (supra) the plaintiffs had notice of the defendant's refusal to perform even prior to the institution of the first suit for injunction, in Inbasagaran (supra) and Rathnavathi (supra), such a knowledge of the fact that the defendants had no intention to perform the agreement for sale was acquired after the first suit was instituted and through the defence which was put forth by the defendants to the first suit. This was precisely why the plea of bar under Order II Rule 2 was said to apply to the facts in Virgo Industries (supra) and Vurimi Pullarao (supra) and to be inapplicable to the facts in Inbasagaran (supra) and Rathnavathi (supra).

65. If the factual scenario of the present case is superimposed to those in the decisions as aforesaid, it can be seen that the respondent no. 1 (plaintiff) had filed a suit for permanent injunction against both the respondent no. 2 and the appellant in order to restrain them from interfering with the peaceful possession and enjoyment of the suit property by the respondent no. 1. In the plaint of the first suit for injunction, the respondent no. 1 averred as follows:

"6. Quite unfortunately, the First Defendant for reasons best known to her, issued a letter on 2nd November 2007 (received by the Plaintiff on 5th November 2007) inter alia revoking the Power of Attorney issued in favour of the Plaintiff.

7. While these are the circumstances, the Defendant with an ulterior design and ill motive issued a letter to the Plaintiff on 06.02.2008 setting forth frivolous and vexatious contentions enclosing a sum of Rs. 1,50,000/- by way of demand draft. A copy of the said letter along with a copy of the demand draft is submitted herewith as document No. 6.

8. The plaintiff also issued a notice through its counsel on 09.02.08 calling upon her not to sell the suit property to any Person."

(emphasis supplied)

66. The revocation of the Power of Attorney which was issued in favour of the respondent no. 1 for the performance of all formalities in connection with the registration and execution of the sale deed on 02.11.2007, combined with the return of the entire sale consideration which was given by the respondent no. 1 on 06.02.2008 under alleged false pretexts, also combined with the lack of response to the letter dated 09.02.2008, was sufficient for the respondent no. 1, as a reasonable individual, to infer that the respondent no. 2 did not intend to perform her part of the agreement for sale dated 24.01.2007 and execute the sale deed in favour of the respondent no. 1.

67. Furthermore, in the plaint of the first suit, the respondent no. 1 alluded to the fact that it was aware of the purchase of the suit property by the appellant and stated thus:

"9. The 2nd defendant claims to have purchased the property from the first defendant while the first defendant has no right, title or interest in respect of the suit property after having received the entire sale consideration. The second defendant cannot claim any right through the first defendant in respect of the suit property.

10. As already stated, the first defendant has no right title or interest in respect of the suit property after receiving the entire sale consideration from the plaintiff. The plaintiff's possession is protected statutorily u/s Section 53 A of the Transfer of property Act. The second defendant cannot claim itself to be a bona fide purchaser as much as it is fully aware of the subsisting sale agreement which took place between the plaintiff and the first defendant."

(emphasis supplied)

68. Adding to the above, in the plaint of the second suit, the respondent no. 1 additionally made an averment that when the respondent no. 2 and appellant i.e., the original defendants, demanded possession of the suit property during the second week of February 2008, they furnished a copy of the sale deed which was said to have been executed by the respondent no. 2 in favour of the appellant.

This no doubt refers to the sale deed dated 24.01.2008. Thereafter, the respondent no. 1 proceeds to agree that the act on part of the respondent no. 2 in revoking the Power of Attorney and also executing a sale deed in respect of the suit property in favour of the appellant would by themselves sufficiently prove that the respondent no. 2 had refused to perform her part of the contract. Admittedly, both the events pre-existed the date of institution of the first suit. The specific averments are as follows:

"VIII. During the second week of Feb 2008, the second Defendant attempted to interfere with the plaintiff's peaceful possession and enjoyment of the suit property and they demanded possession of the suit property with the help of anti-social elements with a copy of the sale deed said to have been executed by the First Defendant in its favour. Thus, the Plaintiff came to know about the alleged sale of the suit property by the First Defendant to the Second Defendant."

IX. The facts set out above would reveal that while the plaintiff has performed his part of the contract, the first defendant has failed to perform her part of the contract. The act on the part of the first defendant in revoking the power of Attorney and executing a sale deed in respect of the suit property in favour of the second defendant itself would prove that the first defendant has refused to perform her part of the contract.

XVI. While the circumstances are such, the first defendant with an ulterior design and ill motive, issued a letter on 5th February 2008, forwarding a Demand Draft for Rs. 1,50,000/- inter alia mentioning that she is enclosing the said draft in connection with the repayment for the purchase of vehicle. A cursory perusal of the letter would reveal the reveal the motive behind issuing such a letter and the said letter has been issued with ulterior design and motive and the statement made in the letter is a blatant lie. While on 24th Jan, 2007, the first defendant has entered into an Agreement for Sale, executed the irrevocable power of Attorney and received the entire sale consideration, it is not understood as to what warranted the return of the demand draft. Evidently, this demand draft has been sent after executing the impugned sale deed illegally in favour of the second defendant."

(emphasis supplied)

69. The averments as regards the cause of action in the plaint of the second suit also indicate the fact that the respondent no. 1 was aware of the alleged sale deed dated 24.01.2008 entered into between the respondent no. 2 and the appellant during the second week of February 2008 and that this amounted to a deemed refusal on part of the respondent no.2 to perform the agreement for sale. It reads as thus:

"The cause of the action for the suit arose on and from 24th Jan 2008 (sic - 2007) when the first defendant entered into the Agreement for sale with the plaintiff on 25th March, 2007 when the first defendant executed the irrevocable power of Attorney in favour of the plaintiff and when the payments were made under the Agreement for sale.

On 7th September, 2007 when the agreement for sale was registered, on 24th January 2008 when the sale deed was executed by the first defendant in favour of

the second defendant, on and from the 2nd week of the Feb, 2008 when the plaintiff came to know of the impugned sale deeds, on and from 24th Jan, 2008 when the first defendant registered the sale deed in respect of the suit property in favour of the second defendant which amounts to deemed refusal on her part to perform her part of the Agreement for sale and on all dates when the first defendant has failed to perform her part of the contract and at Thyagavalli village, Cuddalore District within the jurisdiction of this Honourable court."

(emphasis supplied)

70. A conjoint reading of the aforementioned averments made by the respondent no.1 as the plaintiff in the plaints of both the suits would indicate that the refusal by the respondent no. 2 to perform the agreement for sale was brought to the knowledge of the respondent no. 1 much prior to the filing of the first suit. In other words, the notice of the refusal to perform on part of the respondent no. 2 preceded the filing of the first suit.

Therefore, to this extent, the factual scenario would be akin to those in Virgo Industries (supra) and Vurimi Pullarao (supra). This might be why the Trial Court in its judgment and decree dated 30.04.2009 passed in I.A. No. 17 of 2009 and O.S. No. 122 of 2008 (second suit) had arrived at the conclusion that the second suit must be subjected to the bar imposed under Order II Rule 2. In other words, that when the respondent no. 1 could have prayed for a larger relief in their first suit, their omission to do so must preclude them for agitating the same subsequently.

71. However, in our opinion, the Trial Court had unfortunately failed to address a key aspect - whether more than one relief in respect of the cause of action which formed the foundation of the institution of the first suit was "available" to the respondent no. 1?

In other words, whether the relief of specific performance and the relief to pray for the cancellation of the sale deed dated 24.02.2008 executed in favour of the appellant were "available" to the respondent no. 1 at the time of filing the first suit in view of the ban imposed on the registration of sale deeds at the Thyagavalli village by the G.O. dated 08.08.1986 issued by the Government of Tamil Nadu and the notification dated 23.10.2006 issued by the TNEB which exclusively allowed the appellant to register the sale deeds at the Thyagavalli village where the suit property is situate.

V. The "entitlement to" along with the "availability of" the relief as a requisite in determining the applicability of Order II Rule 2.

72. The Privy Council in Mohammad Khalil Khan (supra) elaborated on the true import of Order II Rule 2 as follows:

"Shortly stated O. 2. R. 2, C.P.C., enacts that if a Plaintiff fails to sue for the whole of the claim which he is entitled to make in respect of a cause of action in the first suit, then he is precluded from suing in a second suit in respect of the portion so omitted. To apply the rule to the facts of the case their Lordships will have to consider what was the cause of action in Suit No. 8, on which the Plaintiffs founded their claims, and whether they included all the claims which they were entitled to make in respect of that cause of action in that suit. For, if they failed to include all the claims, then by force of O. 2, R. 2, they are precluded from including the claim omitted in the present Suit No. 2."

(emphasis supplied)

73. Order II Rule 2(1) reads that - "every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action.". Similarly, Order II Rule 2(3) reads that - "A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs.". It is necessary that the same intention also be read into Order II Rule 2(2) which reads that - "where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished".

The phrase "any portion of his claim" must essentially be understood to mean any portion of his claim which he is entitled to make for the simple reason that there cannot be a deliberate or intentional relinquishment of any portion of a claim, if the plaintiff was not entitled to it. Therefore, the true import of the bar under Order II Rule 2 must be that it operates to preclude a plaintiff from instituting a second suit, on the same cause of action, for a claim, any portion of a claim, or reliefs, which the plaintiff was entitled to avail at the time of filing of the first suit.

74. There may arise a situation where the plaintiff may be entitled to a relief but such a relief was not available at a certain point in time. In other words, that obtaining such a relief was impossible due to the circumstances which existed during the institution of the first suit. It is our opinion that, in such scenarios, Courts must give such an interpretation to the principles under Order II Rule 2 that is not bogged down by mere technicalities.

75. We are in agreement with the view taken by the Rajasthan High Court in Ramjilal v. Board of Revenue, Rajasthan reported in AIR 1964 Raj 114 wherein the High Court had opined that Order II Rule 2 does not require that a person must seek all the remedies to which he may be entitled to even though it would be impossible for him to obtain the remedy from the opposite party.

Herein, it was not possible for the plaintiff to obtain the relief of possession from the respondent no. 2 in his initial suit since the respondent no. 2 himself was put in actual possession of the property much after the institution of the first suit. In such circumstances, it could not be said that the plaintiff had intentionally relinquished any portion of his claim or that he omitted to ask for a relief which he could otherwise obtain. The relevant observations are reproduced hereinbelow:

"8. Now, in the present case, when the petitioner filed the first suit on 14th August, 1946, his claim was only for a declaration to the effect that the adoption of respondent No. 2 by Pusharam was invalid in law and for the relief that the adoption-deed should be cancelled. According to the admission of respondent No. 2 himself he was not in possession of the property in respect of which the second suit was filed on 1st July, 1954. It cannot therefore, be said that the plaintiff had intentionally relinquished any portion of his claim or that he omitted to ask for a relief which he could get from respondent No. 2.

Even if he had sued for possession against respondent No. 2, he could not obtain a decree for possession against a person who was admittedly not in occupation of the same. It would, therefore, have been futile on the part of the petitioner to sue for possession against respondent No. 2 at that time. O. 2, R. 2 C.P.C. does not require that a person must seek all the remedies to which he may be entitled even though it be impossible for him to obtain them from the opposite party. It is true that respondent No. 2 had obtained a decree for possession against the landlords on 18th February, 1946, i.e., about six months prior to the institution of the petitioner's suit, but the petitioner was not a party to that suit.

It had nowhere been mentioned in the judgment of the learned Members of the Board of Revenue if the petitioner was even aware of the decree which respondent No. 2 had obtained against the landlords Moreover, even if it be assumed for the sake of argument that the said decree was in the knowledge of the petitioner, then too, he could not sue for possession, because respondent No. 2 was not put in actual possession of the property in execution of the decree. It was about three years after, i.e., on 11th March, 1949 that respondent No. 2 got possession of the property. In our opinion, the learned Members committed an error, which is patent on the face of the record, in holding that the petitioner ought to have sued for possession at the time when he filed the first suit on 14th August, 1946.

15. We think it unnecessary to burden the judgment by referring to other authorities. In our opinion, the learned Members of the Board of Revenue have committed an error, which is apparent on the face of the record i.e. from the very perusal of their judgment, in dismissing the suit filed by the petitioner on the grounds that it was barred by O. 2, R. 2 of the Code of Civil Procedure. They

have also failed to exercise their jurisdiction by giving an incorrect interpretation to O. 2, R. 2 and not deciding the suit on merits."

(emphasis supplied)

76. We are also in agreement with the position taken by the Allahabad High Court in National Security Assurance Company Ltd. v. S.N. Jaggi reported in AIR 1971 All 421 in so far as it held that a subsequent suit in respect of a claim which was barred at the time of the earlier suit but revived later on by an enactment would not be hit by the provisions of Order II Rule 2. Here, the appellant insurance company had insured the goods of the respondent in his shop and his home respectively. During the disturbances and rioting which took place on 07.09.1947 and 08.09.1947, the respondent's goods, both at his home and shop, were looted.

While the applicant had raised a claim for the goods looted at his home, he did not raise any claim for the insured goods at his shop since he had no knowledge of it. However, when the factum of looting at his shop came to his knowledge, he intimated the insurer but the insurer took the defence that intimation of the loss was not made within 15 days of the occurrence of the looting as per the insurance policy.

Under these circumstances, the respondent instituted a suit against the insurer for recovery of the amount which was to be paid on account of the loss of goods at his house only and the same ended in a compromise decree where the respondent accepted a sum of Rs. 5500. On 09.12.1951, the Displaced Persons (Debt Adjustment) Act, 1951 was applied to Uttar Pradesh, where the respondent was now residing. In such circumstances, the appellant then made a claim for recovery of the amount due from the insurer for the loss of goods at his shop on account of him being a displaced person and also a debt being due to him.

The High Court opined that the Act enacted special provisions which revived the claim of the respondent and that it can be said that a fresh right was conferred on the applicant by the Act to recover the amount due from the appellant-insurer for the loss of the goods kept in the shop. Therefore, there would be no question of applicability of Order II Rule 2 in order to bar the respondent's claim. The relevant observations are as thus:

"20. There now remains to consider the argument whether the provisions of Order 2, Rule 2 were attracted and otherwise the applicant was not entitled to claim the amount he having accepted Rs. 5,500/- in full payment of the claim under the insurance policy.

21. As the law stood in 1948 the applicant under the terms of the policy was not entitled to recover the loss incurred by him for the destruction of goods of the

shop or looting thereof as he had not been able to intimate of the loss to the company within fifteen days of the occurrence. Since the applicant had been able to intimate the loss of the insured goods kept in the house within fifteen days of the occurrence, he filed a suit No. 650 of 1948 in the Civil Court at Delhi for recovery of Rs. 8,000/- from the company which represented the risk which the company covered for the loss of the goods in the house.

That being the position no question of the application of provisions of Order 2, Rule 2 will arise as in that suit which was instituted by the applicant in 1948 he could not, in law, claim a relief for the loss of the goods kept in the shop as under the terms of the insurance policy he could not recover the amount representing risk covered by the company for those goods. I think the Tribunal was right in holding that in the suit filed by the applicant in the Civil Court at Delhi the applicant could not have obtained any relief in respect of loss of the goods kept in his shop.

The compromise in the said suit, to my mind, would remain confined to the claim in regard to the loss of the goods kept in the house of applicant and when the applicant who was the plaintiff in the suit accepted the sum of Rs. 5,500/- in full settlement of the claim under the policy it would only mean that he accepted that smaller sum as against Rs. 8,000/-, a sum claimed in full satisfaction of the claim under the policy relating to the loss of the goods kept in the house and not to the loss of the goods kept in the shop as they were not the subject-matter of the suit at all.

I do not agree with the learned counsel for the appellant that the applicant is estopped now to raise any claim and re-agitate the matter as he would be deemed to have given up the claim in regard to the loss of the goods kept in the shop. I do not see how the provisions of Order 2, Rule 2, C.P. Code, or the principles of estoppel bar the applicant from recovering the money due under the insurance policy for the loss of the goods kept in the shop. In fact the company in 1948 told the applicant that he was not entitled to recover any thing in regard to the loss of the goods in the shop as the claim had not been made within the time as agreed under the policy, then to say now that the applicant could have claimed that sum will be allowing the company to blow hot and cold at the same time.

22. The Act enacted special provisions which revived the claim of the applicant and it can be said that a fresh right was conferred on the applicant by the Act to recover the amount due on the policy for the loss of the goods kept in the shop and in that view of the matter also no question of applicability or Order 2, Rule 2, C.P. Code or any principles of estoppel, can bar the applicant's claim."

(emphasis supplied)

77. These decisions of the Rajasthan and Allahabad High Courts respectively, have rightly taken the view that when it is not possible for the plaintiff to obtain a particular relief in the first instance but such relief becomes available to him on the happening of a subsequent event, post the institution of the first suit, then the bar under Order II Rule 2 would not stand in the way of the plaintiff who has instituted a subsequent suit for claiming those reliefs. It can be said that the occurrence of that subsequent event gives rise to a fresh cause of action to the concerned plaintiff for claiming certain reliefs which he was otherwise prevented from claiming.

78. In Virgo Industries (supra), this Court had held that just because the relief for specific performance was premature on the dates on which the first set of suits were instituted, it would not mean that it could not be prayed for in the first suit, especially when the defendant made his intentions clear through his overt acts. This view was taken in a different factual context. In the said case, the plaintiff claimed that the suit for specific performance was premature on the date of filing of the first set of suits since the time for execution of the sale documents in terms of the agreement to sell had not elapsed.

It is in this background that the Court had taken the view that a suit claiming a relief to which the plaintiff may become entitled to at a subsequent point in time, though may be termed as premature, yet, cannot be dismissed to be presented on a future date. However, such a view cannot be adopted in the facts of the present case since it is not the premature nature of the claim but the impossibility of it which prevented the respondent no. 1 from availing certain remedies. A mandatory bar was created by a G.O. issued by the State Government which disabled the respondent no. 1 from seeking the remedy which he was otherwise entitled to.

79. The G.O. Ms. No. 1986 dated 08.08.1986 issued by the Government of Tamil Nadu read with the notification dated 23.10.2006 issued by the TNEB imposed an absolute prohibition which restrained any individual land owner in the two villages of Thiyagavalli and Kudikkadu from transferring their lands either by way of sale or by any other mode to any third party other than to "M/s. Cuddalore Power Company Limited" who is the appellant herein.

On the strength of this G.O., the revenue authorities refused to register the sale deeds pertaining to several extents of land, belonging to several individuals. Only sale deeds executed in favour of the appellant herein was being registered by the authorities. The Madras High Court while delivering its decision dated 05.03.2008 in the public interest litigation remarked that they were at a loss to understand as to how and under what provision of law such a prohibition could have been imposed and stated that any such ban would directly infringe the constitutional right of any land owner to his right to property.

80. During the institution of the first suit for permanent injunction by the respondent no.1 on 16.02.2008, the proceedings in the public interest litigation which challenged the G.O. dated 08.08.1986 was still pending before the High Court and the respondent no. 1 himself had also filed a separate writ petition challenging the actions of the registrar. Until the High Court quashed the G.O. dated 08.08.1986 vide order dated 05.03.2008 passed in the public interest litigation, the respondent no. 1 could not have registered a sale deed in his favour or sought for the relief of specific performance.

It must be highlighted that the factual situation herein is slightly different from one where there is a statutory requirement under any law which mandates that a permission/sanction from certain competent authorities must be obtained before registering a sale deed. In such a situation, the court would be empowered to grant a conditional decree of specific performance subject to such permission/sanction being obtained by the appropriate party and a suit for specific performance would be maintainable. However, in the present peculiar facts, there was an absolute ban and not a conditional restriction to execute the sale deeds. Therefore, a suit for specific performance could not have been instituted by the respondent no.1 since it would have been nothing but a futile attempt.

81. It is worthy to be noted that the respondent no. 1 had approached the revenue authorities multiple times for registering a sale deed in its favour but was faced with a denial from the authorities on every one of these attempts. As a natural next course of action, the respondent no. 1 filed their own writ petition dated 21.01.2008 challenging such a refusal. When the order dated 05.03.2008 quashing the G.O. dated 08.08.1986 was passed, the rights of the respondent no.1 had been crystallized and a relief which was impossible to obtain earlier due to the existence of a State Government imposed ban was now made available to the respondent no.1.

It was on the basis of the decision dated 05.03.2008 that the writ petition which was filed by the respondent no. 1 was disposed of by a single judge of the High Court on 25.03.2008. Therefore, a new cause of action for obtaining the relief of specific performance directing the respondent no. 2 to execute the sale deed in favour of the respondent no. 1 and for seeking the cancellation of the sale deed dated 24.01.2008 entered into between the respondent no. 2 and the appellant had arisen on 05.03.2008 and on 25.03.2008 respectively.

82. The counsel for the appellant argued that extraneous matters cannot be projected as giving a cause for the second suit, unless such extraneous matters had been set forth in the agreement to sell itself so as to postpone the cause for filing a suit for specific performance. It was alleged that the respondent no. 1 entered into an agreement to sell on 24.01.2007 being fully aware of the facts that

were prevalent on the said date and therefore, cannot plead extraneous matters for the purpose of saving the second suit. Furthermore, it was their case that these extraneous matters were neither set forth in the cause of action paragraph provided in the second plaint nor were they argued before the High Court in the proceedings which resulted in the impugned judgment.

83. We are unable to agree with these contentions raised by the counsel for the appellant. First, it would be unfair to the respondent no. 1 to hold that the decisions of the Madras High Court dated 05.03.2008 and 25.03.2008 respectively relating to the G.O. would not be of any benefit whatsoever to their cause just because the existence of such a ban was not mentioned in the agreement to sell which was entered into with the respondent no. 2.

It is clear that the ban prevented the respondent no. 1 from obtaining a title to the property which he otherwise could have obtained if not for the existence of such peculiar circumstances. Furthermore, averments relating to these decisions of the Madras High Court were mentioned in the second plaint. Therefore, in the interests of justice, the decisions dated 05.03.2008 and 25.03.2008 must be held to have given rise to a new cause of action to the respondent no. 1 for the agitating the reliefs in the second suit.

84. Secondly, it cannot be accepted that the respondent no. 1 was fully aware of the circumstances relating to the ban at the time of entering into the agreement to sell and would therefore, be precluded from relying on the decision lifting the ban to postpone his cause of action. Such a fact cannot be inferred from the plaints which have been placed before us. On the other hand, from the averments of the plaint, it can be seen that the agreement to sell was registered by the respondent no. 1 with the Joint Sub-Registrar, Cuddalore on 07.09.2007 without any hassle.

Even at this stage, the revenue authorities had not brought it to the knowledge of the respondent no. 1 that the agreement to sell could not be registered in his favour due to the operation of the ban. It is only when the respondent no. 1 approached the revenue authorities on multiple occasions for the execution of the sale deed that the reluctance of the registrar was noticed and a writ petition had been immediately filed challenging the actions of the registrar. Therefore, we see no reason to doubt the bona fides of the respondent no. 1.

85. Thirdly, it cannot be said that such extraneous matters are not set forth in the plaint. On the contrary, on a holistic reading of the both the plaints, it can be seen that the respondent no. 1 indicated in the first plaint that a writ petition instituted by them before the High Court challenging the actions of the registrar is pending and in the second plaint, they had averred that the High Court had quashed the G.O. dated 08.08.1986 in a public interest litigation and had also disposed of their writ petition.

It is, however, true that the specific pleadings as regards the cause of action does not contain the date on which the High Court had decided the public interest litigation i.e., 05.03.2008 or the date on which the writ petition of the respondent no. 1 was disposed of i.e., 25.03.2008. However, it is difficult for us to subscribe to such a technical view that since these dates do not figure in the paragraph relating to the cause of action in the second plaint as giving rise to a new cause of action to the respondent no.1, the same would not save the second suit.

As indicated by us in our forgoing discussion, the plaint should be read as a whole and certain specific paragraphs or lines should not be isolated to arrive at a restricted view. As far as the contention that these arguments were not raised before the High Court goes, a bare perusal of the Memorandum of Grounds of Appeal filed by the respondent no. 1 would indicate that the grounds relating to the ban imposed by the G.O. dated 08.08.1986 and the subsequent decision of the High Court in the public interest litigation as also in the writ petition filed by the respondent no. 1 were agitated during the second appeal as well.

86. It is established law that the principles governing the applicability of the provisions of Order II Rule 2 do not operate as a bar when the subsequent suit is based on a cause of action different from that on which the first suit was based and that the identity of the causes of action in both the suits must be the material consideration before the court which decide the applicability of this provision to a second suit filed by the plaintiff. It would be incorrect for us to hold that merely because the pleadings in the plaint filed in O.S. No. 28 of 2008 and the plaint filed in O.S. No. 122 of 2008 are similar to some extent, the causes of action are also identical.

Rejecting the plaint in the second suit i.e., O.S. No. 122 of 2008 would result in depriving the respondent no. 1 from claiming the relief of specific performance of the agreement for sale dated 24.01.2007 and the cancellation of the sale deed dated 24.01.2008. In this regard, we have examined the entire factual matrix along with the causes of action on which both the suits were founded, through a holistic reading of the plaints placed before us.

In our opinion, the reliefs in the subsequent suit are in fact founded on a cause of action which is distinct from that which is the foundation of the former suit. The facts which are necessary to be proved and the evidence to support the claims in the second suit are also different from that of the first suit. Therefore, it cannot be said that the respondent no. 1 could have prayed for the reliefs claimed in the subsequent suit at an earlier stage.

87. The High Court could be said to have fallen in error in failing to notice that the crucial fact which acted as a linchpin in saving the second suit was its own decisions dated 05.03.2008 and 25.03.2008 respectively which set aside the ban

imposed by the G.O. dated 08.08.1986 and directed the registrar to register the sale deeds pertaining to the suit property.

However, for altogether different reasons than what has been elaborated by us, the High Court held that the bar under Order II Rule 2 was not applicable and that the respondent no. 1 would not be prevented from instituting the second suit. As a consequence, the plaint in the second suit i.e., O.S. No. 122 of 2008 was restored. The Trial Court was accordingly directed to decide both the suits together on their own merits and in accordance with law, within a period of six months. We do not wish to disturb the ultimate conclusion arrived at by the High Court.

88. The questions relating to whether such an agreement for sale dated 24.01.2007 could have been entered into by the respondent no.1 in ignorance of the subsistence of the ban which was imposed by the G.O. dated 08.08.1986 to begin with and whether the appellant entering into a subsequent sale deed dated 24.01.2008 during the existence of the aforementioned agreement to sell was a bona fide purchaser of the suit property, along with all other pertinent questions, are all issues which will have to be determined by the Trial Court on merits.

89. In so far as the appeal preferred against the decision of the High Court dated 01.09.2016 in C.M.P. No. 12498 of 2016 in S.A. No. 858 of 2014 is concerned, we find no reason to make separate observations since after a detailed examination of the two plaints, we have also arrived at the conclusion that the bar under Order II Rule 2 would not be applicable to the facts of the present case.

F. CONCLUSION

90. In view of the aforesaid, it is held that the bar under the provisions of Order II Rule 2 CPC would not stand in the way of the institution of the second suit by the respondent no. 1 (original plaintiff).

91. It is made clear that this Court has not expressed any views on the merits of the matter.

92. In view of the above, the appeals fail and are hereby dismissed.

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

.....J. (J.B. Pardiwala)

.....J. (R. Mahadevan)

New Delhi.

January 15, 2025.

IN THE SUPREME COURT OF INDIA

U. Sudheera & Ors.
Vs.
C. Yashoda & Ors.

[Civil Appeal No. 567 f 2025
arising out of SLP (C) No. 27761 of 2024]

HEADNOTE – A second appeal under Section 100 CPC cannot proceed without framing substantial questions of law

JUDGMENT

R. Mahadevan, J.

1. Leave granted.

2. The challenge made in this appeal is to the interim order dated 20.09.2024 passed by the High Court of Andhra Pradesh at Amaravathi1 in the Second Appeal bearing No.518/2023. For the sake of clarity and ease of reference, the order impugned herein is reproduced below:

"Learned counsel for the respondent No.9 is present. Notice sent to respondent No.8 was served. Therefore, service of respondent No.8 is 'held sufficient'. Learned counsel for the appellant is permitted to take out steps for filing substitute service against the respondent Nos.4, 6 and 7. It was represented by the learned Senior Counsel for the appellant, Sri S. Rajendra Prasad that the appellant is in possession and enjoyment of the scheduled property as on today and the respondents are making efforts for interfering with the possession of the appellant. Considering the representation made by the learned Senior Counsel for the appellant, both parties are directed to maintain status-quo till 25.09.2024. List the matter on 25.09.2024."

3. The Respondent No.1 is the plaintiff in the suit in O.S.No.48 of 2011; Appellant Nos.1 to 3 are the legal representatives of the deceased Defendant No.5; Appellant Nos.4 to 6 are Defendant Nos.1, 3, and 6; and Respondent Nos.2 and 3 are Defendant Nos.2 and 4 in the said suit.

4. The brief facts of the case, as presented by the appellants, are as follows: The defendants are members of the Gazetted Officers Cooperative House Building Society2, which was registered in 1966 with the purpose of purchasing and making constructions on lands in Mangalam Village, Tirupati. The Society

purchased lands in Survey Nos.2, 10/1, 10/2 and 12 measuring an extent of 5.35 Ac, 0.61Ac, 4 Ac, 5.47 Ac respectively. The suit scheduled property measuring an extent of 0.61 Ac was also purchased by the Society through a sale deed dated 20.03.1986 from one M.Savithramma W/o. Mudduluru Ramakrishnamraju.

The original pattadar of the suit scheduled property was one Kannavaram Lokanadham, who sold the same to M.Savithramma by sale deed dated 14.05.1981. While so, the Government issued notification under section 4 of the Land Acquisition Act, 1894, seeking to acquire the lands of the Society. Aggrieved by the same, the Society approached the High Court by filing a writ petition bearing No.2357/1987, which was allowed and the acquisition notification was set aside, by order dated 27.07.1987.

Thereafter, the Tirupati Urban Development Authority issued Order under Section 14 of the Andhra Pradesh Urban Areas (Development) Act, 1975, on 19.06.1996 granting approval of layout in respect of the lands in Sy.Nos.2, 10/1, 10/2 of Mangalam Village, Tirupati. Pursuant to the same, plots were developed and were sold to the defendants. As things stood, the Respondent No.1/plaintiff approached the Tahsildar for mutation of the revenue records in respect of the land in Sy.No.10/1 (0.61 Ac) and the same was done ex parte by Order dated 13.04.2010.

On the basis of the same, the Respondent No.1/plaintiff filed a suit in OS.No.48 of 2011 before the 1st Additional Junior Civil Judge, Tirupati, for permanent injunction against the defendants. The trial Court decreed the suit in favour of the plaintiff, by judgment dated 05.02.2016. However, the First Appellate Court viz., V Additional District Judge, Tirupati, by judgment dated 11.11.2022 passed in A.S.No.17/2016, allowed the appeal suit and set aside the judgment and decree passed by the trial Court, after having found that the plaintiff could not have maintained a suit for bare injunction, without seeking declaration of title. Challenging the same, the Respondent No.1 / plaintiff filed a second appeal bearing No. 518 of 2023 before the High Court.

After adjourning the matter on three occasions on the ground that the respondents therein were not served, the High Court on the fourth occasion i.e., 20.09.2024, granted interim relief in the form of status quo, without formulating any substantial question of law arising in the second appeal. By order dated 26.09.2024, the said interim relief was extended till 17.10.2024. Feeling aggrieved, the legal heirs of Defendant No.5 and the Defendant Nos.1,3, and 6 are before us with the present appeal.

5. The learned counsel for the appellants submitted that without framing substantial question of law, an interim order cannot be passed in a second appeal filed under Section 100 of the Code of Civil Procedure, 19083.

In this connection, reliance was placed on the judgment of this Court in Ram Phal v. Banarasi4, wherein, it was found that the High Court granted interim order and thereafter, fixed the matter for framing of question of law on a subsequent date, and ultimately, it was held that 'since the High Court dealt with the matter contrary to the mandate enshrined under Section 100 CPC, the impugned order deserves to be set aside'. The said judgment has been consistently followed by this Court in the subsequent decisions in Raghavendra Swamy Mutt v. Uttaradi Mutt5 and Bhagyashree Anant Gaonkar v. Narendra @ Nagesh Bharma Holkar 6.

5.1. The learned counsel further submitted that when the fact remains that all the respondents have not been served and the plaintiff has not even sought for declaration of title, the High Court erred in granting the interim relief, on a mere representation.

5.2. Referring to the judgment of this Court in Anathula Sudhakar v. P Buchi Reddy7, it is submitted that the suit instituted for bare injunction without seeking declaration of title, is not maintainable.

5.3. The learned counsel further submitted that the trial Court decreed the suit on the presumption that the Respondent No.1/plaintiff is the owner of the property on the basis of revenue records. However, it is settled law that revenue records cannot be the basis for determination of ownership. In this regard, reference was made to the judgment of this Court in Bhimabai Mahadeo Kambekar v. Arthur Import & Export Co.8, wherein, it was held that 'mutation of a land in the revenue records does not create or extinguish the title over such land nor has it any presumptive value on the title. It only enables the person in whose favour mutation is ordered, to pay the land revenue in question'.

5.4. It is finally submitted that the First Appellate Court, on facts, decided the appeal in favour of the appellants and as such, the High Court ought not to have granted an interim order merely on the basis of representation of the counsel.

5.5. By submitting so, the learned counsel prayed to allow this appeal by setting aside the interim order passed by the High Court.

6. On the contrary, the learned counsel for the contesting respondent / plaintiff submitted that the jurisdiction of the Court is inherent to issue any ad interim / temporary order for limited period, in case of exigencies or the circumstances not covered in the scheme of Code to protect the ends of justice and to safeguard the subject matter of the proceedings. To substantiate the same, reference was made to the judgment of this Court in Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal9, which was referred to in Vareed Jacob v. Sosamma Geeverghese and Ors.10

6.1. Adding further, it is submitted that since the Code does not provide for any provision for protection of the subject matter of proceedings, when an Appeal under Order 41 Rule 5 CPC is preferred, and the substantive question of law remains to be framed yet, the inherent power of the Court under Section 151 CPC can be invoked in the interregnum to protect the subject matter.

6.2. It is also submitted that the impugned order is only in the nature of an exparte ad interim arrangement for a limited period i.e., till the next date of hearing. It is neither creating any right nor divesting the parties of their right. That apart, it does not stay the operation of the decree, but is only in aid of preserving the subject matter of the suit and maintaining the status quo as it stood on the date of passing of the order. Therefore, the said ad interim ex parte arrangement cannot be construed as interim order. In support of his contention, reference was made to the judgment of Bombay High Court in Vrajesh Anandrao Kerkar v. Durgesh Tulsidas Kerkar and Others11.

6.3. The learned counsel further pointed out that in Ram phal (supra), the execution of the decree itself was stayed, whereas in the present case, the decree has not been stayed and mere ad interim arrangement to maintain status quo is under challenge. Similarly, the judgment of this Court in Bhagyashree Anant Gaonkar (supra) is factually distinguishable as the High Court had passed the final judgment without even framing any question of law. Therefore, the decisions relied on by the learned counsel for the petitioners are not applicable to the facts of the present case.

6.4. Ultimately, it is submitted by the learned counsel that as per the averments made in the plaint, the plaintiff has right and share in the suit scheduled property. Hence, the second appeal could be decided only upon perusal of the entire papers properly and the impugned order has been passed only as an interim measure to protect the interest of the parties.

6.5. Thus, according to the learned counsel, there is no infirmity or illegality in the order so passed by the High Court and the same need not be interfered with by this court.

7. We have considered the rival submissions and perused the documents produced before us.

8. Now, the short question arising for our consideration is, whether the High Court can pass any ad interim order for a limited period, before framing substantial question(s) of law, while dealing with a second appeal filed under Order XLI r/w Section 100 CPC.

9. The facts that remain undisputed are that the suit in OS.No.48 of 2011 filed by the Respondent No.1/ plaintiff was one for permanent injunction and the same

was decreed in her favour by judgment dated 05.02.2016. However, the First Appellate Court set aside the same and allowed the appeal suit filed by the appellants / defendants by judgment dated 11.11.2022.

Therefore, the Respondent No.1 / plaintiff preferred SA.No.518 of 2023, in which, without formulating the substantial questions of law, the High Court granted the interim relief in the form of status quo to be maintained by the parties, and the same is called in question before us. Considering the limited nature of the issue involved herein, we need not go further into the factual aspects of the matter.

10. Let us first examine the relevant legal provisions and case laws connected to the issue involved in this appeal.

10.1. The right of filing a second appeal is provided under section 100 CPC, which confers jurisdiction on the High Court only when it is satisfied that the case involves a substantial question of law. For better appreciation, the said provision reads as under:

"12[100. Second appeal.-

(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal may lie under this section from an appellate decree passed ex parte.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.]"

10.2. This Court has categorically held that the High Court acquires jurisdiction to deal with the second appeal on merits only when it frames a substantial

question of law as required to be framed under Section 100 CPC; and it cannot grant an interim order, without framing substantial question of law. In this regard, a few decisions and the relevant paragraphs are usefully quoted below:

(i) Ram Phal (supra)

"2. Aggrieved, the respondents herein filed second appeal before the High Court against the judgment and decree of the first appellate court. When the second appeal came up for admission on 20-12-1999 the High Court directed to list the appeal for framing of question of law on 28-3-2000. However, the High Court granted interim order by staying the execution of the decree.

It is against the said order granting interim relief the respondent in the second appeal has preferred this appeal. This Court, on a number of occasions, has repeatedly held that the High Court acquires jurisdiction to decide the second appeal or deal with the second appeal on merits only when it frames a substantial question of law as required to be framed under Section 100 of the Civil Procedure Code.

In the present case, what we find is that the High Court granted interim order and thereafter fixed the matter for framing of question of law on a subsequent date. This was not the way to deal with the matter as contemplated under Section 100 CPC. The High Court is required to frame the question of law first and thereafter deal with the matter. Since the High Court dealt with the matter contrary to the mandate enshrined under Section 100 CPC, the impugned order deserves to be set aside."

(ii) Raghavendra Swamy Mutt (supra)

"23. The submission of the learned Senior Counsel for the appellant is that Order 41 Rule 5 confers jurisdiction on the High Court while dealing with an appeal under Section 100 CPC to pass an ex parte order and such an order can be passed deferring formulation of question of law in grave situations. Be it stated, for passing an ex parte order the Court has to keep in mind the postulates provided under sub-rule (3) of Rule 5 of Order 41.

It has to be made clear that the Court for the purpose of passing an ex parte order is obligated to keep in view the language employed under Section 100 CPC. It is because formulation of substantial question of law enables the High Court to entertain an appeal and thereafter proceed to pass an order and at that juncture, needless to say, the Court has the jurisdiction to pass an interim order subject to the language employed in Order 41 Rule 5(3).

24. It is clear as day that the High Court cannot admit a second appeal without examining whether it raises any substantial question of law for admission and

thereafter, it is obliged to formulate the substantial question of law. Solely because the Court has the jurisdiction to pass an ex parte order, it does not empower it not to formulate the substantial question of law for the purpose of admission, defer the date of admission and pass an order of stay or grant an interim relief.

That is not the scheme of CPC after its amendment in 1976 and that is not the tenor of precedents of this Court and it has been clearly so stated in Ram Phal v. Banarasi, [(2003) 11 SCC 762] . Therefore, the High Court has rectified its mistake by vacating the order passed in IA No. 1 of 2015 and it is the correct approach adopted by the High Court. Thus, the impugned order is absolutely impregnable."

(iii) Santosh Hazari v. Purushottam Tiwari13

"9. The High Court cannot proceed to hear a second appeal without formulating the substantial question of law involved in the appeal and if it does so it acts illegally and in abnegation or abdication of the duty cast on Court. The existence of substantial question of law is the sine qua non for the exercise of the jurisdiction under the amended Section 100 of the Code. (See: Kshitish Chandra Purkait v. Santosh Kumar Purkait [(1997) 5 SCC 438], Panchugopal Barua v. Umesh Chandra Goswami [(1997) 4 SCC 713] and Kondiba Dagadu Kadam v. Savitribai Sopan Gujar [(1999) 3 SCC 722].)"

(iv) Roop Singh v. Ram Singh14

"7. It is to be reiterated that under Section 100 CPC jurisdiction of the High Court to entertain a second appeal is confined only to such appeals which involve a substantial question of law and it does not confer any jurisdiction on the High Court to interfere with pure questions of fact while exercising its jurisdiction under Section 100 CPC.

(v) State Bank of India v. S.N. Goyal15

"15. It is a matter of concern that the scope of second appeals and as also the procedural aspects of second appeals are often ignored by the High Courts. Some of the oft-repeated errors are:

(a) Admitting a second appeal when it does not give rise to a substantial question of law.

(b) Admitting second appeals without formulating substantial question of law.

(c) Admitting second appeals by formulating a standard or mechanical question such as "whether on the facts and circumstances the judgment of the first appellate court calls for interference" as the substantial question of law.

(d) Failing to consider and formulate relevant and appropriate substantial question(s) of law involved in the second appeal.

(e) Rejecting second appeals on the ground that the case does not involve any substantial question of law, when the case in fact involves substantial questions of law.

(f) Reformulating the substantial question of law after the conclusion of the hearing, while preparing the judgment, thereby denying an opportunity to the parties to make submissions on the reformulated substantial question of law.

(g) Deciding second appeals by reappreciating evidence and interfering with findings of fact, ignoring the questions of law.

These lapses or technical errors lead to injustice and also give rise to avoidable further appeals to this Court and remands by this Court, thereby prolonging the period of litigation. Care should be taken to ensure that the cases not involving substantial questions of law are not entertained, and at the same time ensure that cases involving substantial questions of law are not rejected as not involving substantial questions of law."

(vi) Municipal Committee, Hoshiarpur v. Punjab SEB16

"16. The court cannot entertain a second appeal unless a substantial question of law is involved, as the second appeal does not lie on the ground of erroneous findings of fact based on an appreciation of the relevant evidence. The existence of a substantial question of law is a condition precedent for entertaining the second appeal; on failure to do so, the judgment cannot be maintained. The existence of a substantial question of law is a sine qua non for the exercise of jurisdiction under the provisions of Section 100 CPC. It is the obligation on the court to further clear the intent of the legislature and not to frustrate it by ignoring the same."

(vii) Umerkhan v. Bismillabi17

"11. In our view, the very jurisdiction of the High Court in hearing a second appeal is founded on the formulation of a substantial question of law. The judgment of the High Court is rendered patently illegal, if a second appeal is heard and judgment and decree appealed against is reversed without formulating a substantial question of law. The second appellate jurisdiction of the High Court under Section 100 is not akin to the appellate jurisdiction under Section 96 of the

Code; it is restricted to such substantial question or questions of law that may arise from the judgment and decree appealed against.

As a matter of law, a second appeal is entertainable by the High Court only upon its satisfaction that a substantial question of law is involved in the matter and its formulation thereof. Section 100 of the Code provides that the second appeal shall be heard on the question so formulated. It is, however, open to the High Court to reframe substantial question of law or frame substantial question of law afresh or hold that no substantial question of law is involved at the time of hearing the second appeal but reversal of the judgment and decree passed in appeal by a court subordinate to it in exercise of jurisdiction under Section 100 of the Code is impermissible without formulating substantial question of law and a decision on such question."

(viii) In Bhagyashree Anant Gaonkar (supra), this Court has observed that the exclusive jurisdiction of the High Court to deal with a regular second appeal is stipulated in section 100 CPC, which grants power to the High Court to consider a regular second appeal only on a substantial question of law; and after referring to the aforesaid earlier judgments, has ultimately, set aside the impugned judgment passed in the Regular Second Appeal and remanded the matter to the High Court for a fresh consideration after ascertaining whether substantial questions were framed at the time of admitting the matter and if not, to frame the substantial questions of law on hearing the learned counsel for the respective parties and thereafter to dispose of the second appeal in accordance with law.

(ix) Following the aforesaid judgments, this Court in Hemavathi & others v. V.Hombegowda and another18, has observed that if no substantial question of law arose in the case, then, the appeal could not have been entertained and ought to have been dismissed at the stage of admission. The relevant passage reads as under:

"The jurisdiction of the High Court to entertain a Second Appeal is wellknown. It is a unique jurisdiction of the High Court where the High Court can entertain a Regular Second Appeal purely on a "substantial" question of law not even a question of law or a question of fact.

It is a settled law that the first appellate court is the final Court insofar as the question of facts are concerned and it is only when substantial questions of law would arise in a case that the High Court can entertain a Regular Second Appeal and if at the stage of admission such substantial questions of law are discerned by the High Court the same would have to be framed and the appeal(s) would have to be admitted. It is only thereafter that the parties have to be heard on the substantial questions of law that are framed by the High Court at the stage of admission.

However, the CPC gives power to the High Court to frame additional substantial questions of law or to mould the substantial questions of law already framed on hearing the parties at the time of final hearing of a Second Appeal. In the event the respondents before the High Court are on record even at the stage of admission of a Regular Second Appeal and the same is to be disposed of finally even at this stage substantial questions of law must be framed and answered before the Regular Second Appeal is admitted and disposed."

10.3. As per Section 100, a High Court can proceed to hear a Second Appeal only if the case involves a substantial question of law, implying that when the appeal is taken up for admission, it must satisfy itself that a substantial question of law is involved. Thereafter, the High Court must frame such question and direct the parties to submit their arguments on such question. The scheme of the Code also enables the High Court to hear the parties on any other substantial question of law, not framed by it at the first hearing, but during the course of hearing for the reasons to be recorded.

Again, if the court is not satisfied at the first hearing that the case does not involve a substantial question of law, it cannot proceed further. Once such additional question of law is framed during the course of hearing, the parties must be given opportunity to submit their arguments on the other substantial question of law(s). We take cognizance of the fact, that in some High Courts, there is a practice to order Notice of Motion, whereby even before an appeal is admitted, an opportunity is granted to the respondents therein to contest the case. In such a case, it is implied that the High Court is not satisfied prima facie with the case.

Such dissatisfaction could be either for a reason that the case does not involve a substantial question of law or for a reason that in the facts of the case, the question of law, though substantial, would not warrant interference. In such cases, though the High Court in exercise of its power under Section 151 of CPC is generally empowered to grant interim orders to preserve the subject matter of the dispute and to avoid multiplicity of proceedings, we are of the opinion, the court cannot grant any interim protection to the appellant, unless the substantial question of law is framed under Section 100 (4) or as per the Proviso.

On the other hand, if the High Court is prima facie of the view that the substantial question of law involved would not require much time for disposal, the court is bound to frame the substantial question of law at the stage of admission and then order short notice. The High Court cannot use its inherent power under Section 151 in violation of the express mandates in other provisions of the Code. We find support to this view from the following passage in Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal19:

"42. The Code of Civil Procedure is undoubtedly not exhaustive : it does not lay down rules for guidance in respect of all situations nor does it seek to provide rules for decision of all conceivable cases which may arise. The civil courts are authorised to pass such orders as may be necessary for the ends of justice or to prevent abuse of the process of court, but where an express provision is made to meet a particular situation the Code must be observed, and departure therefrom is not permissible.

As observed in LR 62 IA 80 (Maqbul Ahmed v. Onkar Pratab) "It is impossible to hold that in a matter which is governed by an Act, which in some limited respects gives the court a statutory discretion, there can be implied in court, outside the limits of the Act a general discretion to dispense with the provisions of the Act". Inherent jurisdiction of the court to make orders ex debito justitiae is undoubtedly affirmed by Section 151 of the Code, but that jurisdiction cannot be exercised so as to nullify the provisions of the Code. Where the Code deals expressly with a particular matter, the provision should normally be regarded as exhaustive."

10.4. Thus, the law is clear that a second appeal will be maintainable before the High Court, only if it is satisfied that the case involves a substantial question of law. If no substantial question of law arises, the second appeal could not have been entertained and the same ought to have been dismissed, as the jurisdiction of the High Court itself is not yet invoked.

11. Concededly, in the present case, the High Court, without formulating substantial questions of law, granted the interim relief by directing the parties to maintain status quo, till the next date of hearing. The said interim order was also subsequently extended. It is also pertinent to point out that all the respondents in the second appeal have not been served and notice was unserved qua Respondent Nos.4, 6 and 7 therein. Therefore, we are of the opinion that the High Court could not have passed the interim order without satisfying itself of the existence of a substantial question of law, as mandated under Section 100 CPC.

12. Though the learned counsel for the Respondent No.1/plaintiff made an attempt to contend that the High Court has jurisdiction to pass any interim order and the order impugned herein is only an ad interim arrangement to protect the interest of the subject matter of the proceedings, the same cannot be countenanced by us in the facts of this case.

Indisputably, the High Court has jurisdiction to pass an interim order ex parte, however, it does not empower to grant ad interim relief, without examining the parties and formulating the substantial question of law involved in the second appeal as it is contrary to section 100 CPC. The judgements relied upon by the

learned counsel for the contesting respondent are of no avail as they are factually distinguishable and do not support the case of the respondent.

13. In the light of the aforesaid settled legal position, we have no hesitation to set aside the interim order passed by the High Court. Accordingly, the impugned order dated 20.09.2024 made in SA.No.518 of 2023 is set aside and this appeal stands allowed. There is no order as to costs.

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

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

.....J. [R. Mahadevan]

New Delhi

January 17, 2025

1 Hereinafter referred to as "the High Court"
2 For short, "the Society"
3 For short, "CPC"
4 (2003) 11 SCC 762
5 (2016) 11 SCC 235
6 (2023) SCC Online 1236
7 (2008) 4 SCC 594
8 (2019) 3 SCC 191
9 AIR 1962 SC 527
10 (2004) 6 SCC 378
11 2024 SCC OnLine Bom 472
12 Substituted by Act 104 of 1976, sec.37, for section 100 (w.e.f. 1-2-1977)
13 (2001) 3 SCC 179
14 (2000) 3 SCC 708
15 (2008) 8 SCC 92
16 (2010) 13 SCC 216
17 (2011) 9 SCC 684
18 2023 INSC 848 : 2023 SCC OnLine SC 1206
19 1961 SCC OnLine SC 17 : 1962 Supp (1) SCR 450 : AIR 1962 SC 527

IN THE SUPREME COURT OF INDIA

Balbir Singh & Anr. Etc.
Vs.
Baldev Singh (D) through his LRS. & Ors. Etc.

[Civil Appeal Nos. 563-566 of 2025
SLP (C) Nos. 22802-22805 of 2022]

HEADNOTE – A suit for specific performance does not conclude after the passing of a decree and that the court retains its control even after the decree is passed.

JUDGMENT

J.B. Pardiwala, J.

1. Leave granted.

2. Since the issues raised in all the captioned appeals are same, the parties are also same and the challenge is also to the self-same judgment and order passed by the High Court those were taken up for hearing analogously and are being disposed of by this common judgment and order.

3. These appeals arise from the judgment and order passed by the High Court of Punjab & Haryana at Chandigarh dated 09.09.2022 in Civil Revision No. 6706 of 2019, Civil Revision No. 6952 of 2019, Civil Revision No. 6980 of 2019 and Civil Revision No. 7053 of 2019 respectively by which the High Court rejected all the four revision applications filed by the original defendants by a common order and thereby affirmed the order passed by the executing court permitting the original plaintiff to deposit the balance sale consideration and rejecting the application filed by the defendants (judgment debtors) under Section 28 of the Specific Relief Act, 1963 (For short, "the Act") for rescission of contract.

4. The facts of this litigation giving rise to these appeals as recorded by the High Court in its impugned judgment read thus:

"2. Four connected revision petitions have come up for final disposal. The learned counsel representing the parties are ad idem that these four revision petitions can, conveniently, be disposed of by a common order.

3. Some peculiar facts are required to be noticed. As many as four different suits for grant of specific performance of the agreement to sell were decreed by the trial Court on 16.08.1994. Four identical conditional decrees for specific performance of the agreement to sell were passed while permitting the decree holder to deposit the balance sale consideration in the Court within a period of 20

days and the defendant was directed to get the sale deed executed in favour of the plaintiffs.

However, the judgments and decrees passed by the trial Court were reversed on 24.11.1994 by the First Appellate Court, which led to filing of four regular second appeals. The High Court allowed three regular second appeals on 03.05.2018, whereas, the fourth one was allowed 24.05.2018. Resultantly, the decrees passed by the trial Court were restored. The decree sheets were prepared on 31. 05 .2018 and a copy thereof was supplied to the plaintiffs. They filed four execution petitions on 04.09.2018. On 07.09.2018, applications to deposit the amount were also filed.

The judgment debtors also filed an application under Section 28 of the Specific Relief Act, 1963 {hereinafter referred to as "the 1963 Act") for rescission of the contract on account of non-payment of the remaining sale consideration. The decree holder as permitted by the Court, deposited the decreetal amount in the Court on 07.09.2018. Consequently, on 16.08.2019, the Executing Court has dismissed the application for rescission of the contract. These four revision petitions have been filed for setting aside the orders dated 07.09.2018 and 16.08.2019."

5. The High Court proceeded to record the submissions canvassed by the parties as under:

"5. On one hand, the learned counsel representing the judgment debtors contends that as per the trial Court's judgment dated 16.08.1994, the amount was required to be deposited within a period of 20 days. Since the decree holders have failed to deposit the amount within the stipulated time, the contract was required to be rescinded. He further contends that the High Court, while allowing the regular second appeals, on 03.05.2018 and 24.05.2018, respectively, restored the judgment and decree passed by the trial Court.

He submits that at the most, the amount could be deposited within a period of 20 days from 03.05.2018 and 24.05.2018, respectively. Since the decree holders failed to deposit the amount, therefore, the contract should have been ordered to be rescinded. He, in support of his submission~, relies upon the judgment passed by the Supreme Court in Prem Jeevan v. K.S. Venkata Raman and Another 2017 (2) Civil Court Cases 1.

6. On the other hand, the learned counsel representing the decree holders submits that the trial Court has correctly extended the period and permitted the decree holders to deposit the amount as ordered in the conditional decree. He submits that a decree passed in favour of the decree holder cannot be permitted to be

defeated, unless the Court comes to a conclusion that the decree holder has intentionally failed to honour the conditional decree."

6. The High Court ultimately while rejecting all the four revision petitions held as under:

"12. From a careful examination of the aforesaid judgments, it is apparent that Section 28 of the 1963 Act enables the Executing Court to extend the period keeping in view the conduct of the parties. The Courts have also recognized that the decree passed by the trial Court stands merged with the decree passed by the Appellate Court. In this case, the High Court did not fix any time period for deposit of the amount. The application for execution was filed within a period of four months.

Immediately, on filing the execution petition, the decree holders have filed an application seeking permission to deposit the remaining amount, which has been allowed. Undoubtedly, the judgment debtors have filed the various applications for rescission of the contract before the amount was deposited, however, in the facts of the case, this Court does not find that there was any unreasonable delay particularly when the High Court did not fix any period for deposit of the amount.

The argument of learned counsel representing the petitioner that 20 days' period, as directed by the trial Court, shall revive, is to be examined in the facts of the present case. The decree passed by the trial Court stands merged with the judgment and decree passed by the High Court in the regular second appeal The question is "whether the decree holder willfully failed to deposit the amount under the decree particularly when the High Court did not fix the time for such payment or there was, in fact, unreasonable delay on part of the decree holder to deposit the amount?

13. In view of the detailed discussion here-in-before the aforesaid question is answered in the negative.

14. Keeping in view the facts of the case, it is not considered appropriate to conclude that the decree holders failed to honour the conditional decree. The trial Court has exercised its discretion prudently while extending the time and this Court does not find any reasonable ground to interfere with the order in the exercise of its revisional jurisdiction, which has been passed in accordance with law. Consequently, all the four revision petitions are dismissed."

7. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration whether the High Court committed any error in passing the impugned judgment and order? 8. The original decree in one of the suits reads thus:

"In view of the foregoing findings on the aforesaid issues, the suit of the plaintiff succeeds and it is hereby decree with costs in his favour for possession by way of specific performance of the agreement dated 5.4.1989 in respect of the suit land mentioned in para no.1 of the plaint and against the defendant. The plaintiff is directed to deposit the balance sale consideration in the court within the period of twenty days and all the defendant are directed to get the sale-deed executed in favour of the plaintiff in terms of the agreement on or before 15.9.1994. In default, the plaintiff shall be entitled to get the sale-deed executed and attested through the court. Decree sheet be prepared accordingly. File be consigned to the record room."

9. Identical decrees as above were filed in the other connected suits too.

10. Thus, the plain reading of the decree referred to above indicates that the plaintiff was directed to deposit the balance sale consideration in the court within a period of 20 days and the defendants, at the same time, were directed to execute the sale deeds in favour of the plaintiff.

11. Before the plaintiff could deposit the balance sale consideration as directed by the trial court within the stipulated time period of 20 days the defendants went in appeal before the district court. The appeals were preferred on 26th August 1994. The first appellate court allowed the appeals vide judgment and order dated 16th August 1994. Thus, the judgment and decree passed by the trial court granting specific performance came to be set aside.

12. In such circumstances referred to above the plaintiff went to the High Court and filed regular second appeals. All the second appeals came to be allowed vide judgment and order dated 03.05.2018 and the judgment and order passed by the appellate court came to be set aside and the original decree passed by the trial court granting specific performance came to be restored.

13. Against the judgment and order passed by the High Court in second appeals the defendants came to this court seeking leave to appeal. While the SLPs filed by the defendants were pending before this Court, the original plaintiff (decree holder) preferred execution petition on 04.09.2018.

14. The plaintiffs prayed for permission before the executing court to deposit the balance sale consideration and the same was granted by the executing court vide order dated 07.09.2018 on the very same day the plaintiff deposited the balance sale consideration.

15. On 18.01.2019 this Court dismissed all the SLPs filed by the defendants herein thereby affirming the judgment and order passed by the High Court in second appeals filed by the plaintiff.

16. On 04.04.2019 the defendants/judgment debtors filed an application under Section 28 of the Act to rescind the contract.

17. The executing court vide order dated 16th August 2019 rejected the application filed by the defendants under Section 28 of the Act referred to above.

18. What is important to note is that in 2019 the sale deeds were executed by the defendants in favour of the plaintiffs.

19. Vide the impugned judgment and order dated 23.09.2022 the challenge to the orders passed by the executing court dated 07.09.2018 and 16.08.2019 respectively also failed.

20. On 29.11.2022 the warrants of possession were issued for the purpose of execution of the decree.

21. On 07.12.2022 the execution petitions came to be dismissed as withdrawn as possession of the suit lands was handed over to the plaintiffs.

22. On 15.12.2022 this Court while issuing notice in the present SLPs stayed the further proceedings of the execution petitions. It appears that it was not brought to the notice of this Court that the execution petition had already been disposed of and the possession of the suit lands had also been handed over to the plaintiffs.

ANALYSIS:-

23. In view of the aforesaid, two questions of law fall for our consideration. First, the effect of merger of the trial court's decree with that of the decree passed by High Court in second appeals. Secondly, whether the defendants/ judgment debtors could have prayed for rescission of contract on the ground that the plaintiffs/ decree holders had failed to deposit the balance sale consideration within the stipulated time period of 20 days as prescribed in the original decree.

24. Section 28 of the Act reads as follows:

"28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.-

(1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by

order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

(2) Where a contract is rescinded under sub-section (1), the court-

(a) shall direct the purchaser or lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor, and

(b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and, if the justice of the case so requires, the refund of any sum paid by the vendee or lessee as earnest money or deposit in connection with the contract.

(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely-

(a) the execution of a proper conveyance or lease by the vendor or lessor;

(b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.

(5) The costs of any proceedings under this section shall be in the discretion of the court."

25. The present section corresponds to Section 35(c) of the Specific Relief Act, 1877 (hereinafter referred to as "the repealed Act") under which it was open to the vendor or lessor in the circumstances mentioned in that section to bring a separate suit for rescission; but this section goes further and gives to the vendor or lessor the right to seek rescission in the same suit, when after the suit for specific performance is decreed the plaintiff fails to pay the purchase money within the period fixed. The present section, therefore, seeks to provide complete relief to both the parties in terms of a decree for specific performance in the same suit without requiring one of the parties to initiate separate proceedings.

The object is to avoid multiplicity of suits. Likewise, under the present provision where the purchaser or lessee has paid the money, he is entitled in the suit for

specific performance to the reliefs as indicated in sub-section (3) like, partition, possession, etc. A suit for specific performance does not come to an end on passing of a decree and the court which has passed the decree for specific performance retains the control over the decree even after the decree has been passed.

26. The decree for specific performance has been described as a preliminary decree. The power under Section 28 of the Act is discretionary and the court cannot ordinarily annul the decree once passed by it. Although the power to annul the decree exists yet Section 28 of the Act provides for complete relief to both the parties in terms of the decree. The court does not cease to have the power to extend the time even though the trial court had earlier directed in the decree that payment of balance price to be made by certain date and on failure the suit to stand dismissed. The power exercisable under this section is discretionary. [See : Chanda (dead) through Lrs. v. Rattni and Anr. reported in (2007) 14 SCC 26]

27. As stated above upon the decision of the High Court in the second appeals filed by the plaintiffs (decree holders) there was a merger of the judgment of the trial court with the decision which was rendered by the High Court in the second appeals. Consequent upon the passing of the decree of the second appellate court, the decree of the trial court merges with that of the same.

28. The doctrine of merger is founded on the rationale that there cannot be more than one operative decree at a given point of time. The doctrine of merger applies irrespective of whether the appellate court has affirmed, modified or reversed the decree of the trial court. The doctrine has been discussed and explained succinctly by this Court in Surinder Pal Soni v. Sohan Lal (Dead) through Legal Representatives, (2020) 15 SCC 771.

29. In Kunhayammed v. State of Kerala, (2000) 6 SCC 359, while explaining the doctrine of merger, this Court held thus:

"12. The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When a decree or order passed by an inferior court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy.

Once the superior court has disposed of the lis before it either way - whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below. However, the doctrine is not of

universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject matter of challenge laid or which could have been laid shall have to be kept in view."

30. Further, while explaining the position that emerges on the grant of special leave to appeal by this Court, it was observed:

"41. Once a special leave petition has been granted, the doors for the exercise of appellate jurisdiction of this Court have been let open. The order impugned before the Supreme Court becomes an order appealed against. Any order passed thereafter would be an appellate order and would attract the applicability of doctrine of merger. It would not make a difference whether the order is one of reversal or of modification or of dismissal affirming the order appealed against. It would also not make any difference if the order is a speaking or non-speaking one."

31. This position of law has been affirmed and reiterated by a three-Judge Bench decision of this Court in Khoday Distilleries Ltd. v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd., (2019) 4 SCC 376.

32. The decision in Kunhayammed (supra) was followed by a three-Judge Bench decision of this Court in Chandi Prasad v. Jagdish Prasad, (2004) 8 SCC 724, which held thus:

"23. The doctrine of merger is based on the principles of propriety in the hierarchy of the justice delivery system. The doctrine of merger does not make a distinction between an order of reversal, modification or an order of confirmation passed by the appellate authority. The said doctrine postulates that there cannot be more than one operative decree governing the same subject-matter at a given point of time.

24. It is trite that when an appellate court passes a decree, the decree of the trial court merges with the decree of the appellate court and even if and subject to any modification that may be made in the appellate decree, the decree of the appellate court supersedes the decree of the trial court. In other words, merger of a decree takes place irrespective of the fact as to whether the appellate court affirms, modifies or reverses the decree passed by the trial court."

33. The decision in Chandi Prasad (Supra) was followed by a two-Judge Bench of this Court in Shanthi v. T.D. Vishwanathan, (2019) 11 SCC 419 : (2019) 4 SCC (Civ) 787, rendered on 24-10-2018 in the following terms:

"7. When an appeal is prescribed under a statute and the appellate forum is invoked and entertained, for all intents and purposes, the suit continues. When a higher forum entertains an appeal and passes an order on merit, the doctrine of

merger would apply. The doctrine of merger is based on the principles of the propriety in the hierarchy of the justice delivery system. The doctrine of merger does not make a distinction between an order of reversal, modification or an order of confirmation passed by the appellate authority. The said doctrine postulates that there cannot be more than one operative decree governing the same subject-matter at a given point of time."

34. Thus, once the High Court allowed the second appeals in favour of the plaintiffs, there was evidently a merger of the judgment of the trial court with the decision of the High Court. Once the High Court as an appellate court in second appeal renders its judgment it is a decree of the second appellate court which becomes executable hence, the entitlement of the decree holder to execute the decree of the second appellate court cannot be defeated.

35. The issue may be looked at from another perspective in terms of the provisions of Section 28 of the Act referred to earlier.

36. Interpreting the provisions of Section 28 of the Act, a three-Judge Bench of this Court held in Sardar Mohar Singh v. Mangilal, (1997) 9 SCC 217:

"4. From the language of sub-section (1) of Section 28, it could be seen that the court does not lose its jurisdiction after the grant of the decree for specific performance nor it becomes functus officio. The very fact that Section 28 itself gives power to grant order of rescission of the decree would indicate that till the sale deed is executed in execution of the decree, the trial court retains its power and jurisdiction to deal with the decree of specific performance.

It would also be clear that the court has power to enlarge the time in favour of the judgment-debtor to pay the amount or to perform the conditions mentioned in the decree for specific performance, in spite of an application for rescission of the decree having been filed by the judgment-debtor and rejected. In other words, the court has the discretion to extend time for compliance with the conditional decree as mentioned in the decree for specific performance."

37. In Bhupinder Kumar v. Angrej Singh, (2009) 8 SCC 766 : (2009) 3 SCC (Civ) 556, this Court held thus :

"21. It is clear that Section 28 gives power to the court either to extend the time for compliance with the decree or grant an order of rescission of the agreement. These powers are available to the trial court which passes the decree of specific performance. In other words, when the court passes the decree for specific performance, the contract between the parties is not extinguished. To put it clearly the decree for specific performance is in the nature of a preliminary decree and the suit is deemed to be pending even after the decree.

22. Sub-section (1) of Section 28 makes it clear that the court does not lose its jurisdiction after the grant of decree for specific performance nor it becomes functus officio. On the other hand, Section 28 gives power to the court to grant an order of rescission of the agreement and it has the power to extend the time to pay the amount or perform the conditions of decree for specific performance despite the application for rescission of the agreement/decree. In deciding an application under Section 28(1) of the Act, the court has to see all the attending circumstances including the conduct of the parties."

38. The learned counsel appearing on behalf of the respondents placed reliance on the decision in V.S. Palanichamy Chettiar Firm v. C. Alagappan, (1999) 4 SCC 702. While adverting to the decision of this Court in Ramankutty Guptan v. Avara, (1994) 2 SCC 642, the two-Judge Bench held:

"15. This Court observed that when the decree specifies the time for performance of the conditions of the decree, on its failure to deposit the money, Section 28(1) itself gives power to the court to extend the time on such terms as the court may allow to pay the purchase money or other sum which the court has ordered him to pay. The Court held, after noticing the conflict of decisions by the Bombay [Maruti Vishnu Kshirsagar v. Bapu Keshav Jadhav, 1969 SCC OnLine Bom 39 : AIR 1970 Bom 398] High Court and the Andhra Pradesh [Ibrahim Shariff v. Masthan Shariff, 1966 SCC OnLine AP 251 : (1967) 2 An WR 60] High Court, that when the court which passed the decree and the executing court is the same, application under Section 28 can be filed in the executing court.

However, where a decree is transferred for execution to a transferee executing court then certainly the transferee court is not the original court and the executing court is not the "same court" within the meaning of Section 28 of the Act. But when an application has been made in the court in which the original suit was filed and the execution is being proceeded with, then certainly an application under Section 28 is maintainable in the same court."

39. In the above case, the facts before this Court were that an agreement to sell had been executed nineteen years earlier on 16-2-1980 and no explanation was forthcoming as to why the balance of the sale consideration was not deposited within the time granted by the court. No application for extension was made under Section 28 of the Act. This Court observed that merely because a suit was filed within a period of three years prescribed by Article 54 of the Limitation Act, 1963, that did not absolve the vendee-plaintiff from demonstrating that he was ready and willing to perform the agreement and whether the non-performance was on account of obstacles placed by the vendor or otherwise. In that context, this Court held:

"17. The court has to see all the attendant circumstances including if the vendee has conducted himself in a reasonable manner under the contract of sale. That being the position of law for filing the suit for specific performance, can the court, as a matter of course, allow extension of time for making payment of balance amount of consideration in terms of a decree after 5 years of passing of the decree by the trial court and 3 years of its confirmation by the appellate court? It is not the case of the respondent decree-holders that on account of any fault on the part of the vendor judgment-debtor, the amount could not be deposited as per the decree.

That being the position, if now time is granted, that would be going beyond the period of limitation prescribed for filing of the suit for specific performance of the agreement though this provision may not be strictly applicable. It is nevertheless an important circumstance to be considered by the Court. That apart, no explanation whatsoever is coming from the respondent decree-holders as to why they did not pay the balance amount of consideration as per the decree except what the High Court itself thought fit to comment which is certainly not borne out from the record. Equity demands that discretion be not exercised in favour of the respondent decree-holders and no extension of time be granted to them to comply with the decree."

40. The facts noted in the above extract from the judgment indicate a situation which is factually distinct. In that case, the balance of the sale consideration was sought to be deposited three years after the confirmation of the decree by the appellate court. In the present case the balance sale consideration came to be deposited immediately after the second appeals came to be allowed by the High Court in 2018 by seeking permission of the executing court.

41. In a given case the trial court while passing a conditional decree in a suit for specific performance may say so in so many words that if the plaintiff fails to deposit the balance sale consideration within a particular period of time stipulated by the court while allowing the suit, the failure to make such deposit within the time prescribed would have the effect of dismissal of suit. In other words, there could be a decree which may say that if the plaintiff fails to deposit the balance sale consideration within the stipulated time period, the suit shall automatically stand dismissed.

If such is the nature of the decree then will the court concerned become "functus officio" and would have no jurisdiction to grant extension of time fixed by the decree for the purpose of deposit? This is one issue that the Supreme Court one day in an appropriate case may have to consider and decide. We say so because there are conflicting views of different High Courts, including to some extent of this Court. In the present case, it is not necessary for us to look into and decide this issue because the decree is not of such a nature.

42. In the case of Mahanth Ram Das v. Ganga Das, AIR 1961 SC 882, this Court has taken the view that Section 148 of the Code of Civil Procedure (C.P.C.) empowers the Court to deal with events that might arise subsequent to an order, for the purpose of enlarging time for payment even though it had been peremptorily fixed, but in that connection the Court observed as follows:

"Such procedural orders, though peremptory (conditional decrees apart) are, in essence, in terrorem, so that dilatory litigants might put themselves in order and avoid delay. They do not, however, completely estop a Court from taking note of events and circumstances which happen within the time fixed."

43. The aforesaid gives an impression whilst laying down, in effect, that s. 148 must be liberally construed, the Court has excluded from its ambit conditional decrees.

44. It is well settled position of law that when time for payment of money is extended, it does not mean a modification of the decree. The trial court has power to extend the time, and the expression "such further period as the court may allow" would mean the court which had passed the decree, or, where the application under Section 28 of the Act of 1963, is filed.

45. In the case of Sardar Mohar Singh (supra), this Court had held that the Court does not lose its jurisdiction after the grant of decree for specific performance nor it becomes functus officio. This Court had further held that the very fact that Section 28 of the Act itself gives power to grant order of rescission of the decree, the same would indicate that till the sale deed is executed in execution of the decree, the Trial Court retains its power and jurisdiction to deal with the decree of specific performance. The Court has the discretion to extend time for compliance of the conditional decree as mentioned in the decree for specific performance.

46. One very unusual contention was raised by the learned counsel appearing for the appellant as regards the failure on the part of the decree-holder(plaintiff) to deposit the balance sale consideration within 20 days from the date of the judgment passed by the High Court in second appeal. The argument is that the trial court while allowing the suit filed by the plaintiff for specific performance had specifically directed that the plaintiff shall deposit the balance sale consideration with the court within 20 days from the date of the judgment passed by the trial court. According to the learned counsel this very decree passed by the trial court came be affirmed by the High Court in second appeal and, therefore, the plaintiff was obliged to deposit the balance sale consideration within 20 days from the date the High Court delivered its judgment in second appeal. This argument proceeds applying the doctrine of Merger.

47. We do not find any merit in the aforenoted submission canvased on behalf of the appellant herein.

48. In the aforesaid context, we may refer to the observations made by the Chief Justice M.C. Chagla (as His Lordship then was) in the case of Commissioner of Income Tax, Bombay v. Tejaji Farasram reported in AIR 1954 BOM 93. We quote the relevant observations as under:

"It is a well established principle of law that when an appeal is provided from a decision of a tribunal and the appeal Court after hearing the appeal passes an order, the order of the original Court ceases to exist and is merged in the order of the appeal Court, & although the appeal Court may merely confirm the order of the trial Court, the order that stands and is operative is not the order of the trial Court but the order of the appeal Court."

49. The doctrine of Merger or the Merger doctrine in civil proceedings is a common law doctrine that stems from the idea of maintenance of the decorum of the hierarchy of courts and tribunals. The Court in the case of Gojer Bros. (Pvt.) Ltd. v. Ratan Lal Singh reported in (1974) 2 SCC 453 correctly summed up the meaning of the doctrine as "the doctrine is based on the simple reasoning that there cannot be, at the same time, more than one operative order governing the same subject matter". To put it simply, if there are two orders passed on the same subject matter, that is, one passed by a subordinate court like a tribunal and another passed by a superior court like the High Court, the operative part of the order by the subordinate court (tribunal in this instance) may be merged with the order of the High Court.

50. In the case of Commissioner of Income Tax, Bombay v. Amritlal Bhogilal & Co. reported in (1958) 34 ITR 130, this Court in para 10 observed as under:

"10. There can be no doubt that, if an appeal is provided against an order passed by a tribunal, the decision of the appellate authority is the operative decision in law. If the appellate authority modifies or reverses the decision of the Tribunal, it is obvious that it is the appellate decision that is effective and can be enforced. In law, the position would be just the same even if the appellate decision merely confirms the decision of the Tribunal. As a result of the confirmation or affirmance of the decision of the tribunal by the appellate authority, the original decision merges in the appellate decision and it is the appellate decision alone that subsists and is operative and capable of enforcement."

51. Thus, the Supreme Court merely reiterated the observation of Bombay High Court in the case of Tejaji Farasram (supra) and stated that the hierarchy of courts and tribunals is to be maintained when the decision is reversed by the superior

court and even when the superior court merely affirms the decision of the subordinate court.

52. Thus, the High Court while allowing the second appeal filed by the original plaintiff had not issued any specific direction as regards the deposit of the balance sale consideration within a particular period of time. It is incorrect on the part of the appellant herein to say that since the trial court had directed that the balance sale consideration shall be deposited within 20 days, the same direction would be applicable even after the judgment of the High Court in second appeal.

53. Before we close this matter, we must deal with the judgment of this Court in the case of Prem Jeevan vs. K.S. Venkata Raman and Another reported in (2017) 11 SCC 57 on which strong reliance has been placed by the learned counsel appearing for the appellants herein. In the said case a decree for specific performance was granted in favour of the plaintiff as follows:

"In the result, the suit of the plaintiff is decreed with costs directing Defendant 1 to execute and register sale deed in favour of the plaintiff in respect of the suit schedule property within two months from the date of this order after receipt of balance sale consideration of Rs 10,50,000 (sic with interest) at 6% per annum from 27-9-2002 i.e. from the date of agreement of sale. It is further decreed that in case Defendant 1 refuses to receive the balance sale consideration with interest the plaintiff is at liberty to deposit the said amount into the Court and to obtain regular sale deed through Court."

54. The plaintiffs therein claimed to have issued a cheque on 04.12.2008 for the amount in question but the same was returned as not accepted by the judgment debtor, who was the appellant before this Court. Thereafter the decree holders applied for execution sometime in the year 2010, after making the deposit of the decretal amount on 07.10.2010. The judgment debtor filed an application before the executing court objecting to the execution of the decree as the amount in question was not deposited by the decree holders within the stipulated time, rendering the decree inexecutable in the absence of extension of time.

55. The executing court upheld the objection holding as under:

"There is no documentary proof to show that he sought enlargement of time for paying the purchase money under Section 28(1) of the 1963 Act. Without seeking extension of time the respondent herein filed this EP on 7-10-2010 i.e. after a period two years two months. As per the decision in Suggula Venkata Subrahmanyam v. Desu Venkata Rama Rao [Suggula Venkata Subrahmanyam v. Desu Venkata Rama Rao, (2010) 5 ALD 807 : 2010 SCC OnLine AP 670] the execution petition for obtaining specific performance is not maintainable."

56. On a revision having been filed by the decree holders the High Court reversed the order of the executing court and held as under:

"17. The executing court was not clear, both as regards the facts and as to law. On facts, it did not take into account, the real purport of the decree. The relevant portion has already been extracted. The stipulation of two months was for the first respondent to execute the decree. That stipulation, no doubt, is coupled with the right to receive the balance of consideration. There was nothing on record to indicate that he ever made any effort to collect or demand the balance of consideration from the petitioner, within that time.

The plea of the petitioner that when he offered the amount, the respondents refused to receive; remained unrebutted. The first respondent did not file any rejoinder to the counter-affidavit. As observed in the preceding paragraphs, the executing court did not record any evidence of the parties. Therefore, the finding recorded by the trial court, in this behalf, cannot be sustained. When valuable rights accrued to a party, on account of the suit for specific performance being decreed, they cannot be taken away, on the basis of such an untenable finding.

18. On the aspect of law, the executing court proceeded as though Section 28 of the Act gets attracted, though it did not mention in so many words. Firstly, the first respondent himself did not invoke that provision. Secondly, the provision gets attracted only where, (a) the court, which passed the decree, directs the decree-holder to pay the purchaser money (balance of consideration) within a period, stipulated by it, and (b) the decree-holder failed to comply with the direction. It is then, and only then, that the court can consider the feasibility of directing rescission of contract. In the instant case, the time stipulated by the trial court in its decree was for the first respondent to execute the decree, and not directly for the petitioner to deposit the amount.

19. There is nothing on record to disclose that the first respondent has ever made any effort to receive the amount, stipulated in the decree. On the other hand, the plea of the petitioner that, when he offered to pay the amount, the first respondent did not receive the same; remained unrebutted. The court must ensure strict compliance with the conditions stipulated in a provision, which has the effect of nullifying a decree. Even where two views are possible on the facts of the case, the one, which would sustain the decree, must be adopted."

57. This Court looked into Order XX Rule 12-A C.P.C. which provides that in every decree of specific performance of a contract, the court has to specify the period within which the payment has to be made. In the said case the period was two months from the date of the decree. The Court took notice of the fact that in the absence of the said time being extended, the decree holder could execute the decree only by making the payment of the decretal amount to the judgment

debtor or making the deposit in the court in terms of the said decree. This Court also took notice of the fact that neither the said deposit was made within the stipulated time nor extension of time was sought or granted and also no explanation had been furnished for the delay in making of the deposit.

58. In such circumstances referred to above, this Court rejected the contention advanced on behalf of the decree holders that unless the judgment debtor seeks rescission of the contract in terms of Section 28 of the Act, the decree would remain executable in spite of expiry of the period for deposit.

59. This Court while allowing the appeals filed by the judgment debtor held that although Section 28 of the Act permits the judgment debtor to seek rescission of a contract and also permits extension of time by the court yet merely because rescission of contract was not sought by the judgment debtor would not automatically result in extension of time. Thus, the decision of this Court in Prem Jeevan (supra) was altogether in a different factual scenario. The same is of no avail to the appellants herein.

60. In the overall view of the matter, we are convinced that the High Court committed no error much less any error of law in passing the impugned judgment.

61. In the result, the appeals fail and are hereby dismissed.

.....J. (J.B. Pardiwala)

.....J. (R. Mahadevan)

New Delhi;

January 17, 2025

IN THE SUPREME COURT OF INDIA

Ivan Rathinam
Vs.
Milan Joseph

[Criminal Appeal No. 413 of 2025
arising out of SLP (Crl.) No. 4917 / 2018]

HEADNOTE – A child's legitimacy determines paternity, emphasizing that a child born during a valid marriage is presumed to be the legitimate offspring of parents who had access to each other at the time of conception.

The legitimacy and paternity are not distinct concepts and not requiring separate determination. Legitimacy and paternity are inherently intertwined, as the legitimacy of a child directly establishes paternity. If it is proven that the married couple had access to each other at the time of the child's conception, the child is deemed legitimate, thereby establishing the paternity of the couple.

Family Court lacks jurisdiction to entertain a plea for paternity claim from the extra-marital affairs.

JUDGMENT

Surya Kant, J.

1. Leave granted.

2. The instant appeal impugns the judgment dated 21.05.2018 passed by a Single Judge of the Kerala High Court (Ernakulam) (High Court), upholding the Family Court's order dated 09.11.2015 reviving a maintenance petition on the following grounds: (i) paternity and legitimacy are independent concepts in law; (ii) the Civil Courts did not have jurisdiction to entertain the original suit; and (iii) since only the Family Court can determine maintenance and legitimacy, the Family Court could proceed to determine paternity as incidental to the maintenance proceedings.

A. FACTS

A.1 First round of litigation

3. Since the instant appeal arises out of a long-drawn saga, during which multiple rounds of litigation occurred inter-se the parties before various fora, including

this Court, it is necessary to narrate the factual events before delving into the legal issues raised before us.

3.1 It is a matter of record that the Respondent's mother married Mr. Raju Kurian on 16.04.1989. In 1991, a daughter was born from this wedlock. Subsequently, the Respondent was born on 11.06.2001. Immediately after the Respondent's birth, Mr. Raju Kurian's name was entered as the 'father' of the Respondent in the Register of Birth maintained by the Municipal Corporation of Cochin. Owing to differences between them, in 2003, the Respondent's mother and Mr. Raju Kurian began residing separately. Shortly thereafter, they moved a joint application for divorce, which was granted by the Family Court in 2006.

The Respondent's mother then approached the Municipal Corporation of Cochin, requesting the authorities to enter the Appellant's name in the Register of Birth, as the father of the Respondent, in place of Mr. Raju Kurian's name. She allegedly reasoned that such a request was being made on the basis that she had been involved in an extra-marital relationship with the Appellant, due to which the Respondent was begotten. In response, the Corporation authorities expressed that they would be able to grant such a request only if directed to do so by a court of law.

3.2 Consequently, the Respondent and his mother filed OS No. 425/2007 (Original Suit) before the First Additional Munsiff Court, Ernakulam (Munsiff Court) seeking a decree declaring the Appellant to be the Respondent's father and a mandatory injunction directing the Appellant to submit an application to include his name as the Respondent's father in the relevant registers. Subsequently, the Respondent and his mother also moved an application seeking a direction to the Appellant to undergo a DNA test to prove his paternity.

3.3 The Munsiff Court directed the Appellant, on 03.11.2007, to undergo the paternity test. This direction was substantiated on the ground that, considering no matrimonial relationship subsisted between the Respondent's mother and the Appellant, the presumption under Section 112 of the Indian Evidence Act, 1872 could not be drawn.

3.4 In the same year, the Respondent filed MC No. 224/2007 (Maintenance Petition) under Section 125 of the Code of Criminal Procedure, 1973 (CrPC) before the Family Court, Alappuzha (Family Court) claiming maintenance from the Appellant, on the ground that he was his biological father. The Respondent filed the Maintenance Petition through his mother as he was a minor at that time. It is pertinent to note that Mr. Raju Kurian was not made a party to the Original Suit or the Maintenance Petition.

3.5 In this backdrop, having been aggrieved by the Munsiff Court's order dated 03.11.2007, the Appellant filed WP (C) No. 37165/2007 before the High Court. On 18.03.2008, a Single Judge of the High Court: (i) disposed of the said Writ Petition; (ii) set aside the order dated 03.11.2007; and (iii) directed the Munsiff Court to consider the matter in light of this Court's judgment in Sharda v. Dharmpal,[1] which laid down that a court could order a paternity test only if the presumption under Section 112 of the Indian Evidence Act, 1872 was displaced by proving non-access.

The High Court further noted that it was well within the power of the court to direct a person to undergo a DNA test but that power could be exercised only if the applicant made out a strong prima facie case through sufficient material placed on record. In this regard, it noted that such an in-depth analysis had, however, not been conducted by the Munsiff Court.

3.6 The Appellant then filed Review Petition No. 411/2008 before the High Court, contending that the correct law was laid down in Kamti Devi v. Poshi Ram,[2] wherein this Court held that the results of a genuine DNA test would be insufficient to escape the conclusiveness of Section 112 of the Indian Evidence Act, 1872, especially when the spouses had access to each other. The Review Petition came to be decided by another Single Judge of the High Court on 03.07.2008, who allowed the same and disposed of the Writ Petition while clarifying that the court cannot permit a DNA test unless, after adducing evidence, it was convinced that the relevant stakeholders-the Respondent's mother and Mr. Raju Kurian- had no access to each other when the Respondent was begotten.

3.7 This prompted the Respondent and his mother to prefer SLP (C) No. 20951/2008 before this Court, challenging the order dated 03.07.2008. This Court, on 14.09.2009, dismissed the same stating that no grounds to interfere were made out.

3.8 Approximately a year later, on 15.10.2009, the Munsiff Court dismissed the Original Suit with costs. The Munsiff Court held that there was no need to refer the parties to a DNA test as a valid marriage subsisted between the Respondent's mother and Mr. Raju Kurian when the Respondent was begotten. Further, it was emphasized that they had been living as spouses under the same roof, from the date of their marriage until 2003, well after the Respondent's birth. The Munsiff Court, thus, held that since the Respondent's mother failed to prove non-access between herself and Mr. Raju Kurian, the Respondent would be presumed to be their legitimate son.

3.9 Thereafter on 05.02.2010, in view of the Munsiff Court's order dated 15.10.2009, the Family Court closed the Maintenance Petition. However, the

court imposed a condition permitting the revival of the Maintenance Petition if the Respondent or his mother filed an appeal or revision against the Munsiff Court's order, and the appeal or revision thereafter favoured them.

3.10 The Respondent and his mother then preferred AS No. 150/2010 (First Appeal) before the III Additional Sub-Judge, Ernakulam (Sub-Judge), against the Munsiff Court's decision dated 15.10.2009. However, the First Appeal was dismissed with costs vide the order dated 21.02.2011. The Sub-Judge based his decision on three prongs:

(i) Mr. Raju Kurian would not have signed the consent letter, as the husband of the Respondent's mother, in the hospital when the Respondent was born, if they had an estranged marital relationship;

(ii) the Respondent's mother and Mr. Raju Kurian were living together as spouses long before, during, and even after the Respondent's birth; and

(iii) the letters produced by the Respondent's mother, where she claimed the Appellant admitted his paternity, were not proved to be written by the Appellant and thus, could not be relied upon. In this manner, the Sub-Judge held that the evidence adduced was insufficient to uproot the presumption of legitimacy under Section 112 of the Indian Evidence Act, 1872.

3.11 The Respondent and his mother then filed RSA No. 973/2011 (Second Appeal) before the High Court, assailing the Sub-Judge's order. A Single Judge of the High Court dismissed the Second Appeal vide the judgment dated 28.10.2011. The Single Judge held that when the husband and wife were living under one roof, non-access could not be pleaded as they had the opportunity for a marital, sexual relationship.

Further, the Single Judge noted that the conclusiveness of Section 112 could not be watered down merely because the mother was alleging paternity on someone other than her husband, especially when the husband was not a party to the proceedings. It is imperative to note that this order has not been challenged in any further proceedings since and has attained finality.

A.2 Second round of litigation

3.12 It seems that the dispute then attained quietus for some years, only to be resumed in 2015 when the Respondent filed an application before the Family Court, seeking to revive the Maintenance Petition. The reasons recorded in the said application were that the Respondent was facing various health issues and had undergone several surgeries, which he and his mother were unable to afford. Further, the Respondent claimed that he had also not been receiving any

maintenance from Mr. Raju Kurian either for his medical or educational expenses.

3.13 On 09.11.2015, the Family Court revived the Maintenance Petition and allowed Mr. Raju Kurian to be impleaded as a party respondent. In its order, the Family Court observed that after the enactment and effectuation of the Family Courts Act, 1984, the Family Court, alone, had the jurisdiction to adjudicate a dispute regarding maintenance and the legitimacy of a person. It further highlighted that these matters are covered by explanation (e) and (f) of Section 7 of the Family Courts Act, 1984. As a result, the Family Court held the order passed by the Munsiff Court to be devoid of jurisdiction.

As a corollary thereto, it was elucidated that the Family Court was not bound by its earlier order dated 05.02.2010 as the Munsiff Court lacked the jurisdiction to entertain the Original Suit. Lastly, the Family Court observed that since the question in a proceeding under Section 125 of the CrPC does not concern legitimacy, the earlier orders of the Munsiff Court, the Sub-Judge, and the High Court would not impede the Family Court from determining the question of paternity.

3.14 Challenging this order of the Family Court, the Appellant filed Crl. (OP) No. 420/2015 before the High Court. In this regard, the Appellant contended that the Respondent was not entitled to institute a revival memo owing to the Family Court's order dated 05.02.2010, imposing a condition on itself to reopen the case. Further, the Appellant contended that since the Original Suit was filed for a declaration of paternity and the order dated 28.10.2011 had attained finality, the issue in question had already been decided by a court of competent jurisdiction and could not be re-agitated.

3.15 The High Court, vide the impugned judgment dated 21.05.2018, primarily determined that: (i) the legitimacy of birth was irrelevant when considering the right of the child to receive maintenance from their biological father; (ii) the presumption of legitimacy does not prevent an enquiry into the true paternity of a child; (iii) since 'paternity' and 'legitimacy' operate in different spheres, a declaration on the legitimacy of a child by a Civil Court would not impede an enquiry into 'paternity' by the Family Court, for the purpose of determining maintenance; and (iv) the Civil Courts lacked jurisdiction to determine the legitimacy of the Respondent, owing to the exclusive jurisdiction of the Family Court.

3.16 Thus, aggrieved by this decision, the Appellant preferred the instant appeal.

B. CONTENTIONS OF THE PARTIES

4. Mr. Romy Chacko, Learned Senior Advocate, appearing on behalf of the Appellant, contended that the High Court erred in its decision and adduced the following submissions:

(a) Since the Respondent failed to prove non-access between the spouses when the Respondent was begotten, there is conclusive proof that the Respondent is the legitimate child of Mr. Raju Kurian. When legitimacy is established, the Respondent can claim maintenance only from his 'legitimate' father, not a third-party, whom he claims to be his biological father. Consequently, under such circumstances, the Appellant could not be ordered to undergo a DNA test.

(b) The prayer in the Original Suit was for a declaration that the Appellant is the Respondent's father, thus, making it a suit for determining paternity. Since this issue was decided concurrently by three courts, the question pertaining to paternity could not have been reopened under the guise of 'maintenance' by the Family Court. In any case, the condition permitting reopening had not been fulfilled.

5. Per contra, Mr. Shyam Padman, Learned Senior Advocate, appearing on behalf of the Respondent, put forth the following submissions:

(a) It is well-settled that 'paternity' and 'legitimacy' are distinct concepts. While legitimacy can be determined through a legal presumption, paternity is a matter of science. Thus, a civil suit concerning the presumption of legitimacy under Section 112 would not have any bearing on the determination of 'paternity.' Further, it is in the best interests of the child that the Appellant undergoes a DNA test, as the child has the right to know his real parentage and accrue the rights emanating therefrom.

(b) Paternity, as a concept, is intrinsically connected with maintenance; and maintenance can be claimed from the biological father even when the child is illegitimate. Since maintenance can only be decided by the Family Court, under explanation (f) of Section 7 of the Family Courts Act, 1984, it is well within its jurisdiction to also determine paternity when posed with the question of maintenance.

(c) The Family Court was entitled to revive the Maintenance Petition because the condition for its revival was bad in law as legitimacy and paternity are different concepts, independent of each other. Thus, the revival of the Maintenance Petition concerning paternity, could not be determined based on a finding of legitimacy in a civil suit.

C. ISSUES

6. Having given our thoughtful consideration to the submissions at length, the following issues arise for the consideration of this Court:

i. Whether the presumption of legitimacy, if not displaced, determines paternity in law?

ii. Whether the Civil Court had the jurisdiction to entertain the Original Suit; and accordingly, whether the Family Court was entitled to reopen the Maintenance Petition?

iii. Whether the second round of litigation, initiated by the Respondent, was barred by the principle of res judicata?

D. ANALYSIS

D.1 Issue No. 1: Displacing the presumption of legitimacy and permitting a DNA test

7. The issue herein is regarding the effect of the conclusive presumption of legitimacy, how it can be displaced, and under what circumstances a court may order a DNA test. To this end, the Appellant argued that the presumption of legitimacy is conclusive until it is rebutted by leading evidence reflecting non-access between the spouses when the child was begotten.

Only when non-access is made out, the court may order a DNA test. The Appellant further argued that the result of such a DNA test may bastardize an innocent child and violate the right to privacy and dignity of the persons involved. An order for a DNA test, therefore, must be resorted to sparingly. In support of these contentions, the Appellant cited decisions such as Aparna Ajinkya Firodia v. Ajinkya Arun Firodia,[3] Ashok Kumar v. Raj Gupta,[4] and Goutam Kundu v. State of W.B.,[5] among others.

8. Per contra, the Respondent argued that even a positive finding by a Court regarding the legitimacy of a child would not be sufficient to prove paternity for the purpose of maintenance. Further, the Respondent argued that Courts have ordered DNA tests because it is within the best interests of the child to know their biological father. In support of their contentions, the Respondent cited decisions such as Dipanwita Roy v. Ronobroto Roy[6] and Bhabani Prasad Jena v. Orissa State Commission for Women.[7]

9. We are of the considered view that this issue hinges on two primary prongs requiring detailed analysis:

(i) the difference between legitimacy and paternity, and consequently, the circumstances under which the presumption of legitimacy is displaced to permit an enquiry into paternity; and

(ii) the exercise of 'balancing of interests' and evaluating the eminent need for a DNA test.

D.1.1 Displacing the notion of legitimacy

10. The Respondent has vehemently argued that 'legitimacy' and 'paternity' are different concepts-the former being rooted in law while the latter is rooted in science. The High Court upheld this view and thereby, permitted the revival of the maintenance proceedings as an enquiry into 'paternity,' not 'legitimacy.'

11. In this vein, we agree that scientifically and technically, a legitimate child, i.e. one born during the subsistence of a valid marriage between two persons, may not always be the biological child of the persons in the marriage. In our view, it would be possible and easy to contemplate such a situation arising, which leads us to the postulation that in a more technical sense, the terms 'legitimacy' and 'paternity' may indeed undertake different meanings.

12. The question that, however, arises is whether the law contemplates and accepts such a differentiation. To answer this, we deem it appropriate to investigate the law governing the presumption of 'legitimacy' and 'paternity' globally, followed by its analysis in India.

D.1.1.1 Position in the UK

13. The presumption of legitimacy comes from the maxim, "pater est quem nuptiae demonstrant" which means, "he is the father whom the marriage indicates to be so." Since time immemorial, English Courts upheld that where a husband and wife cohabited and no evidence of impotency was forthcoming, the child is conclusively presumed to be legitimate even though the wife is known to have been guilty of infidelity.[8] To date, the presumption that a child born in wedlock is legitimate, has held the floor.[9] Earlier, the courts held that evidence from the spouses to disprove legitimacy was inadmissible.[10] Over time, this strict rule was relaxed and the parties were permitted to rebut this presumption by claiming nonaccess and leading evidence accordingly.[11]

14. Advances in science and social transformation led to the passing of the Family Law Reform Act, 1969.[12] It was later replaced by the Family Law Reform Act, 1987.[13] Initially, the presumption of legitimacy could only be rebutted by proof beyond reasonable doubt.[14] However, by virtue of section 26 of the 1969 Act, the presumption could be rebutted on a simple balance of probabilities.[15] This legislation also empowered the courts to conduct paternity

tests to determine the biological father of the child,[16] even without the guardian's consent.[17]

15. Any person could apply to the High Court for a declaration as to whether that person is the parent of another person.[18] The court may refuse to hear the application if it considers that the determination of the application would not be in the best interests of the child. Despite this, the Family Court has continued to uphold the rule that 'access' must be proved with cogent evidence, and that it is insufficient to merely show that opportunities for sexual intercourse existed.[19]

16. Thus, in England, the presumption of legitimacy exists to date. As illustrated, it can be rebutted by claiming non-access and leading evidence to prove so by a simple balance of probabilities. Additionally, the claims of infidelity or adultery, in and of itself, would be insufficient to rebut the presumption of legitimacy.

D.1.1.2 Position in the United States of America

17. In the United States, State laws presume that a child born in wedlock is the natural, legitimate child of the mother's husband. However, the rules concerning the presumption of legitimacy and the evidence necessary to rebut it vary from State to State. As a result, the US Supreme Court has had few opportunities to discuss the 'marital presumption.'

For instance, the US Supreme Court dealt with a case where the respondent claimed to be the biological father of the children, though they were conceived during the subsistence of a valid marriage between the appellants. Despite the Californian Evidence Code permitting the results of DNA tests to be admitted into evidence to determine paternity, the US Supreme Court noted that the law retained a strong bias against ruling the children of married women illegitimate.[20]

18. In response to the need for new legislation eliminating the legal differentiation between 'legitimate' and 'illegitimate' children, the Uniform Parentage Act, 1973[21] was promulgated. This Act was later amended in 2002 and 2017. The aforementioned Act incorporates the presumption of paternity in circumstances such as:[22]

(i) where there is a marriage between the presumed father and the mother at the time of the child's birth;

(ii) where the marriage was terminated no more than 300 days prior to the child's birth; and

(iii) where the presumed father and the mother got married after the child's birth. Only one father, however, may trigger the marital presumption.

19. All States continue to recognize at least a rebuttable presumption that a child born within marriage is the child of the husband,[23] but continue to limit the circumstances in which it may be rebutted.[24] Several States grant the biological father a right to rebut the presumption and establish a relationship with the child.[25] Courts in other States apply the marital presumption based on a 'best interest' analysis, i.e. they will not allow the presumption to be rebutted unless it is in the child's interests. These rulings often result in decisions upholding the marital presumption.[26]

20. The courts in USA and England thus, seem to maintain a strong bias towards the presumption of legitimacy. Nonetheless, both jurisdictions have enacted specific provisions governing the procedure to order DNA tests when the legitimacy of a child comes under challenge. However, this presumption is moulded as the foundation for these provisions and cannot be displaced by mere allegations or suspicion. The court can order a DNA test only after cogent and reliable evidence is led to prove illegitimacy and if the test is in the 'best interests' of the child.

D.1.1.3 Position in Malaysia

21. We also find it fruitful to look into the position regarding the presumption of legitimacy in Malaysia as they have extensively borrowed the language of Section 112 of the Indian Evidence Act, 1872. To compare the progress between the two jurisdictions, it would prove beneficial to look into Malaysia's Evidence Act, 1950.

22. In Malaysia, the court presumes the child to be legitimate if:

(i) a valid marriage existed between the presumed parents; and

(ii) the child was born during the subsistence of a valid marriage or within 280 days of its dissolution. This presumption can be rebutted by proving non-access when the child could have been conceived.

23. The courts generally refuse to order DNA testing when the child is born during a valid marriage between the parties, and especially when the applicant fails to prove a lack of sexual access between them.[27] However, if the parties undergo a DNA test voluntarily, the results of such a test can be admitted into evidence to determine paternity.[28]

24. Here, we notice a consonance between the laws in all three jurisdictions. While the courts have the authority to direct the parties to undergo a DNA test if a case for non-access is made out, the courts may also utilize the results of a voluntarily-conducted DNA test to displace the presumption. However, the

standard of proof required in Malaysia seems to be higher than a mere balance of probabilities.

D.1.1.4 Position in India

25. The above analysis makes it clear that courts around the globe have recognized the theoretical difference in 'paternity' and 'legitimacy' to the extent that in the Venn diagram of paternity and legitimacy, legitimacy is not an independent circle, but is entombed within paternity. After adverting to the position of 'paternity' and 'legitimacy' in various foreign jurisdictions, it is imperative to evaluate the position in India in light of the unique factual matrix of the instant appeal.

26. The advent of scientific testing has made it much easier to prove that a child is not a particular person's offspring. To this end, Indian courts have sanctioned the use of DNA testing, but sparingly.

27. Before delving into the analysis, it is pertinent to elucidate Section 112 of the Indian Evidence Act, 1872:

"112. Birth during marriage, conclusive proof of legitimacy. The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten."

28. The language of the provision makes it abundantly clear that there exists a strong presumption that the husband is the father of the child borne by his wife during the subsistence of their marriage. This section provides that conclusive proof of legitimacy is equivalent to paternity.[29] The object of this principle is to prevent any unwarranted enquiry into the parentage of a child. Since the presumption is in favour of legitimacy, the burden is cast upon the person who asserts 'illegitimacy' to prove it only through 'non-access.'

29. It is well-established that access and non-access under Section 112 do not require a party to prove beyond reasonable doubt that they had or did not have sexual intercourse at the time the child could have been begotten. 'Access' merely refers to the possibility of an opportunity for marital relations.[30]

To put it more simply, in such a scenario, while parties may be on non-speaking terms, engaging in extra-marital affairs, or residing in different houses in the same village, it does not necessarily preclude the possibility of the spouses having an opportunity to engage in marital relations.[31] Non-access means the impossibility, not merely inability, of the spouses to have marital relations with

each other.[32] For a person to rebut the presumption of legitimacy, they must first assert non-access which, in turn, must be substantiated by evidence.

30. It is only when such an assertion is made, that the court can consider the question of ordering a DNA test to establish paternity. In Goutam Kundu v. State of W.B. (supra), this Court laid down the following parameters to decide whether a court can order a DNA test for the purposes of Section 112:

"(1) that courts in India cannot order blood test as a matter of course;

(2) wherever applications are made for such prayers in order to have roving inquiry, the prayer for blood test cannot be entertained.

(3) There must be a strong prima facie case in that the husband must establish non-access in order to dispel the presumption arising under Section 112 of the Evidence Act.

(4) The court must carefully examine as to what would be the consequence of ordering the blood test; whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman.

(5) No one can be compelled to give sample of blood for analysis."

31. These parameters have been subsequently followed by this Court in Sharda v. Dharmpal (supra) and Bhabani Prasad Jena v. Orissa State Commission for Women (supra). In these cases, it was held that DNA tests may be ordered, only if a strong prima facie case of non-access is made out, with sufficient material placed before the court to arrive at a decision.

32. In the case at hand, it is an admitted fact that when the Respondent was begotten in 2001, his mother and Mr. Raju Kurian were married. In fact, they had been married since 1989 and neither had ever questioned the validity of the marriage. They were, admittedly, living under the same roof from 1989 till 2003, when they decided to separate. It is, but obvious, that the Respondent's mother and Mr. Raju Kurian had access to each other throughout their marriage. This conclusion has been arrived at through concurrent findings of all the courts involved, at multiple stages of litigation.

Even if it is assumed that the Respondent's mother had relations with the Appellant during her marriage and especially when the Respondent was begotten, such a fact per se, would not be sufficient to displace the presumption of legitimacy. The only thing that such an allegation sheds light on is the fact that there seems to have been simultaneous access with the Respondent's mother, by the Appellant and Mr. Raju Kurian. What, however, needs to be clarified is that an 'additional' access or 'multiple' access does not automatically negate the access

between the spouses and prove non-access thereof. Consequently, there is a statutory mandate that the Respondent must be presumed to be the son of Mr. Raju Kurian.

33. In our considered opinion, the challenge raised before the High Court that 'paternity' and 'legitimacy' are distinct or independent concepts is a misdirected notion and is liable to be rejected. The High Court's view that 'paternity' can be determined independent of the concurrent findings regarding the legitimacy of the child thus, cannot be sustained.

D.1.2 Balancing of interests and the 'eminent need' for a DNA test

34. The Respondent argued that it was in his best interests that the Appellant undergo a DNA test, as he has the right to know his true parentage and accrue rights emanating therefrom, such as maintenance. The High Court upheld this view and noted that though it is not in the interest of society to brand a child as 'illegitimate,' the interest of the child to know his biological father and claim maintenance from him is overwhelming in comparison.

35. In the peculiar circumstances of this case, this Court must undertake an exercise to 'balance the interests' of the parties involved and decide whether there is an 'eminent need' for a DNA test.[33] This pertains not simply to the interests of the child, i.e. the Respondent, but also to the interests of the Appellant.

36. On one hand, courts must protect the parties' rights to privacy and dignity by evaluating whether the social stigma from one of them being declared 'illegitimate' would cause them disproportionate harm. On the other hand, courts must assess the child's legitimate interest in knowing his biological father and whether there is an eminent need for a DNA test.

D.1.2.1 Right to privacy and right to dignity

37. Having recognized the diverging pathways in the present analysis, it is pertinent to first address the aspect of the right to privacy. At the outset, a cursory reference to the decision in K.S. Puttaswamy (Privacy-9J.) v. Union of India,[34] reveals that privacy is concomitant to the right of the individual to exercise control over his or her personality. Privacy includes, at its core, the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home, and sexual orientation. Privacy also connotes a right to be left alone, as a corollary to the safeguarding of individual autonomy and the ability of an individual to control vital aspects of his life. Elaborating further, this Court held that:

"325. Like other rights which form part of the fundamental freedoms protected by Part III, including the right to life and personal liberty under Article 21, privacy is

not an absolute right. A law which encroaches upon privacy will have to withstand the touchstone of permissible restrictions on fundamental rights. In the context of Article 21 an invasion of privacy must be justified on the basis of a law which stipulates a procedure which is fair, just and reasonable.

The law must also be valid with reference to the encroachment on life and personal liberty under Article 21. An invasion of life or personal liberty must meet the threefold requirement of (i) legality, which postulates the existence of law; (ii) need, defined in terms of a legitimate State aim; and (iii) proportionality which ensures a rational nexus between the objects and the means adopted to achieve them."

38. In this context, while permitting an enquiry into a person's paternity vide a DNA test, we must be mindful of the collateral infringement of privacy. For this, the court must satisfy itself that the threshold for the abovementioned three conditions is satisfied. If even one of these conditions fails, it is considered an unwarranted invasion of privacy and consequently, of life and personal liberty as embodied in Article 21 of the Constitution.

39. Similarly, when dealing with the right to dignity, this Court, in X2 v. State (NCT of Delhi),[35] held that the right to dignity encapsulates the right of every individual to be treated as a self-governing entity having intrinsic value. It means that every human being possesses dignity merely by being a human, and can make self-defining and selfdetermining choices. Further, this Court held that the right to dignity is intertwined with the right to privacy. This means that a person can exercise his right to privacy in order to protect his right to dignity and vice-versa. Together, these rights protect an individual's ability to make the most intimate decisions regarding his life, including sexual activity,[36] whether inside or outside the confines of marriage.

40. Forcefully undergoing a DNA test would subject an individual's private life to scrutiny from the outside world. That scrutiny, particularly when concerning matters of infidelity, can be harsh and can eviscerate a person's reputation and standing in society. It can irreversibly affect a person's social and professional life, along with his mental health. On account of this, he has the right to undertake certain actions to protect his dignity and privacy, including refusing to undergo a DNA test.

41. Usually in cases concerning legitimacy, it is the child's dignity and privacy that have to be protected, as they primarily come under the line of fire. Though in this instance, the child is a major and is voluntarily submitting himself to this test, he is not the only stakeholder bearing personal interest in the results, whatever they may be. The effects of social stigma surrounding an illegitimate child make their way into the parents' lives as there may be undue scrutiny owing to the

alleged infidelity. It is in this backdrop that the Appellant's right to privacy and dignity have to be considered.

42. Moreover, the Respondent is already declared to be the legitimate son of Mr. Raju Kurian. The fishing enquiry, which he wants through the judicial process is seemingly, not meant to bring 'certainty' to an uncertain event. Rather, it is predominantly targeted to harm the Appellant's reputation. The Respondent knows well who is his 'father' as per the law.

43. That apart, the courts must also remain abreast with the effects such a probe would have on other relevant stakeholders, especially women. Casting aspersions on a married woman's fidelity would ruin her reputation, status, and dignity; such that she would be castigated in society.

Though in this case, the Respondent's mother is actively associated in propagating this vexatious litigation, one can only imagine the repercussions in other cases where a child, in utter disregard to the sentiments and self-respect of their mother, initiates proceedings seeking a declaration of paternity? The conferment of such a right can lead to its potential misuse against vulnerable women. They would be put to trial in a court of law and the court of public opinion, causing them significant mental distress, among other issues. It is in this sphere that their right to dignity and privacy deserve special consideration.

44. It must be noted that the law permits only a preliminary enquiry into a person's private life by allowing the parties to bring evidence on record to prove non-access to dislodge the presumption of legitimacy. When the law provides for a mode to attain a particular object, that mode must be satisfied. When the evidence submitted does not rebut this presumption, the court cannot subvert the law to attain a particular object, by permitting a roving enquiry into a person's private life, such as through a DNA test.

45. Despite concurrent findings of three courts as to the legitimacy of the Respondent, he and his mother maintain and proclaim to the world that the Appellant is his biological father. It must be underscored that the Appellant has maintained a consistent stance across all fora that he never had sexual relations with the Respondent's mother.

In fact, the dispute was assumed to have been put to rest in 2011, providing some relief to the Appellant, only to be reopened in 2015, once again making him face the brunt of the allegations. This constant pendulum-like state of affairs and unsubstantiated allegations must have, undoubtedly, had an adverse effect on the Appellant's quality of life. In this backdrop, an order necessitating a DNA test based on mere allegations of adultery, would ultimately violate the Appellant's right to dignity and privacy.

D.1.2.2 Eminent need for a DNA test

46. When dealing with the eminent need for a DNA test to prove paternity, this Court balances the interests of those involved and must consider whether it is possible to reach the truth without the use of such a test.[37]

47. First and foremost, the courts must, therefore, consider the existing evidence to assess the presumption of legitimacy. If that evidence is insufficient to come to a finding, only then should the court consider ordering a DNA test. Once the insufficiency of evidence is established, the court must consider whether ordering a DNA test is in the best interests of the parties involved and must ensure that it does not cause undue harm to the parties. There are thus, two blockades to ordering a DNA test: (i) insufficiency of evidence; and (ii) a positive finding regarding the balance of interests.

48. The Respondent in this regard, has placed strong reliance on two decisions of this Court to buttress his claim for a DNA test: Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik[38] and Dipanwita Roy v. Ronobroto Roy (supra). We are of the view that it is necessary to distinguish these cases from the facts of the case at hand to illustrate as to why they cannot come to the aid of the Respondent.

49. In Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik (supra), all the parties concerned consented to undergo a DNA test. It was solely on this basis that the High Court permitted such testing. The question before this Court was only whether the results of such a test could be admitted into evidence to rebut the presumption of legitimacy. This Court held that since none of the parties contested the DNA test, the Court had to proceed with the assumption that the order for it was validly passed. Thus, the issue before this Court was solely concerning the admissibility of the results of the test, not whether a DNA test could be ordered in the first instance.

50. In Dipanwita Roy v. Ronobroto Roy (supra), this Court directed the child therein to undergo a DNA test. However, this direction was not given in furtherance of a declaration as to the legitimacy of the child. On the contrary, the proceedings therein were regarding a prayer for divorce based on adultery. The DNA test was to be conducted to prove that the wife was adulterous for the sake of obtaining a divorce. The appellant therein did not desire to prove the illegitimacy of the child; it was merely incidental. This Court explicitly stated that though the question of legitimacy was incidentally involved, the issue of infidelity alone would be determined by the DNA test, without expressly disturbing the presumption under Section 112 of the Indian Evidence Act, 1872.

51. In the case at hand, we cannot say that there is insufficient evidence to come to a conclusion regarding the presumption of legitimacy. The Respondent and his

mother placed on record certain letters, claimed to be written by the Appellant, where he allegedly admitted his paternity. They were deemed unreliable as they could not be proved to be written by the Appellant. Even the Register of Birth in Cochin clearly recorded Mr. Raju Kurian's name as the father of the Respondent.

Documentary evidence aside, it is uncontested that the Respondent's mother and Mr. Raju Kurian were residing together, in a valid, subsisting marriage when the Respondent was conceived. Thus, in our considered opinion, there seems to be ample evidence to presume legitimacy and there is absolutely no confusion as to whether the presumption would apply. Further, as analyzed in detail above, the balance of interest does not support mandating a DNA test, as it is likely to have a disproportionately adverse impact on the Appellant and the Respondent's mother. As a result, there is no 'eminent need' for a DNA test.

52. In light of the above, it is evident that the High Court erred in holding that the Respondent's legitimate interest to know his father outweighs the infringement of the Appellant's right to privacy and dignity.

D.2 Issue No. 2: The jurisdiction of the Civil Court

53. In regard to this particular question of law, we are only concerned with two sub-issues:

(i) whether the Munsiff Court could have decided on legitimacy despite the Family Court's supposed exclusive jurisdiction; and

(ii) whether the Family Court is bound by a self-imposed condition.

D.2.1 The exclusive jurisdiction of the Family Court

54. We deem it appropriate to begin our analysis by extracting Sections 7 and 8 of the Family Courts Act, 1984, which state as follows:

"7. Jurisdiction- (1) Subject to the other provisions of this Act, a Family Court shall-

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation.- The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:-

(a)-(d)****

(e) a suit of proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g)****

8. Exclusion of jurisdiction and pending proceedings- Where a Family Court has been established for any area-

(a) no District Court or any subordinate civil court referred to in sub-section (1) of Section 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the Explanation to that sub-section;

(b) no magistrate shall, in relation to such area, have or exercise any jurisdiction or power under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);

(c)****"

55. In this regard, the Appellant asserted that the Munsiff Court had jurisdiction to entertain the Original Suit because it was filed for a declaration of paternity and for a mandatory injunction. In support of this, the Appellant cited Renubala Moharana v. Mina Mohanty.[39] Per contra, the Respondent claimed that the Family Court, alone, could adjudicate on paternity through the Maintenance Petition, as it is distinct from legitimacy. Further, the Respondent contended that the Family Court had exclusive jurisdiction to make a declaration regarding legitimacy. In support of this, the Respondent cited Bharat Kumar v. Selma Mini[40] and Alexander C. C v. Jacob Anthony Palakkandathi @ Amith and Anr.[41]

56. It is well-settled law that the Family Court has exclusive jurisdiction over a suit or proceeding for a declaration as to the legitimacy of a person. However, the Family Court cannot entertain any proceedings for a declaration of legitimacy without a claim on the marital relationship.

57. In Renubala Moharana v. Mina Mohanty (supra), this Court was confronted with a set of facts similar to the present dispute. In the captioned matter, the child therein was contended not to have been the mother's husband's offspring, despite being conceived during the subsistence of the marriage. The appellants therein filed a petition before the Family Court "to declare that their son was the father of the minor child, and not the mother's husband." This Court held that the Family

Court could not entertain any proceedings for a declaration as to the legitimacy of any person without any claim on the marital relationship.

58. The jurisdiction conferred upon the Family Court is for the settlement of issues arising out of matrimonial causes. A matrimonial cause essentially relates to the rights of marriage between a husband and wife. In the instant case, there is no claim regarding the marital relationship between the Respondent's mother and Mr. Raju Kurian, and instead, it pertains to an alleged extra-marital relationship between the Appellant and the Respondent's mother. This matter, therefore, cannot be construed to fall within the exclusive jurisdiction of the Family Court and was thus, rightly entertained by the Munsiff Court and subsequently, the Sub-Judge.

D.2.2 The authority of the Family Court to revive the Maintenance Petition by imposing a condition on itself

59. By virtue of Section 151 of the Civil Procedure Code, 1908 (CPC) read with Section 7 of the Family Courts Act, 1984, the Family Court has inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of the court's process.

60. The Appellant claimed that the Family Court had the authority to impose a condition on itself. On the contrary, the Respondent argued that since the condition imposed by the Family Court was bad in law, the Maintenance Petition could be revived. The High Court upheld the Respondent's claim and accordingly, held that the condition had to be read as "the Respondent could proceed with the maintenance petition after the disposal of the civil suit."

61. Since the overlapping nature of paternity and legitimacy have been exhaustively explained in the first issue, we do not deem it necessary to delve into it again. In the present scenario, the Family Court seems to have acted within its powers under Section 151 of the CPC, by selfimposing a condition regarding the revival of the Maintenance Petition. Through its order dated 05.02.2010, the Family Court merely kept the Maintenance Petition in abeyance; only to be opened depending on the outcome of the civil proceedings.

62. This condition was fairly applied, after recognizing that the Family Court would, incidentally adjudicate on the legitimacy of the Respondent while determining maintenance. If the Family Court proceeded with the Maintenance Petition, it would result in parallel proceedings, both of which, would have involved an examination of the legitimacy of the Respondent.

These parallel proceedings would not have served the interests of justice but instead, would have further complicated the matter. Instead, it was apropos to place a temporary pause on the maintenance proceedings and to allow the

Original Suit to come to its logical conclusion. Further, had there been a finding favouring the Respondent in the Original Suit, the disposal of the Maintenance Petition would have perhaps become easier, as the Respondent would not have to establish why the claim was laid against a third-party.

63. Nevertheless, in our considered view, this condition was not abhorrent to law as it was necessary in the interest of justice to avoid multiple proceedings, and it did not cause any prejudice to the rights of the parties. As a result, the order dated 05.02.2010 is perfectly valid. In any case, considering the fact that the condition imposed was not satisfied, the Maintenance Petition could not have been revived or reopened. As a necessary corollary thereto, we must clarify that the Family Court erred in reviving the Maintenance Petition vide its order dated 09.11.2015.

D.3 Issue No. 3: The principle of res judicata

64. In pursuance thereto, we find it imperative to examine the issue pertaining to the revival of the Maintenance Petition through the lens of the principle of res judicata. Though such a contention has not been raised by the parties, it is nonetheless essential as the reopening of the Maintenance Petition could very well fall foul of this fundamental doctrine of law.

65. The principle of res judicata is a salutary and pragmatic edict to reinforce the doctrine of finality. When a matter, whether on a question of fact or question of law, has been decided between two parties in a suit and the decision is final, neither party will be allowed to canvass the matter again in a future suit or proceeding.[42] Without this bar, parties would be immobilized for all eternity, due to the uncertainty regarding their rights and entitlements. Res judicata infuses predictability in legal adjudication. The courts are thus, under a bounden duty to enforce this statutory embargo where the facts of the case overwhelmingly satisfy the ingredients of Section 11 of the CPC.

66. This principle applies squarely to the sequence of events in the instant case. The High Court's order dated 28.10.2011, as already elucidated, was never challenged and attained finality. This concomitantly means that the issue of legitimacy was conclusively decided, in favour of the Appellant, inter partes on that very day. As the lis stood adjudicated, no court of law, except in appeal, could have proceeded to decide the same issue arising between the same parties, regardless of whether it was incidental to other proceedings.

67. Given our understanding of the commonalities shared by the aspects of legitimacy and its effects on maintenance issues, there is no gainsaying that these particular subject matters are interdependent. In such a scenario, the Family Court at a later point in time could not have revived the Maintenance Petition, simply under the guise that the issue of maintenance would be entirely divorced

from an analysis of the issue of legitimacy, such that they could be examined in distinct silos.

68. In furtherance, permitting a second round of litigation, when the issue was already settled inter partes, is a grave misuse of judicial time and resources. Courts must pay heed to settled principles of law and avoid unearthing established precedents. On the fulcrum of this postulate, there seems to have been no reason for those involved to be embroiled in yet another round of litigation, which lasted more than a decade after the issue was conclusively decided by the High Court in 2011. Allowing such an application sets a dangerous example and will open the floodgates, allowing one and all to re-agitate matters that have already attained finality. The Family Court's order dated 09.11.2015, reviving the Maintenance Petition, is ex-facie in direct contravention with the principles of res judicata.

E. CONCLUSION AND DIRECTIONS

69. This convoluted case, spanning over two decades, has no doubt taken its toll on the parties involved and other relevant stakeholders. Given these extenuating circumstances, at this stage, it must be closed for all intents and purposes.

70. Accordingly, we deem it appropriate to allow this appeal and set aside the Impugned Judgment of the High Court dated 21.05.2018 and of the Family Court dated 09.11.2015, with the following directions and conclusions:

i. Legitimacy determines paternity under Section 112 of the Indian Evidence Act, 1872, until the presumption is successfully rebutted by proving 'non-access';

ii. The Munsiff Court and the Sub-Judge Court possessed jurisdiction to entertain the Original Suit, which dealt with the question of the legitimacy of the Respondent;

iii. The Family Court, Alappuzha erred in reopening the Maintenance Petition when the self-imposed condition was not satisfied;

iv. The impugned proceedings, initiated by the Respondent, are barred by the principle of res judicata;

v. The proceedings in MC No. No. 224/2007 before the Family Court, Alappuzha stand quashed;

vi. Any claim by the Respondent based upon the perceived relationship of paternity qua the Appellant, stands negated; and

vii. The Respondent is presumed to be the legitimate son of Mr. Raju Kurian.

71. The instant appeal is allowed in the above terms.

72. Ordered accordingly. Pending applications if any, to be disposed of.

.....J. (Surya Kant)

.....J. (Ujjal Bhuyan)

New Delhi;

January 28, 2025

1 Sharda v. Dharmpal, (2003) 4 SCC 493.

2 Kamti Devi v. Poshi Ram, (2001) 5 SCC 311.

3 Aparna Ajinkya Firodia v. Ajinkya Arun Firodia, (2024) 7 SCC 773.

4 Ashok Kumar v. Raj Gupta, (2022) 1 SCC 20.

5 Goutam Kundu v. State of W.B., 1993 (3) SCC 418.

6 Dipanwita Roy v. Ronobroto Roy, (2015) 1 SCC 365.

7 Bhabani Prasad Jena v. Orissa State Commission for Women, (2010) 8 SCC 633.

8 Halsbury's Laws of England, Children, Volume 9, 2023; Halsbury's Laws of England, Children, Volume 10, 2023.

9 In re H. and Others (Minors) (Sexual Abuse: Standard of Proof), [1996] 2 WLR 8.

10 Russell v. Russell, (1924) AC 687.

11 In re Guardianship of Infants Acts, 1886 and 1925, AND In re S. B. An Infant., [1949] Ch. 108.

12 United Kingdom Family Law Reform Act, 1969.

13 United Kingdom Family Law Reform Act, 1987.

14 Preston-Jones v. Preston-Jones [1951] A.C. 391.

15 In re H. and Others, supra note 9.

16 1987 Act, supra note 13, Section 23.

17 Re Le, [1968] 1 All ER 20.

18 1987 Act, supra note 13, Section 55A.

19 MS v. RS and Others, [2021] Fam. 1.

20 Michael H. and Victoria D. v. Gerald D., 1989 SCC OnLine US SC 116.

21 Uniform Parentage Act, 1973.

22 Id., Section 4.

23 Leslie J. Harris, June Carbone, and Lee R. Teitelbaum, Family Law, 4th Edition, 2010.

24 Vargo v. Schwartz, 940A2d 459, 463 (Pa Super 2007).

25 Callender v. Skiles, 591 NW2d 182, 190 (Iowa 1999); In the Interest of JWT, 872 SW2d 189 (Tex. 1994). on

26 Hardy v. Hardy, 2011 Ark. 82; Kamp v. Dep't of Human Services, 410 Md. 645, 980 A.2d 448 (2009); and Williamson v. Williamson, 690 SE2d 257 (Ga App 2010).

27 Ng Chian Perng v. Ng Ho Peng, [1998] 2 CLJ Supp 227.

28 Alesiah Jumil & Chua Kin Han v. Julas Joenol, [2013] 1 LNS 1213.

29 Aparna Ajinkya Firodia, supra note 3.

30 Mir Muzafaruddin Khan v. Syed Arifuddin Khan, (1971) 3 SCC 810, para 6; Chilukuri Venkateswarlu v. Chilukuri Venkatanarayana, (1953) 2 SCC 627, para 4.

31 Banarsi Dass v. Teeku Dutta, (2005) 4 SCC 449; Kamti Devi, supra note 2.

32 Aparna Ajinkya Firodia, supra note 3; Sham Lal v. Sanjeev Kumar, (2009) 12 SCC 454.

33 Sharda, supra note 1.

34 K.S. Puttaswamy (Privacy-9J.) v. Union of India, (2017) 10 SCC 1.

35 X2 v. State (NCT of Delhi), (2023) 9 SCC 433.

36 Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.

37 Bhabani Prasad Jena, supra note 7; Aparna Ajinkya Firodia, supra note 3.

38 Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik, (2014) 2 SCC 576.

39 Renubala Moharana v. Mina Mohanty, 2004 (4) SCC 215.

40 Bharat Kumar v. Selma Mini, 2007 (1) KLT 945.

41 Alexander C. C v. Jacob Anthony Palakkandathi @ Amith and Anr., 2012 (2) KLT 36.

42 Mulla, The Civil Procedure Code, 20th Edition, Volume I, 2021

IN THE SUPREME COURT OF INDIA

H. Anjanappa & Ors.
Vs.
A. Prabhakar & Ors.

[Civil Appeal Nos. 1180-1181 of 2025
arising out of SLP (Civil) Nos. 5785-5786 of 2023]

H. Anjanappa & Ors.
Vs.
Beena Anthony & Ors.

[Civil Appeal Nos. 1182-1183 of 2025
arising out of SLP (Civil) Nos. 6724-6725 of 2023]

HEADNOTE – A pendente lite transferee(someone who purchases a suit property during the pendency of the litigation) has no automatic right to be impleaded in a suit. It said only in exceptional cases, where the transferee's rights are adversely affected or jeopardized, a leave would be granted to the pendente lite transferee (who wasn't impleaded in the suit) to appeal against the decree.

Principles laid down:-

i. First, for the purpose of impleading a transferee pendente lite, the facts and circumstances should be gone into and basing on the necessary facts, the Court can permit such a party to come on record, either under Order I Rule 10 CPC or under Order XXII Rule 10 CPC, as a general principle;

ii. Secondly, a transferee pendente lite is not entitled to come on record as a matter of right;

iii. Thirdly, there is no absolute rule that such a transferee pendente lite, with the leave of the Court should, in all cases, be allowed to come on record as a party;

iv. Fourthly, the impleadment of a transferee pendente lite would depend upon the nature of the suit and appreciation of the material available on record;

v. Fifthly, where a transferee pendente lite does not ask for leave to come on record, that would obviously be at his peril, and the suit may be improperly conducted by the plaintiff on record;

vi. Sixthly, merely because such transferee pendente lite does not come on record, the concept of him (transferee pendente lite) not being bound by the judgment does not arise and consequently he would be bound by the result of the litigation, though he remains unrepresented;

vii. Seventhly, the sale transaction pendente lite is hit by the provisions of Section 52 of the Transfer of Property Act; and,

viii. Eighthly, a transferee pendente lite, being an assignee of interest in the property, as envisaged under Order XXII Rule 10 CPC, can seek leave of the Court to come record on his own or at the instance of either party to the suit.

JUDGMENT

J.B. Pardiwala, J.:

1. Leave granted.

2. Since the issues raised in the above captioned appeals are the same, the parties are also same and the challenge is also to the self-same judgment and order passed by the High Court, those were taken up for hearing analogously and are being disposed of by this common judgment and order.

3. The appeals arise from the order passed by the High Court of Karnataka at Bengaluru dated 16.11.2022 in I.A. Nos. 1 & 3 of 2018 respectively in Regular First Appeal No. 1303 of 2018 by which the High Court allowed the said I.A. Nos. 1 & 3 of 2018 respectively filed by the respondents herein and thereby condoned the delay of 586 days in filing the said appeal against the judgment and decree dated 16.09.2016 passed by the Senior Civil Judge and JMFC, Devanahalli in Original Suit No. 458 of 2006 instituted for specific performance of contract.

By the order passed in I.A. Nos 1 & 3 of 2018 respectively, the High Court granted leave to appeal to the Respondent Nos. 1 and 2 herein (subsequent purchasers) against the original judgment and decree of specific performance as they were not parties in the suit proceedings.

4. The facts giving rise to these appeals may be summarised as under. The description of the parties before this Court and before the Trial Court is tabulated as follows:

BEFORE THIS COURT	BEFORE THE TRIAL COURT	REMARKS
Appellants	Plaintiffs	Agreement of Sale Holders/Purchasers
Respondent Nos. 1-2	Not a party as their impleadment application was rejected. Order remained unchallenged and hence, attained finality	Lis Pendens Purchasers (Alleged to have purchased from Subsequent Purchaser)
Respondent	LRs. Of Original Defendant No.	Original Owner

Nos. 3-5	1	
Respondent No. 6	Defendant No. 2	GPA Holder
Respondent No. 7	Defendant No. 3	Subsequent Purchaser

For the sake of convenience, the parties shall be referred to in terms of their status before the Trial Court.

(I) One Late Smt. Daisy Shanthappa - Original Defendant No.1 (since deceased represented through her LRs-Respondents Nos. 3-5 herein) was the absolute owner of lands bearing Sy. No. 176/42 measuring 32 acres and Sy. No. 176/43 measuring 10 acres, situated adjacent to each other in Bagalur Village, Jala Hobli, Bangalore North Taluk. The Suit Schedule Property was agreed to be sold to the plaintiffs, the appellants herein, vide an Agreement of Sale dated 05.09.1995 for a total sale consideration of Rs.20,00,000/- by the Defendant No.1 through her Power of Attorney holder one Shri V. Chandramohan (Original Defendant No. 2/ Respondent No.6 herein). Earnest money of Rs.5,00,000/- was paid and the Defendant Nos. 1 & 2 undertook to get the unauthorized occupants in the Suit Schedule Property evicted.

(II) Since the unauthorized occupants on the Suit Schedule Property were not evicted by the Defendant Nos.1 & 2, a Supplementary Agreement dated 10.03.1997 was executed extending the time for execution of Sale Deed. Out of the entire sale consideration of Rs.20,00,000/- a substantial amount of Rs.15,00,000/- was paid by the appellants herein to the Defendant No. 1.

(III) While such being the case, and during the subsistence of Sale Agreement in favour of the Plaintiffs, the Defendant No.1 having lost her right over the suit schedule property in pursuance of the general power of attorney executed in favour of Defendant No.2, which has been acted upon, allegedly executed a Sale Deed in favour of Respondent No. 7/Defendant No. 3 selling land to an extent of 40 acres out of 42 acres for a sum of Rs.40,00,000/-. The plaintiffs became aware of the aforementioned sale transfer, when the Defendant No.3 attempted to change the revenue records in his name.

(IV) Aggrieved by the same, the plaintiffs filed O.S. No.1093/2003 (later renumbered as O.S. No.458/2006) before the Court of Principal Civil Judge (Sr. Dn.) Bengaluru Rural District (hereinafter referred to as the Trial Court) inter alia seeking Specific Performance of the Agreement of Sale. The Trial Court upon appreciating the case of the plaintiffs admitted the suit and on 17.12.2003 passed a specific Order of Temporary Injunction restraining the Defendant Nos. 1-3 from alienating and creating third party rights in the Suit Schedule Property.

(V) The Defendant No.3 however, in contravention of specific order of injunction and during the subsistence of the order of injunction, sold a portion of Suit Schedule Property to the extent of 4 Acres (and 6 Acres) in Sy. No. 176/43 in favour of Respondents Nos. 1-2 herein.

(VI) It is relevant to note that the Defendant No.1 executed a Deed of Confirmation in favour of the plaintiffs admitting the Agreement of Sale in favour of the plaintiffs and further acknowledged the receipt of a substantial sum of Rs. 15,00,000/- out of Rs.20,00,000/- in furtherance of the Agreement of Sale dated 05.09.1995 and further stating that the sale made by her in favour of Defendant No.3 was due to the fact that she was being misled by some persons of oblique mindsets.

(VII) At this stage, on 10.07.2007, the Respondent Nos. 1-2 respectively herein filed an Interlocutory Application - I.A. No.4 in O.S. No.458/2006 seeking to implead themselves as Defendants in the said suit. The said I.A. No.4 was however rejected by the Trial Court vide Order dated 06.08.2014 on the ground that the Respondent Nos. 1-2 herein had purchased the portion of Suit Schedule Property without the permission of the court, during the pendency of suit and in contravention of a Specific Order of Injunction against alienation and creation of third party rights. The same being contrary to Section 52 of the Transfer of Property Act, 1882 (for short, "Transfer of Property Act"). The said order of rejection of impleadment never came to be challenged in appeal and thereby, the said issue has attained finality.

(VIII) Thereafter, the Trial Court upon appreciation of evidence on record passed its final Judgment and Decree in O.S. No. 458/2006 decreeing the suit of the plaintiffs and granting relief of specific performance with a specific direction to execute a sale deed within a period of 2 months. Assailing the legality of the said Order, the Defendant No. 3 (who is the Vendor of Respondent Nos. 1 & 2 herein) filed R.F.A. No.396/2017 before the High Court which came to be dismissed on 04.07.2017.

(IX) It is in the aforestated backdrop that the Respondent Nos.1 & 2 respectively, in spite of a Specific Order of Injunction against the Defendant No. 3 (Vendor of the Respondent Nos.1 & 2) of not creating third party rights, purchased the suit property in contravention of Section 52 of the Transfer of Property Act. More importantly the application for impleadment in the Suit also came to be rejected and having not been challenged by the contesting Respondent Nos. 1 & 2, the issue had attained finality. After dismissal of the appeal filed by their Vendor i.e., Defendant No. 3, Respondent Nos 1 & 2 proceeded to challenge the order of Trial Court decreeing the Suit of the plaintiffs. After almost 2 years of passing of the Judgment and Decree dated 16.09.2016 in O.S. No.458/2006 and 11 years from the filing of the Impleadment Application, the Respondent Nos. 1 & 2

herein preferred RFA No.1303/2018 before the High Court challenging the said Decree.

(X) The Respondent Nos. 1 & 2 filed I.A. No.1 & 3 of 2018 seeking condonation of delay of 586 days in preferring RFA No.1303/2018, and also prayed for leave to appeal. The said I. A.s were opposed by the plaintiffs. The High Court, however, vide the impugned order allowed both the I.A. Nos. 1 & 3 of 2018 respectively by condoning the inordinate and unexplained delay of 586 days and further permitting the Respondents Nos. 1 and 2 herein to prefer the appeal by granting leave.

5. Being aggrieved by the same, the plaintiffs are here before this Court with the present appeals.

SUBMISSIONS ON BEHALF OF THE PLAINTIFFS/APPELLANTS

6. Mr. Anand Sanjay M. Nuli, the learned senior counsel appearing for the appellants (original plaintiffs) vehemently submitted that the High Court committed a serious error in condoning the unexplained and inordinate delay of 586 days in preferring the regular first appeal and also by granting leave to file appeal to the Respondent Nos. 1 and 2 i.e., subsequent purchasers of the suit property.

According to the learned counsel, it is not just enough for the Respondent Nos. 1 and 2 respectively to say that they were not aware of the suit proceedings before the Trial Court. The Respondent Nos. 1 and 2 had, in fact, preferred an application for being impleaded in the suit as defendants and such application which was filed on 10.07.2007 came to be rejected vide order dated 06.08.2014. The said order was never challenged by the Respondent Nos. 1 and 2 herein and it has attained finality.

7. Mr. Nuli submitted that having purchased the suit property pendente lite on 05.04.2004 and that too in contravention of the order of temporary injunction dated 17.12.2003 passed by the Trial Court, the Respondent Nos. 1 and 2 respectively do not deserve any indulgence. It was argued that the Respondent Nos. 1 and 2 cannot be said to be bona fide purchasers of the suit property for value without notice. 8. In such circumstances referred to above, the learned senior counsel prayed that there being merit in his appeals, those may be allowed.

SUBMISSIONS ON BEHALF OF RESPONDENT NOS. 1 AND 2 RESPECTIVELY

9. Mr. Gautam Narayan, the learned senior counsel appearing for the subsequent purchasers i.e. Respondent Nos. 1 and 2 submitted that no error, not to speak of any error of law, may be said to have been committed by the High Court in

passing the impugned order. According to the learned counsel, there is no question of law involved in the present appeals warranting any interference with the impugned order passed by the High Court. He would submit that his clients are bona fide subsequent purchasers of the suit property and as subsequent purchasers, they have a substantial interest in the suit property and also in the final outcome of the suit.

10. The learned counsel submitted that the order passed by the Trial Court, in itself, would not render the transfer made to the subsequent purchasers ineffective and the validity of such transfer is always subject to the outcome of the litigation.

11. The learned counsel submitted that in the present case, collusion between the vendor of the answering respondents who are subsequent purchasers pendente lite i.e., Defendant No. 3 and the plaintiffs, is writ large on the face of the record. He submitted that the bar on transfer of immovable property which is subject matter of a litigation under Section 52 of the Transfer of Property Act is not applicable to the present case as Section 52 expressly excludes from its ambit collusive proceedings and, therefore, the High Court correctly granted an opportunity to his clients to establish this fact by allowing them to prefer an Appeal.

12. He submitted that unfortunately the Defendant No. 3 colluded with the plaintiffs in order to get the suit decreed vide judgment dated 16.09.2016 as is borne out from the following facts:

(i) Defendant No. 3 did not cross-examine the witnesses of the Plaintiffs;

(ii) Defendant No. 3 did not lead any rebuttal evidence in the suit;

(iii) Despite filing an appeal against the decree dated 16.09.2016, he withdrew the Appeal without stating any reason on 04.07.2017, and

(iv) In fact, even after having succeeded in the suit and obtaining a decree dated 16.09.2016, the plaintiffs did not get the same executed and have allowed the Defendant No.3 to enter into a registered agreement of sale dated 12.09.2019 for the suit property for a consideration of Rs.20 crores with third parties.

In light of the aforesaid facts, he submitted that the High Court was justified in granting permission to the answering respondents to prefer an appeal against the decree dated 16.09.2016 in order to defend their rights.

13. He further submitted that the impugned order is also justified in the context of settled law that a subsequent purchaser should ordinarily be allowed to implead himself in pending proceedings in order to protect his interests when the transferor fails to do so.

14. He submitted that the approach of the High Court in the impugned order is only a logical extension of the aforesaid principle in so far as it only extends to subsequent purchasers, i.e., the answering respondents, the opportunity to defend their interests in the face of ex facie collusion by their vendors with plaintiffs in the suit.

15. No prejudice would be caused to the plaintiffs if the Respondent Nos. 1 and 2 are merely allowed to agitate their appeal on merits keeping in view the fact that they are subsequent purchasers for value who were duped by their vendor.

16. He submitted that the condonation of delay in preferring the appeals is justified in view of Section 17 of the Limitation Act, 1963 read with Section 5 thereof.

17. He submitted that his clients, both of whom are senior citizens, were residing with their children in Scotland when their application for impleadment was rejected by the Trial Court and were assured by Defendant No. 3 that he would defend their interest in the suit and therefore due to the trust and faith reposed in him, they did not make any efforts to prosecute the suit or the Appeal.

18. In the last, the learned counsel submitted that the lis pendens purchasers although not arrayed as parties in the suit, yet they are the persons who could be said to be claiming as defendants under Section 146 of the Code of Civil Procedure, 1908 (for short "CPC").

19. In such circumstances referred to above, the learned senior counsel prayed that there being no merit in the present appeals, those may be dismissed.

ANALYSIS

20. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned order.

21. The High Court in the impugned order observed as under:-

"13. In these two applications, we are concerned with the prayer for leave to prosecute the appeal and condonation of delay. It is not disputed that appellants have purchased 4 acres of land out of the suit schedule property. They did file an application to implead themselves in the suit, but unsuccessfully. One of the main ground urged in support of the application for condonation of delay is that they were assured by their vendor-third defendant that he would protect their interest.

14. Shri Holla, pointed out in para 18 of the judgment that the learned trial Judge has adverted to the evidence of P.W. 2 and his evidence has remained

unchallenged as he was not subjected to cross-examination and none of the defendants stepped into the witness box. Further the third defendant has filed R.F.A.No.396/2017 and withdrew the same. It is pleaded in the affidavit in support of the application for condonation of delay that the appellants are aged 75 and 66 years respectively and living with their children in Scotland. This averment has remained unrebutted.

15. Keeping in view the fact that appellants have purchased the immovable property measuring 4 acres, that they are senior citizens and their vendor has not defended the suit nor prosecuted the first appeal filed before this Court, we are of the opinion that rights of the parties cannot be scuttled by dismissal of the application seeking condonation of delay. Curiously appellants' vendor namely the third defendant/ respondent No.8, though served and represented by advocate has remained absent. Thus, the allegations made against him in appellants' affidavit have remained uncontroverted. Therefore, in our considered view, the instant applications merit consideration.

16. In view of the above, I.As.No.1 & 3 of 2018 are allowed subject to appellants paying cost of Rs. 25,000/- for each of the applications and cumulatively Rs.50,000/- to the plaintiffs/ respondent Nos.1 to 3."

22. Thus, a plain reading of the impugned order passed by the High Court would indicate that what weighed with the High Court was the fact that the Respondent Nos. 1 and 2 respectively are aged 75 and 66 years and are living with their children in Scotland. The High Court proceeded further to observe that the Respondent Nos. 1 and 2 have purchased 4 acres of land out of a large chunk of subject property and their vendor i.e. the original owner failed to protect their interest in the suit proceedings.

23. We are of the view that the High Court committed an egregious error in condoning delay of 586 days in filing the regular first appeal on mere asking. We are not convinced with the sufficient cause assigned by the Respondent Nos. 1 and 2 respectively for the delay of 586 days. In the facts and circumstances of the case, it cannot be said that the Respondent Nos. and 2 were vigilant of their so called rights. The High Court should have put an end to the entire litigation by declining to condone the delay itself far from granting leave to appeal.

24. Having taken the view that the High Court committed an egregious error in condoning the delay, we could have closed this matter without observing or saying anything further by setting aside the impugned order passed by the High Court. However, we would like to say something also as regards the grant of leave to appeal by the High Court in favour of the Respondent Nos. 1 and 2 respectively, more particularly in light of two submissions canvassed by Mr. Nuli, the learned counsel appearing for the appellants herein.

The first submission canvassed by the learned counsel is that once the impleadment application filed by the Respondent Nos. 1 and respectively herein invoking the provisions of Order I Rule 10 CPC came to be rejected by the Trial Court and the said order attained finality, thereafter there is no question of seeking leave to appeal against the final decree granting specific performance, and the second submission canvassed by the learned counsel is that the findings recorded by the Trial Court while rejecting the impleadment application would operate as re judicata in the appeal that may be filed by the transferee pendente lite against the final decree of specific performance.

LAW GOVERNING THE GRANT OF LEAVE TO APPEAL

25. Sections 96 and 100 respectively of the Code of Civil Procedure, 1908 (for short, the "CPC") provide for preferring an appeal from any original decree or from decree in appeal respectively. The aforesaid provisions do not enumerate the categories of persons who can file an appeal. However, it is a settled legal proposition that a stranger cannot be permitted to file an appeal in any proceedings unless he satisfies the court that he falls within the category of aggrieved persons. It is only where a judgment and decree prejudicially affects a person who is not a party to the proceedings, he can prefer an appeal with the leave of the appellate court. [see : Sri V.N. Krishna Murthy and another vs. Sri Ravikumar and others (Civil Appeal Nos.2701-2704 of 2020, decided on 21st August 2020)].

26. A five-Judge Bench of the Privy Council in Nagendra Nath Dey vs. Suresh Chandra Dey, AIR 1932 PC 165, speaking through Sir Dinshaw Mulla observed that there is no definition of appeal in the CPC, but there is no doubt that any application by a party to an appellate Court, asking it to set aside or revise a decision of a subordinate Court, is an appeal within the ordinary acceptation of the term, and that it is no less an appeal because it is irregular or incompetent.

27. A party to a suit adversely affected by a decree or any of his representatives-in-interest may file an appeal. But a person who is not a party to a decree or order may, with the leave of the court, prefer an appeal from such decree or order if he is either bound by a decree or order or is aggrieved by it or is otherwise prejudicially affected by it.

28. In Adi Pherozshah Gandhi vs. H.M.Seervai, AIR 1971 SC 385, a Constitution Bench of this Court in paragraph 46 held thus:

"46. Generally speaking, a person can be said to be aggrieved by an order which is to his detriment, pecuniary or otherwise or causes him some prejudice in some form or other. A person who is not a party to a litigation has no right to appeal merely because the judgment or order contains some adverse remarks against

him. But it has been held in a number of cases that a person who is not a party to suit may prefer an appeal with the leave of the appellate court and such leave would not be refused where the judgment would be binding on him under Explanation 6 to section 11 of the Code of Civil Procedure."

29. In Smt. Sukhrani (dead) by L.R's and others vs. Hari Shanker and others, AIR 1979 SC 1436, the interlocutory order was not challenged. The same was challenged after the final order was passed by the court. This Court in paragraph 5 of the report held thus:

"5. It is true that at an earlier stage of the suit, in the proceeding to set aside the award, the High Court recorded a finding that the plaintiff was not entitled to seek reopening of the partition on the ground of unfairness when there was neither fraud nor misrepresentation. It is true that the plaintiff did not further pursue the matter at that stage by taking it in appeal to the Supreme Court but preferred to proceed to the trial of his suit. It is also true that a decision given at an earlier stage of a suit will bind the parties at later stages of the same suit. But it is equally well settled that because a matter has been decided at an earlier stage by an interlocutory order and no appeal has been taken therefrom or no appeal did lie, a higher Court is not precluded from considering the matter again at a later stage of the same litigation."

30. We may also refer to the observations of this Court in the case of Smt. Jatan Kumar Golcha vs. Golcha Properties Private Limited, reported in (1970) 3 SCC 573. The same reads thus:

"It is well settled that a person who is not a party to the suit may prefer an appeal with the leave of the Appellate Court and such leave should be granted if he would be prejudicially affected by the Judgment."

31. This Court in the case of State of Punjab and others vs. Amar Singh and another, reported in (1974) 2 SCC 70, while dealing with the maintainability of appeal by a person who is not party to a suit, has observed thus:

"Firstly, there is a catena of authorities which, following the dictum of Lindley, L.J., in re Securities Insurance Co., [(1894) 2 Ch 410] have laid down the rule that a person who is not a party to a decree or order may with the leave of the Court, prefer an appeal from such decree or order if he is either bound by the order or is aggrieved by it or is prejudicially affected by it."

32. In the case of Baldev Singh vs. Surinder Mohan Sharma and others, reported in (2003) 1 SCC 34, this Court held that an appeal under Section 96 of the CPC would be maintainable only at the instance of a person aggrieved by and dissatisfied with the judgment and decree. While dealing with the concept of person aggrieved, it was observed in paragraph 15 as under:

"A person aggrieved to file an appeal must be one whose right is affected by reason of the judgment and decree sought to be impugned."

33. In the aforesaid judgment, a compromise decree was passed in a suit between husband and wife to the effect that their marriage stood dissolved from an earlier date by virtue of a memorandum of customary dissolution of marriage. The said decree was sought to be challenged by a person who was having a property dispute with the husband and who had filed complaints against the husband to the employer of the husband, in contravention of the Employment Rules having contracted a second marriage. This Court, while holding that the person who was seeking to challenge the decree had no locus standi to do so, held:

(a) that there is no dispute that as against the decree, an appeal would be maintainable in terms of Section 96 of the CPC; such an appeal, however would be maintainable only at the instance of a person aggrieved by and dissatisfied with the judgment and decree;

(b) that the dispute between the said person and the husband was in relation to a property and the said person, save for making complaints to the employer of the husband, had nothing to do with the marital status of the husband;

(c) locus of a person to prefer an appeal in a matter of this nature is vital;

(d) the court cannot enlarge the scope of locus, where the parties are fighting litigations;

(e) the pleas of the said person did not disclose as to how and in what manner he would be prejudiced if the compromise decree was allowed to stand;

(f) that the challenge by the said person was not bona fide; and,

(g) even if the compromise decree was a judgment in rem, the said person could not have challenged the same as he was not aggrieved therefrom.

34. In the case of A. Subash Babu vs. State of A.P. and another, reported in (2011) 7 SCC 616, this Court held as under:

"The expression 'aggrieved person' denotes an elastic and an elusive concept. It cannot be confined that the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the complainant's interest and the nature and extent of the prejudice or injuries suffered by him."

35. The expression 'person aggrieved' does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one, whose right or interest has been adversely affected or jeopardized (see : Shanti Kumar R. Canji vs. Home Insurance Co. of New York, (1974) 2 SCC 387 and State of Rajasthan & Ors. vs. Union of India & Ors., (1977) 3 SCC 592).

36. We may also refer to a Division Bench decision of the Madras High Court in the case of Srimathi K. Ponnalagu Ammani vs. The State of Madras represented by the Secretary to the Revenue Department, Madras and Ors., reported in AIR 1953 Madras 485. The High Court laid down the test to find out when it would be proper to grant leave to appeal to a person not a party to a proceeding against the decree or judgment passed in such proceedings in following words:

"Now, what is the test to find out when it would be proper to grant leave to appeal to a person not a party to a proceeding against the decree or judgment in such proceedings? We think it would be improper to grant leave to appeal to every person who may in some remote or indirect way be prejudicially affected by a decree or judgment. We think that ordinarily leave to appeal should be granted to persons who, though not parties to the proceedings, would be bound by the decree or judgment in that proceeding and who would be precluded from attacking its correctness in other proceedings."

37. We may look into the decision in the case of Province of Bombay vs. W.I. Automobile Association, reported in AIR 1949 Bombay 141, and the English practice on which that decision is based. In the Province of Bombay case, Chagla C.J. and Bhagwati J. held that a person not a party to a suit may prefer an appeal if he is affected by the order of the Trial Court provided he obtained leave from the Court of appeal. The learned Chief Justice observed as follows:

"The Civil Procedure Code does not in terms lay down as to who can be a party to an appeal. But it is clear and this fact arises from the very basis of appeals, that only a party against whom a decision is given has a right to prefer an appeal. Even in England the position is the same. But it is recognised that a person who is not a party to the suit may prefer an appeal if he is affected by the order of the trial Court, provided he obtains leave from the Court of appeal; therefore whereas in the case of a party to a suit he has a right of appeal, in the case of a person not a party to the suit who is affected by the order he has no right but the court of appeal may in its discretion allow him to prefer an appeal."

(Emphasis supplied)

38. Bhagwati J. referred to the decision of the Madras High Court in Indian Bank Limited, Madras vs. Seth Bansiram Jashamal Firm through its Managing Partner,

AIR 1934 Mad 360, and accepted it as authority for the position that no person who is not a party to a suit or proceeding has a right of appeal. But if he was aggrieved by a decision of the court, the remedy open to him was to approach the appellate court and ask for leave to appeal which the appellate court would grant in proper cases. The learned Judge cites a passage from the decision in In re Securities Insurance Company, (1894) 2 Ch D 410, where Lindley L.J. said that the practice of the Courts of Chancery, both before and after 1862, was well-settled that while a person who was a party could appear without any leave a person who without being a party was either bound by the order or was aggrieved by it or was prejudicially affected by it could not appeal without leave.

39. The law has been succinctly explained as regards the grant of leave to appeal in In re Markham Markham vs. Markham, (1881) 16 Ch D 1; In re Padstow Total Loss and Collision Assurance Association, (1882) 20 Ch. D 137 at p. 142; Attorney General vs. Marquis of Ailesbury, (1885) 16 QBD 408 at p. 412, and In re Ex Tsar of Bulgaria, (1921) 1 Ch D 107 at p. 110. The position is thus stated in the Annual Practice for 1951 at page 1244: "Persons not parties on the record may, by leave obtained on an 'ex parte' application to the Court of appeal, appeal from a judgment or order affecting their interests, as under the old practice."

40. Halsbury's Laws of England, Vol. 26, page 115, gives the same rule in a different form:

"A person who is not a party and who has not been served with such notice (notice of the judgment or order) cannot appeal without leave, but a person who might properly have been a party may obtain leave to appeal."

41. In more or less similar terms, the rule and its limits are stated in Seton on Judgments and Orders, 7th Edn., Vol. 1, at p. 824:

"Where the appellant is not a party to the record he can only appeal by leave to be obtained on motion 'ex parte' from the Court of Appeal. Leave to appeal will not be given to a person not a party unless his interest is such that he might have been made a party."

(Emphasis supplied)

42. On the anvil of the decisions cited supra, the instant case may be examined. Admittedly, the application filed by the Respondent Nos. 1 and 2 respectively under Order I Rule 10 CPC for being impleaded as party to the suit was rejected by the Trial Court. The said order was not challenged. In view of the authoritative pronouncement of the cases cited supra, the conclusion is irresistible that rejection of the application filed under Order I Rule 10 CPC is per se not a ground to reject the application for leave to file appeal. The appellate court has to see whether the transferee pendente lite is aggrieved by a decree or is otherwise

prejudicially affected by it. The appellate court has to examine that if the decree is allowed to stand, the same will operate res judicata.

43. The principles governing the grant of leave to appeal may be summarised as under:

i. Sections 96 and 100 of the CPC respectively provide for preferring an appeal from an original decree or decree in appeal respectively;

ii. The said provisions do not enumerate the categories of persons who can file an appeal;

iii. However, it a settled legal proposition that a stranger cannot be permitted to file an appeal in any proceedings unless he satisfies the court that he falls within the category of an aggrieved person;

iv. It is only where a judgment and decree prejudicially affects a person who is not a party to the proceedings, he can prefer an appeal with the leave of the court;

v. A person aggrieved, to file an appeal, must be one whose right is affected by reason of the judgment and decree sought to be impugned;

vi. The expression "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury;

vii. It would be improper to grant leave to appeal to every person who may in some remote or indirect way be prejudicially affected by a decree or judgment; and

viii. Ordinarily leave to appeal should be granted to persons who, though not parties to the proceedings, would be bound by the decree or judgment in that proceeding and who would be precluded from attacking its correctness in other proceedings.

44. The issue can also be examined from a different angle.

45. Section 52 of the Transfer of Property Act reads thus:

"52. Transfer of property pending suit relating thereto.- During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceedings which is not collusive and in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree

or order which may be made therein, except under the authority of the Court and on such terms as it may impose."

46. A transfer pendete lite is not illegal ipso jure but remains subservient to the pending litigation. In Nagubai Ammal & Ors. vs. B. Shama Rao & Ors., AIR 1956 SC 593, this Court while interpreting Section 52 of the Transfer of Property Act observed:

"The words "so as to affect the rights of any other party thereto under any decree or order which may be made therein", make it clear that the transfer is good except to the extent that it might conflict with rights decreed under the decree or order. It is in this view that transfers pendente lite have been held to be valid and operative as between the parties thereto."

47. To the same effect is the decision of this Court in Vinod Seth v. Devinder Bajaj, (2010) 8 SCC 1, where this Court held that Section 52 does not render transfers affected during the pendency of the suit void but only render such transfers subservient to the rights as may be eventually determined by the Court. The following passage in this regard is apposite:

"42. It is well settled that the doctrine of lis pendens does not annul the conveyance by a party to the suit, but only renders Page 26 of 35 it subservient to the rights of the other parties to the litigation. Section 52 will not therefore render a transaction relating to the suit property during the pendency of the suit void but render the transfer inoperative insofar as the other parties to the suit. Transfer of any right, title or interest in the suit property or the consequential acquisition of any right, title or interest, during the pendency of the suit will be subject to the decision in the suit."

48. In Thomson Press (India) Ltd. vs. Nanak Builders & Investors P. Ltd., [2013] 2 SCR 74, Justice T.S. Thakur (As His Lordship then was), while concurring with Justice M.Y. Eqbal, summed up the legal position as follows: "There is, therefore, little room for any doubt that the transfer of the suit property pendete lite is not void ab initio and that the purchaser of any such property takes the bargain subject to the rights of the plaintiff in the pending suit.

Although the above decisions do not deal with a fact situation where the sale deed is executed in breach of an injunction issued by a competent Court, we do not see any reason why the breach of any such injunction should render the transfer whether by way of an absolute sale or otherwise ineffective. The party committing the breach may doubtless incur the liability to be punished for the breach committed by it but the sale by itself may remain valid as between the parties to the transaction subject only to any directions which the competent Court may issue in the suit against the vendor.

The third dimension which arises for consideration is about the right of a transferee pendete lite to seek addition as a party defendant to the suit under Order I, Rule 10 CPC. I have no hesitation in concurring with the view that no one other than parties to an agreement to sell is a necessary and proper party to a suit. The decisions of this Court have elaborated that aspect sufficiently making any further elucidation unnecessary. The High Court has understood and applied the legal propositions correctly while dismissing the application of the appellant under Order I, Rule 10 CPC. What must all the same be addressed is whether the prayer made by the appellant could be allowed under Order XXII Rule 10 of the CPC, which is as under:

"Procedure in case of assignment before final order in suit.-

(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1)."

A simple reading of the above provision would show that in cases of assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved. What has troubled us is whether independent of Order I Rule 10 CPC the prayer for addition made by the appellant could be considered in the light of the above provisions and, if so, whether the appellant could be added as a party-defendant to the suit. Our answer is in the affirmative.

It is true that the application which the appellant made was only under Order I Rule 10 CPC but the enabling provision of Order XXII Rule 10 CPC could always be invoked if the fact situation so demanded. It was in any case not urged by counsel for the respondents that Order XXII Rule 10 could not be called in aid with a view to justifying addition of the appellant as a party defendant. Such being the position all that is required to be examined is whether a transferee pendete lite could in a suit for specific performance be added as a party defendant and, if so, on what terms."

(Emphasis supplied)

49. We shall now look into Section 146 CPC. It provides:

"146. Proceedings by or against representatives - Save as otherwise provided by this Court or by any law for the time being in force, where any proceeding may be taken or application made by or against any person, then the proceeding may

be taken or application may be made by or against any person claiming under him."

50. A lis pendens transferee from the defendant, though not arrayed as a party in the suit, is still a person claiming under the defendant. The same principle of law is recognized in a different perspective by Rule 16 of Order XXI of the CPC which speaks of transfer or assignment inter vivos or by operation of law made by the plaintiff-decree-holder.

The transferee may apply for execution of the decree of the Court and the decree will be available for execution in the same manner and subject to the same conditions as if the application were made by the decree-holder. It is relevant to note that a provision like Section 146 of the CPC was not be found in the preceding Code of Civil Procedure, 1859 and was for the first time incorporated in the CPC. In Order XXI Rule 16 also an explanation was inserted through amendment made by Act No. 104 of 1976 w.e.f. 01.02.1977 where by the operation of Section 146 CPC was allowed to prevail independent of Order XXI Rule 16 CPC.

51. A decree passed against the defendant is available for execution against the transferee or assignee of the defendant-judgment-debtor and it does not make any difference whether such transfer or assignment has taken place after the passing of the decree or before the passing of the decree without notice or leave of the Court.

52. The law laid down by a four-Judge Bench of this Court in Smt. Saila Bala Dassi vs. Sm. Nirmala Sundari Dassi and Anr., [1958] SCR 1287, is apt for resolving the issue arising for decision herein. A transferee of property from defendant during the pendency of the suit sought himself to be brought on record at the stage of appeal. The High Court dismissed the application as it was pressed only by reference to Order XXII Rule 10 of the CPC and it was conceded by the applicant that, not being a person who had obtained a transfer pending appeal, he was not covered within the scope of Order 22 Rule 10.

In an appeal preferred by such transferee, this Court upheld the view of the High Court that a transferee prior to the filing of the appeal could not be brought on record in appeal by reference to Order XXII Rule 10 of the CPC. However, the Court held that an appeal is a proceeding for the purpose of Section 146 and further the expression "claiming under" is wide enough to include cases of devolution and assignment mentioned in Order XXII Rule 10. Whoever is entitled to be but has not been brought on record under Order XXII Rule 10 in a pending suit or proceeding would be entitled to prefer an appeal against the decree or order passed therein if his assignor could have filed such an appeal, there being no prohibition against it in the CPC.

A person having acquired an interest in suit property during the pendency of the suit and seeking to be brought on record at the stage of the appeal can do so by reference to Section 146 of the CPC which provision being a beneficent provision should be construed liberally and so as to advance justice and not in a restricted or technical sense. Their Lordships held that being a purchaser pendente lite, a person will be bound by the proceedings taken by the successful party in execution of decree and justice requires that such purchaser should be given an opportunity to protect his rights. [See : Raj Kumar vs. Sardari Lal, (2004) 2 SCC 601]

53. In Dhurandhar Prasad Singh vs. Jai Prakash University, reported in (2001) 6 SCC 534, this Court held that the plain language of Order XXII Rule 10 CPC does not suggest that leave can be sought by that person alone upon whom the interest has devolved. It simply says that the suit may be continued by the person upon whom such an interest has devolved and this applies in a case where the interest of the plaintiff has devolved. Likewise, in a case where interest of the defendant has devolved, the suit may be continued against such a person upon whom interest has devolved, but in either eventuality, for continuance of the suit against the persons upon whom the interest has devolved during the pendency of the suit, leave of the court has to be obtained.

If it is laid down that leave can be obtained by that person alone upon whom interest of a party to the suit has devolved during its pendency, then there may be preposterous results as such a party might not be knowing about the litigation and consequently not feasible for him to apply for leave and if a duty is cast upon him, then in such an eventuality he would be bound by the decree even in cases of failure to apply for leave. As a rule of prudence, initial duty lies upon the plaintiff to apply for leave in case the factum of devolution was within his knowledge or with due diligence could have been known by him.

The person upon whom the interest has devolved may also apply for such a leave so that his interest may be properly represented as the original party, if it ceased to have an interest in the subject-matter of dispute by virtue of devolution of interest upon another person, may not take interest therein, in ordinary course, which is but natural, or by colluding with the other side. If the submission of Mr. Nuli is accepted, a party upon whom interest has devolved, upon his failure to apply for leave, would be deprived from challenging correctness of the decree by filing a properly constituted suit on the ground that the original party having lost interest in the subject of dispute, did not properly prosecute or defend the litigation or, in doing so, colluded with the adversary.

54. In Amit Kumar Shaw vs. Farida Khatoon, AIR 2005 SC 2209, this Court held that a transferee pendente lite to the extent he has acquired interest from the defendant is vitally interested in the litigation, where the transfer is of the entire

interest of the defendant; the latter having no more interest in the property may not properly defend the suit. He may collude with the plaintiff. Hence, though the plaintiff is under no obligation to make a lis pendens transferee a party, under Order XXII Rule 10 an alienee pendente lite may be joined as party.

As already noticed, the court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests. The court has held that a transferee pendente lite of an interest in immovable property is a representative-in-interest of the party from whom he has acquired that interest. He is entitled to be impleaded in the suit or other proceedings where his predecessor-in-interest is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case. This judgment has been followed in Thomson Press (India) Ltd. (supra).

55. In fact, the scope of Order I Rule 10 and Order XXII Rule 10 CPC is similar. Therefore, the principles applicable to Order XXII Rule 10 CPC, in order to bring a purchaser pendente lite on record, are applicable to Order I Rule 10 CPC. Under Order I Rule 10(2) CPC, the Court is required to record a finding that person sought to be impleaded as party in the suit is either necessary or proper party.

While Section 146 and Order XXII Rule 10 CPC confers right upon the legal representative of a party to the suit to be impleaded with the leave of the Court and continue the litigation. While deciding an application under Section 146 and Order XXII Rule 10 CPC, the Court is not require to go in the controversy as to whether person sought to be impleaded as party in the suit is either necessary or proper party. If the person sought to be impleaded as party is legal representative of a party to the suit, it is sufficient for the Court to order impleadment/substitution of such person.

56. Thus, a lis pendens transferee though not brought on record under Order XXII Rule 10 CPC, is entitled to seek leave to appeal against the final decree passed against this transferor, the defendant in the suit. However, whether to grant such leave or not is within the discretion of the court and such discretion should be exercised judiciously in the facts and circumstances of each case.

57. Having regard to the fact that the Respondent Nos. 1 and 2 respectively purchased the suit property during the pendency of the suit instituted for specific performance and that too, while the injunction against the original owner (transferor) was operating, the Respondent Nos. 1 and 2 respectively could not be said to have even made out any good case for grant of leave to appeal.

58. From a conspectus of all the aforesaid judgments, touching upon the present aspect, broadly, the following would emerge:

i. First, for the purpose of impleading a transferee pendente lite, the facts and circumstances should be gone into and basing on the necessary facts, the Court can permit such a party to come on record, either under Order I Rule 10 CPC or under Order XXII Rule 10 CPC, as a general principle;

ii. Secondly, a transferee pendente lite is not entitled to come on record as a matter of right;

iii. Thirdly, there is no absolute rule that such a transferee pendente lite, with the leave of the Court should, in all cases, be allowed to come on record as a party;

iv. Fourthly, the impleadment of a transferee pendente lite would depend upon the nature of the suit and appreciation of the material available on record;

v. Fifthly, where a transferee pendente lite does not ask for leave to come on record, that would obviously be at his peril, and the suit may be improperly conducted by the plaintiff on record;

vi. Sixthly, merely because such transferee pendente lite does not come on record, the concept of him (transferee pendente lite) not being bound by the judgment does not arise and consequently he would be bound by the result of the litigation, though he remains unrepresented;

vii. Seventhly, the sale transaction pendente lite is hit by the provisions of Section 52 of the Transfer of Property Act; and,

viii. Eighthly, a transferee pendente lite, being an assignee of interest in the property, as envisaged under Order XXII Rule 10 CPC, can seek leave of the Court to come record on his own or at the instance of either party to the suit.

CONCLUSION

59. In the overall view of the matter, we are convinced that the impugned order passed by the High Court is unsustainable in law.

60. In the result, the appeals succeed and are hereby allowed. The impugned order passed by the High Court is set aside.

61. If the Respondent Nos. 1 & 2 feel that they have been duped or cheated by the Respondent No. 7/Defendant No. 3, then it shall be open for them to avail appropriate legal remedy before the appropriate forum in accordance with law for the purpose of recovery of the amount towards sale consideration paid at the time of execution of the sale deed.

62. Pending application(s), if any, stand disposed of accordingly.

.....J. (J.B. Pardiwala)

.....J. (R. Mahadevan)

New Delhi

January 29, 2025

IN THE SUPREME COURT OF INDIA

M/S. JM Laboratories and Ors.
Vs.
State of Andhra Pradesh and Anr.

[Criminal Appeal No._____ of 2025
arising out of SLP (Crl.) No. 5067 of 2024]

HEADNOTE – Magistrate's summoning order must reflect reasons.

Followed the dictum of Pepsi Foods Ltd. and Anr. Vs. Special Judicial Magistrate and Others (1998) 5 SCC 749

Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. **The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused.** It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. **The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused**, held in Pepsi Foods Ltd.

JUDGMENT

B.R. Gavai, J.

1. Leave granted.

2. The present appeal challenges the judgment and final order dated 4th October, 2023 passed by a learned Single Judge of the High Court of Andhra Pradesh at Amravati in Criminal Petition No. 5766 of 2023, whereby the petition filed by the appellants herein under Section 482 of Code of Criminal Procedure, 1973 (hereinafter, "CrPC") to quash the proceedings in C.C. No. 1051 of 2023 on the file of learned Judicial Magistrate of First Class, Kurnool (hereinafter, "trial court") came to be dismissed.

3. The facts, in brief, giving rise to the present appeal are as given below.

3.1. On 29th May, 2019 the Drugs Inspector, Kurnool Urban, Kurnool District (Respondent No. 2) filed a complaint being C.C. No. 1051 of 2023 in the Court of First Class Judicial Magistrate, Kurnool under Section 32 of the Drugs and Cosmetics Act, 1940 (hereinafter, "DC Act") against M/s. J.M. Laboratories (Appellant No. 1), its Managing Partner (Appellant No. 2) and three silent partners (Appellant Nos. 3, 4 & 5).

3.2. It is alleged that on 7th September, 2018, the complainant picked up sample of drug MOXIGOLD-CV 625 (Amoxycillin & Potassium Clavunate Tablets IP) bearing Batch No. BT170059F / Manufacture Date - November 2017 / Expiration Date - April 2019, which was manufactured by Appellant No. 1, for analysis. It is further alleged that on the same day by a memorandum, the complainant sent one sealed portion of the drug sample to the Government Analyst, Drugs Control Laboratory, Vijayawada along with Form-18 through registered post.

It is further alleged that subsequently on 15th December, 2018, the complainant received Analytical Report in Form-13 from the Government Analyst declaring the drug sample as "Not of Standard Quality" as defined in the DC Act and rules thereunder for the reason that the sample failed in Dissolution Test for Amoxycillin and Clavulanic Acid. It is, therefore, alleged that the appellants herein have violated Section 18(a)(i) read with Section 16 of the DC Act by manufacturing, selling and distributing "Not of Standard Quality" drugs and ought to be punished for offence punishable under Section 27(d) of DC Act.

3.3. Pursuant to the complaint, the trial court by an order dated 19th July, 2023 summoned the appellants herein and directed them to appear before it on 10th August, 2023.

3.4. Aggrieved thereby, the appellants herein filed a petition under Section 482 of CrPC inter-alia praying that the High Court quash criminal proceedings against them arising out of C.C. No. 1051 of 2023 on the file of the trial court.

3.5. Vide impugned judgment and final order, the learned Single Judge of the High Court dismissed the Criminal Petition. Aggrieved thereby, the present appeal by way of special leave.

4. We have heard Shri H.P.S. Sandhu, learned counsel appearing on behalf of the appellants and Smt. Prerna Singh, learned counsel appearing on behalf of the respondents.

5. Several submissions have been made on behalf of the appellants. It is contended by the appellants that there are violations of various statutory provisions. It is also contended that the case is barred by limitation in view of the

provisions contained in Section 468 (2) of the Cr.P.C. It is submitted that the Analytical Report in respect of which the violation is alleged is dated 15th December 2018 whereas the complaint is filed in May 2023. It is submitted that it is filed beyond a period of three years and hence, the same would not be tenable. It is also submitted that there is also non-compliance of the provisions of Section 202 of Cr.P.C.

6. However, we do not find it necessary to consider the submissions made by the appellants on various grounds inasmuch as the present appeal is liable to be allowed on the short ground that the learned Magistrate has issued the process without assigning any reasons.

7. It will be relevant to refer to the summoning order which reads thus:

"Whereas your attendance is necessary to give evidence in a charge Sec.18(a)(i) r/w Sec. 16(i)(a) of Drugs & Cosmetics Act, 1940 against the accused M/s J.M. Laboratories, Vill. Bhanat, P.O-Ghtti, Subathu Road, Solan (H.P.). You are hereby requested to appear in person before the Hon'ble Court of Judicial First Class Magistrate, Kurnool at 10:30 AM on the 10th day of August 2023.

Given under my hand the seal of the court this _____ day of July 2023."

8. In the judgment and order of even date in criminal appeal arising out of SLP (Crl.) No. 2345 of 2024 titled "INOX Air Products Limited Now Known as INOX Air Products Private Limited and Another v. The State of Andhra Pradesh", we have observed thus:

"33. It could be seen from the aforesaid order that except recording the submissions of the complainant, no reasons are recorded for issuing the process against the accused persons.

34. In this respect, it will be relevant to refer to the following observations of this Court in the case of Pepsi Foods Ltd. and Another v. Special Judicial Magistrate and Others (1998) 5 SCC 749 (supra):

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused.

It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

35. This Court has clearly held that summoning of an accused in a criminal case is a serious matter. It has been held that the order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. This Court held that the Magistrate is required to examine the nature of allegations made in the complaint and the evidence, both oral and documentary in support thereof and as to whether that would be sufficient for proceeding against the accused. It has been held that the Magistrate is not a silent spectator at the time of recording of preliminary evidence before summoning the accused.

36. The said law would be consistently following by this Court in a catena of judgments including in the cases of Sunil Bharti Mittal v. Central Bureau of Investigation (2015) 4 SCC 609, Mehmood Ul Rehman v. Khazir Mohammad Tunda and Others (2015) 12 SCC 420 and Krishna Lal Chawla and Others v. State of Uttar Pradesh and Another (2021) 5 SCC 435.

37. Recently, a Bench of this Court to which one of us (Gavai, J.) was a Member, in the case of Lalankumar Singh and Others v. State of Maharashtra 2022 SCC OnLine SC 1383 (supra), has observed thus:

"38. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of Sunil Bharti Mittal v. Central Bureau of Investigation9, which reads thus:

"51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry,

if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words "sufficient ground for proceeding" appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."

39. A similar view has been taken by this Court in the case of Ashoke Mal Bafna (supra).

40. In the present case, leaving aside there being no reasons in support of the order of the issuance of process, as a matter of fact, it is clear from the order of the learned Single Judge of the High Court, that there was no such order passed at all. The learned Single Judge of the High Court, based on the record, has presumed that there was an order of issuance of process. We find that such an approach is unsustainable in law. The appeal therefore deserves to be allowed."

9. In the present case also, no reasons even for the namesake have been assigned by the learned Magistrate. The summoning order is totally a non-speaking one. We therefore find that in light of the view taken by us in criminal appeal arising out of SLP (Crl.) No. 2345 of 2024 titled "INOX Air Products Limited Now Known as INOX Air Products Private Limited and Another v. The State of Andhra Pradesh", and the legal position as has been laid down by this Court in a catena of judgments including in the cases of Pepsi Foods Ltd. and Another v. Special Judicial Magistrate and Others1, Sunil Bharti Mittal v. Central Bureau of Investigation2, Mehmood Ul Rehman v. Khazir Mohammad Tunda and Others3 and Krishna Lal Chawla and Others v. State of Uttar Pradesh and Another4, the present appeal deserves to be allowed.

10. In the result, we pass the following order:

(i) The present appeal is allowed;

(ii) The impugned judgment and order dated 4th October 2023 passed by the High Court of Andhra Pradesh at Amravati in Criminal Petition No. 5766 of 2023 is quashed and set aside; and

(iii) The summoning order dated 19th July 2023 passed by the Trial Court in C.C. No. 1051 of 2023 and the proceedings arising therefrom are also quashed and set aside.

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

.....J. (B.R. Gavai)

.....J. (Augustine George Masih)

New Delhi;

January 30, 2025.

1 (1998) 5 SCC 749 : 1997 INSC 714

2 (2015) 4 SCC 609 : 2015 INSC 18

3 (2015) 12 SCC 420 : 2015 INSC 983

4 (2021) 5 SCC 435 : 2021 INSC 160

2. Study Material-G.K.

MODERN INDIAN HISTORY (1707–1947)

1. Decline of the Mughal Empire (1707–1857)

- **Aurangzeb's Death (1707)**: Marked the beginning of the decline of the Mughal Empire.
- **Successor Weaknesses**: Later Mughal rulers (Bahadur Shah I, Farrukhsiyar, Muhammad Shah) were weak and inefficient.
- **Rise of Regional Powers**:
    - **Marathas**: Peshwa system, expansion, Third Battle of Panipat (1761).
    - **Rajputs, Jats, and Sikhs**: Sikh Empire under Maharaja Ranjit Singh (1799–1839).
    - **Nawabs of Bengal, Hyderabad, and Awadh**: Became semi-independent.

2. European Expansion in India

Arrival of Europeans

- **Portuguese (1498)**: Vasco da Gama landed in Calicut.
- **Dutch (1602)**: Established trade posts but later focused on Indonesia.
- **British (1600)**: East India Company established by Queen Elizabeth I.
- **French (1664)**: French East India Company established under Colbert.

Anglo-French Rivalry (Carnatic Wars, 1746–1763)

1. **First Carnatic War (1746–48)**: British vs. French, Treaty of Aix-la-Chapelle.
2. **Second Carnatic War (1749–54)**: British victory, Dupleix recalled.
3. **Third Carnatic War (1756–63)**: British victory, Treaty of Paris (1763).

British Conquest of Bengal

- **Battle of Plassey (1757)**: Robert Clive defeated Siraj-ud-Daulah, establishing British control over Bengal.
- **Battle of Buxar (1764)**: British (led by Hector Munro) defeated the combined forces of Mir Qasim, Shuja-ud-Daula, and Shah Alam II.
- **Dual Government in Bengal (1765–1772)**: EIC gained Diwani (revenue collection).

3. British Rule in India

Regulating Acts and Administrative Reforms

- **Regulating Act (1773)**: First attempt at British governance in India.
- **Pitt's India Act (1784)**: Established Board of Control and Court of Directors.
- **Charter Acts (1793–1853)**: Allowed Christian missionaries and opened civil services to Indians.

Major Governors-General and Their Policies

- **Warren Hastings (1773–1785)**: Judicial reforms, First Anglo-Maratha War, and Second Anglo-Mysore War.
- **Lord Cornwallis (1786–1793)**: Permanent Settlement, civil service reforms.
- **Lord Wellesley (1798–1805)**: Subsidiary Alliance, Fourth Anglo-Mysore War (1799).
- **Lord Dalhousie (1848–1856)**: Doctrine of Lapse, railways, postal system, Second Anglo-Sikh War (1848–49).

4. Revolt of 1857

Causes

1. **Political**: Doctrine of Lapse, annexation of Awadh (1856).
2. **Economic**: Heavy taxation, ruin of traditional industries.
3. **Military**: Discontent among sepoys, use of Enfield rifles (greased cartridges).
4. **Social-Religious**: Westernization, interference in customs.

Key Leaders & Centers

- **Bahadur Shah Zafar**: Delhi.
- **Rani Lakshmibai**: Jhansi.
- **Nana Sahib, Tantia Tope**: Kanpur.
- **Kunwar Singh**: Bihar.

Results

- **End of Mughal Rule**: Bahadur Shah Zafar exiled to Rangoon.
- **End of Company Rule**: Government of India Act (1858) brought India under direct British rule.

5. Social and Religious Reform Movements

Brahmo Samaj (1828): Raja Ram Mohan Roy – fought against Sati, caste discrimination.

Arya Samaj (1875): Swami Dayananda Saraswati – advocated Vedic traditions, Shuddhi movement.

Ramakrishna Mission (1897): Swami Vivekananda – spiritual nationalism.

Theosophical Society (1875): Annie Besant – Indian self-rule.

Aligarh Movement: Sir Syed Ahmad Khan – modern education for Muslims.

6. Rise of Nationalism and Indian National Congress (1885)

- **Formation of INC (1885)**: A.O. Hume, Dadabhai Naoroji, W.C. Bonnerjee.
- **Early Phase (1885–1905)**: Moderate approach, petitions, reforms.
- **Partition of Bengal (1905)**: Lord Curzon's divide-and-rule policy led to Swadeshi Movement.
- **Extremists (1905–1919)**: Bal Gangadhar Tilak, Bipin Chandra Pal, Lala Lajpat Rai.
- **Formation of Muslim League (1906)**: Demand for separate electorates.

7. Mahatma Gandhi and the Freedom Struggle (1915–1947)

Major Movements

- **Champaran & Kheda Satyagraha (1917–18)**: First successful movements.
- **Jallianwala Bagh Massacre (1919)**: Led to Non-Cooperation Movement (1920).
- **Simon Commission (1928)**: Rejected by Indians, led to Nehru Report.
- **Civil Disobedience Movement (1930–34)**: Salt March (Dandi March, 1930).
- **Quit India Movement (1942)**: Mass civil disobedience, "Do or Die" slogan.

Other Key Developments

- **Government of India Act (1935)**: Provincial autonomy.
- **Lahore Resolution (1940)**: Demand for Pakistan.
- **Cabinet Mission Plan (1946)**: Proposed federal structure, rejected by Congress and League.

8. Partition and Independence (1947)

- **Mountbatten Plan (1947)**: Partition of India and Pakistan.
- **Indian Independence Act (July 18, 1947)**: India and Pakistan became independent on August 15, 1947.

3. Study Material-Language

Antonyms

1. Common Adjectives

- Big ↔ Small
- Hot ↔ Cold
- Fast ↔ Slow
- Happy ↔ Sad
- Hard ↔ Soft
- Light ↔ Dark
- Strong ↔ Weak
- Old ↔ Young
- Loud ↔ Quiet
- Heavy ↔ Light

2. Common Verbs

- Come ↔ Go
- Give ↔ Take
- Win ↔ Lose
- Love ↔ Hate
- Buy ↔ Sell
- Start ↔ Stop
- Build ↔ Destroy
- Accept ↔ Reject
- Remember ↔ Forget
- Push ↔ Pull

3. Common Nouns

- Love ↔ Hate
- War ↔ Peace
- Success ↔ Failure
- Truth ↔ Lie
- Day ↔ Night
- Rich ↔ Poor
- Life ↔ Death
- Friend ↔ Enemy
- Beginning ↔ End
- Hope ↔ Despair

4. Directional & Positional Antonyms

- Left ↔ Right
- Up ↔ Down
- In ↔ Out
- North ↔ South
- Front ↔ Back
- Near ↔ Far
- Over ↔ Under
- Above ↔ Below
- Open ↔ Closed
- Inside ↔ Outside

5. Time-related Antonyms

- Early ↔ Late
- Past ↔ Future
- Always ↔ Never
- First ↔ Last
- Before ↔ After
- Temporary ↔ Permanent
- Ancient ↔ Modern
- Quick ↔ Slow
- Soon ↔ Later
- Yesterday ↔ Tomorrow

5. Current Affairs

JANUARY 2025

1. Which athletes will be honored with the Khel Ratna Award 2025- **Gukesh D, Harmanpreet Singh, Praveen Kumar and Manu Bhaker**
2. In which state India's first glass sea bridge was unveiled- **Tamil Nadu**
3. How many athletes will be honored with Arjun Award 2025- **32**
4. Which Union Ministers released the book 'Jammu Kashmir and Ladakh: Through the Ages'- **Amit Shah and Dharmendra Pradhan**
5. Which player scored the first century of the year 2025- **Kushal Perera**
6. Who jointly won the title of World Blitz Chess Championship- **Magnus Carlsen and Ian Nepomniachtchi**
7. Who has been appointed as the Director General of CRPF recently- **Vitul Kumar**
8. Which team won the title of the 78th edition of Santosh Trophy- **West Bengal**
9. Where was the World Blitz Chess Championship held- **New York**
10. With which country India is conducting the **"Surya Kiran"** military exercise- **Nepal**
11. Who inaugurated the Panchayat to Parliament 2.0 initiative- **Om Birla**
12. Recently in which city did PM Modi lay the foundation stone of Central Ayurveda Research Institute (CARI)- **New Delhi**
13. What is the name given to the 'torch' of the 38th National Games- **'Tejaswini'**
14. Which city has recently been declared the world's most polluted city- **Hanoi**
15. How many people were recently honored with the highest civilian award by US President Joe Biden - **19**
16. Who has been appointed as the new Chief Financial Officer (CFO) of Apple- **Kevan Parekh**
17. Costas Simitis has passed away recently, he was the former Prime Minister of which country- **Greece**
18. Recently, Dr. Rajagopala Chidambaram died at the age of 88, he was a famous scientist in which field- **Nuclear Energy**
19. Recently India and America have announced the co-production of which technology for the Indian Navy- **Hypersonic missile**
20. How much has Microsoft announced to invest in the next two years on AI and cloud infrastructure in India - **$3 billion**
21. Who has been appointed as the new CFO of Signature Global- **Sanjeev Kumar Sharma**
22. What is the NSO's estimate of India's real GDP growth for the financial year 2024-25 (FY25)- **6.4%**
23. Who won the title of Under-17 Junior Squash Open 2025- **Anahat Singh**

24. Justin Trudeau has recently resigned from the post of Prime Minister of which country- **Canada**
25. In which city is the 18th Pravasi Bharatiya Divas being organized- **Bhubaneswar**
26. What is the theme of World Hindi Day 2025- '**Global voice of Hindi unity and cultural pride**'
27. Martin Guptill has announced his retirement from international cricket, he is a player of which country- **New Zealand**
28. John Dramani Mahama has recently been sworn in as the President of which country- **Ghana**
29. Where is Aero India 2025 being organized- **Bengaluru**
30. Who has been appointed as the new Revenue Secretary under the Ministry of Finance- **Tuhin Kanta Pandey**
31. In whose honor has the Himachal Pradesh government renamed the Himachal Pradesh Institute of Public Administration- **Dr. Manmohan Singh**
32. Where is the Developed India Young Leaders Dialogue being organized- **New Delhi**
33. In which city did Uttar Pradesh CM Yogi Adityanath inaugurate the special 'Kumbhwani' channel of All India Radio- **Prayagraj**
34. Where was India's first cable-stayed railway bridge inaugurated - **Jammu and Kashmir**
35. Who chaired the regional conference on "Drug Trafficking and National Security" in New Delhi on 11 January- **Amit Shah**
36. Where did PM Modi lay the foundation stone of India's first green hydrogen hub- **Visakhapatnam**
37. Recently, P. Jayachandran has passed away, he was a famous personality in which field- **Singing**
38. Who inaugurated the Z-Morh Tunnel or Sonamarg Tunnel- **PM Narendra Modi**
39. Which is the biggest annual festival for the Hatti tribes of the Trans-Giri region in Himachal Pradesh- **Boda Festival**
40. Who has been appointed the new chairman of Indian Police Foundation- **OP Singh**
41. Which country will host the 28th Conference of Speakers and Presiding Officers of Parliaments of Commonwealth countries- **India**
42. Who was recently appointed as the new secretary of BCCI- **Devjit Saikia**
43. Recently which Indian bowler has announced his retirement from international cricket- **Varun Aaron**
44. When is National Youth Day celebrated every year- **12 January**
45. Z-Morh Tunnel or Sonamarg Tunnel will provide connectivity to which two cities- **Jammu and Srinagar**
46. Who has been awarded the ICC Men's Player of the Month award for December 2024- **Jasprit Bumrah**

47. Who has been appointed as the chairperson of the newly formed Athletes Commission of AFI- **Anju Bobby George**
48. Nag Mark 2 anti-tank guided missile has been developed by which organization- **DRDO**
49. Who has been awarded the ICC Women's Player of the Month award for December 2024- **Annabel Sutherland**
50. Recently Nawaf Salam has been appointed as the new Prime Minister of which country- **Lebanon**
51. Who has been appointed the new captain of IPL team Punjab Kings- **Shreyas Iyer**
52. With which institutions has C-DOT signed an agreement to develop wideband spectrum-sensor ASIC-chip- **IIT Jammu and IIT Mandi**
53. Where is the first Kho-Kho World Cup being organized- **New Delhi**
54. Which mission did PM Modi launch to celebrate the completion of 150 years of the Meteorological Department- **'Mission Mausam'**
55. 'Bhargavastra' micro-missile system has been developed by- **Economic Explosives Limited**
56. Recently 'Gaan-Ngai' 2025 festival is being organized in which state- **Manipur**
57. Larsen & Toubro launched which multi-purpose vessel (MPV) for Indian Navy- **INS Utkarsh**
58. Who won the ICC Men's Player of the Month award for December 2024- **Jasprit Bumrah**
59. INS Utkarsh, which was recently inducted into the Navy, has been built by- **Larsen & Toubro**
60. Against which country did the Indian women's cricket team score the highest score in ODI- **Ireland**
61. How many crores has the Central Government approved for 56 watershed development projects- **Rs. 700 crores**
62. Modi cabinet approves 8th Central Pay Commission, when is it expected to be implemented- **Year 2026**
63. What is the main objective of Exercise Devil Strike organized by the Indian Army- **To enhance combat readiness and operational capabilities**
64. What has the Crisil Intelligence report estimated for India's GDP growth rate in the next financial year (2025)- **6.7%**
65. With which country has India signed a deal for the export of Brahmos supersonic cruise missiles- **Indonesia**
66. Former CII Director General Tarun Das was recently awarded the Honorary Citizen Award of which country- **Singapore**
67. Who has been sworn in as the new Justice of the Supreme Court- **Justice K. vinod chandran**
68. Odisha government has announced how much pension for emergency prisoners- **Rs. 20,000**

69. With which country has India declared the year 2026 as the 'Double Year' for Culture, Tourism and AI- **Spain**
70. In which city was the Archaeological Experimental Museum inaugurated recently- **Vadnagar**
71. What is India's rank in the 'Future of Works' category under the QS World Future Skills Index - **Second**
72. General V.K. Singh (Retd) has recently been appointed as the new Governor of which state- **Mizoram**
73. In which city is India Mobility Global Expo 2025 being organized- **New Delhi**
74. Which Union Minister has recently launched Bharat Ranbhoomi Darshan App- **Rajnath Singh**
75. Who took additional charge as Secretary of Ministry of New and Renewable Energy- **Nidhi Khare**
76. With whom has the Defense Ministry signed an agreement for the Navy's medium-range surface-to-air missiles- **Bharat Dynamics**
77. President Draupadi Murmu unveiled the commemorative logo on completion of 60 years of diplomatic relations with which country- **Singapore**
78. External Affairs Minister S Jaishankar and US Ambassador to India Eric Garcetti inaugurated the new US Consulate in which Indian city- **Bengaluru**
79. Who has been appointed as the new Director General of CRPF- **Gyanendra Pratap Singh**
80. Who has been sworn in as the 47th President of the United States- **Donald Trump**
81. Which country has recently banned TikTok- **USA**
82. Where is the 27th International Glass Congress 2025 being organized- **Kolkata**
83. Where was the Flamingo Festival 2025 organized recently- **Andhra Pradesh**
84. Which Indian was recently awarded the Gates-Cambridge Impact Award 2025- **Urvashi Sinha**
85. Recently Divya Kala Mela was successfully organized in which city of Gujarat- **Vadodara**
86. Which African country has recently become the ninth partner country of BRICS- **Nigeria**
87. In which state is the historical Ratnagiri site, which was in the news recently, located- **Odisha**
88. Where will the first International Olympic Research Conference be organized- **Gandhinagar**
89. Department for Promotion of Industry and Internal Trade (DPIIT) has partnered with whom to promote startup talent and create employment opportunities for youth- **'Apna'**
90. Recently Pralay missile was in news, what type of lethal missile is it- **surface to surface**

91. Where did the Ministry of Tribal Affairs organize the National Conference of District Magistrates (DMs) on Pradhan Mantri Janman- **Bharat Mandapam, New Delhi**
92. Who was recently appointed as the new ADG of BSF- **Mahesh Kumar Aggarwal**
93 Who has been elected as the President of the Institute of Company Secretaries of India (ICSI) for the year 2025- **Dhananjay Shukla**
94. Prabawo Subianto is the Chief Guest of Republic Day 2025, the President of which country- **Indonesia**
95. Which ministry is organizing 'Lok Sanvardhan Parv' from 27 January to 2 February 2025 in New Delhi- **Ministry of Minority Affairs**
96. What is the theme of the joint tableau of the three armies for the first time in the Republic Day Parade 2025- **'Strong and Secure India'**
97. Union Culture and Tourism Minister Gajendra Singh Shekhawat inaugurated 'Bhagwat' exhibition - **Prayagraj**
98. Recently, Virgin coconut oil of which city has been awarded the Geographical Indication (GI) tag- **Nicobar**
99. Who has recently become India's top chess player- **D Gukesh**
100. Who took oath as the Chief Justice of Delhi High Court- **Justice Devendra Kumar Upadhyay**
101. Justice Alok Aradhe has recently taken oath as the Chief Justice of which High Court- **Bombay High Court**
102. Which country will host the Chess World Cup 2025- **India**
103. Inland Waterways Authority of India (IWAI) recently established a new regional office in which city- **Varanasi**
104. First EAN Rupay Credit Card is seamlessly integrated with- **UPI**
105. What is India's rank in the Global Firepower Index 2025- **Fourth**
106. Who was recently appointed as the brand ambassador of FICCI Frames- **Ayushmann Khurrana**
107. Where is Khelo India Winter Games 2025 being organized- **Ladakh**
108. What is the main objective of 'Sanjay - Battlefield Surveillance System (BSS)'- **Increasing battlefield transparency and providing information to the decision system**
109. Which card has been launched recently by Tata AIA Life Insurance- **'Shubh Muhurat'**
110. Recently RBI has recognized whom as a cross-border payment aggregator- **Skydo**
111. IDFC First Bank has partnered with whom to launch First EA₹N Credit Card- **Rupay Card**
112. Who was recently awarded the ECI Media Award- **Doordarshan**
113. Which is the first state of independent India to implement Uniform Civil Code- **Uttarakhand**
114. Young Indian mountaineer Shivangi Pathak recently hoisted the tricolor on the highest peak of which country- **Australia**

115. Which player holds the record for scoring the most runs without getting out in T20I cricket- **Tilak Verma**
116. Michel Martin has recently been elected as the new Prime Minister of which country- **Ireland**
117. Who has been selected as the captain of the ICC Men's T20I Team of the Year 2024- **Rohit Sharma**
118. Which player won the title of ICC Men's Test Cricketer of the Year- **Jaspreet Bumrah**
119. Which two cities recently got international recognition as 'Wetland City' under the Ramsar Convention- **Udaipur and Indore**
120. Who was recently appointed as the Executive Director of Dhanlaxmi Bank- **P. Suryaraj**
121. Recently which two Indian cities have been included in the list of global wetland recognized cities- **Indore and Udaipur**
122. Which player won the title of Australian Open 2025- **Yannick Sinner**
123. Who won the ICC Emerging Men's Cricketer of the Year award- **Kamindu Mendis**
124. India has recently joined which program as an observer nation- **Eurodrone program**
125. Who was recently awarded the ICC Umpire of the Year Award- **Richard Illingworth**
126. Under which mission is India ready to launch the first manned submarine- **Deep Sea Mission**
127. ISRO is ready for which launch of GSLV rocket on January 29- **100th launch**
128. When is the birth anniversary of Lala Lajpat Rai, famous as Punjab Kesari, celebrated - **28 January**
129. ISRO launched its 100th mission using – **GSLV-F15**
130. First Australian to score a double century in Sri Lanka – **Usman Khawaja**
131. Hisashi Takeuchi was reappointed as CEO & MD of – **Maruti Suzuki**
132. Greg Bell, who passed away, was a famous long jumper from – **USA**
133. ICC Women's Cricketer of the Year 2024 – **Amelia Kerr (New Zealand)**
134. ICC CEO who recently resigned – **Geoff Allardice**
135. What is the name of AI created by China – **DeepSeek**
136. Which village in Kutch declared the first-ever 'Biodiversity Heritage Site' of Gujarat – **Guneri village**

5. Padma Awards 2025

Padma Awards - one of the highest civilian Awards of the country, are conferred in three categories, namely, Padma Vibhushan, Padma Bhushan and Padma Shri. The Awards are given in various disciplines/ fields of activities, viz.- art, social work, public affairs, science and engineering, trade and industry, medicine, literature and education, sports, civil service, etc. 'Padma Vibhushan' is awarded for exceptional and distinguished service; 'Padma Bhushan' for distinguished service of high order and 'Padma Shri' for distinguished service in any field. The awards are announced on the occasion of Republic Day every year.

These Awards are conferred by the President of India at ceremonial functions which are held at RashtrapatiBhawan usually around March/ April every year. For the year 2025, the President has approved conferment of 139Padma Awards including1 duo case (in a duo case, the Award is counted as one) as per list below. The list comprises 7Padma Vibhushan, 19 Padma Bhushan and 113 Padma Shri Awards. 23of the awardees are women and the list also includes 10 persons from the category of Foreigners/NRI/PIO/OCI and13Posthumous awardees.

Padma Vibhushan (7)

S.N.	Name	Field	State/Country
1.	Shri Duvvur Nageshwar Reddy	Medicine	Telangana
2.	Justice (Retd.) Shri Jagdish Singh Khehar	Public Affairs	Chandigarh
3.	Smt. Kumudini Rajnikant Lakhia	Art	Gujarat
4.	Shri LakshminarayanaSubramaniam	Art	Karnataka
5.	Shri M. T. Vasudevan Nair (Posthumous)	Literature and Education	Kerala
6.	Shri Osamu Suzuki (Posthumous)	Trade and Industry	Japan
7.	Smt. Sharda Sinha (Posthumous)	Art	Bihar

Padma Bhushan(19)

S.N.	Name	Field	State/Country
8.	Shri A Surya Prakash	Literature and Education-Journalism	Karnataka
9.	Shri Anant Nag	Art	Karnataka

10.	Shri Bibek Debroy(Posthumous)	Literature and Education	NCT Delhi
11.	Shri Jatin Goswami	Art	Assam
12.	Shri Jose Chacko Periappuram	Medicine	Kerala
13.	Shri Kailash Nath Dikshit	Others-Archaeology	NCT Delhi
14.	Shri Manohar Joshi(Posthumous)	Public Affairs	Maharashtra
15.	Shri Nalli Kuppuswami Chetti	Trade and Industry	Tamil Nadu
16.	Shri Nandamuri Balakrishna	Art	Andhra Pradesh
17.	Shri P R Sreejesh	Sports	Kerala
18.	Shri Pankaj Patel	Trade and Industry	Gujarat
19.	Shri Pankaj Udhas(Posthumous)	Art	Maharashtra
20.	Shri Rambahadur Rai	Literature and Education-Journalism	Uttar Pradesh
21.	Sadhvi Ritambhara	Social Work	Uttar Pradesh
22.	Shri S Ajith Kumar	Art	Tamil Nadu
23.	Shri Shekhar Kapur	Art	Maharashtra
24.	Ms. Shobana Chandrakumar	Art	Tamil Nadu
25.	Shri Sushil Kumar Modi (Posthumous)	Public Affairs	Bihar
26.	Shri Vinod Dham	Science and Engineering	United States of America

Padma Shri (113)

S.N.	Name	Field	State/Country
27.	Shri Adwaita Charan Gadanayak	Art	Odisha
28.	Shri Achyut Ramchandra Palav	Art	Maharashtra
29.	Shri Ajay V Bhatt	Science and Engineering	United States of America
30.	Shri Anil Kumar Boro	Literature and Education	Assam
31.	Shri Arijit Singh	Art	West Bengal
32.	Smt. Arundhati Bhattacharya	Trade and Industry	Maharashtra
33.	Shri Arunoday Saha	Literature and Education	Tripura
34.	Shri Arvind Sharma	Literature and Education	Canada

35.	Shri Ashok Kumar Mahapatra	Medicine	Odisha
36.	Shri Ashok Laxman Saraf	Art	Maharashtra
37.	Shri Ashutosh Sharma	Science and Engineering	Uttar Pradesh
38.	Smt. Ashwini Bhide Deshpande	Art	Maharashtra
39.	Shri Baijnath Maharaj	Others-Spiritualism	Rajasthan
40.	Shri Barry Godfray John	Art	NCT Delhi
41.	Smt. Begam Batool	Art	Rajasthan
42.	Shri Bharat Gupt	Art	NCT Delhi
43.	Shri Bheru Singh Chouhan	Art	Madhya Pradesh
44.	Shri Bhim Singh Bhavesh	Social Work	Bihar
45.	Smt. Bhimavva Doddabalappa Shillekyathara	Art	Karnataka
46.	Shri Budhendra Kumar Jain	Medicine	Madhya Pradesh
47.	Shri C S Vaidyanathan	Public Affairs	NCT Delhi
48.	Shri Chaitram Deochand Pawar	Social Work	Maharashtra
49.	Shri Chandrakant Sheth(Posthumous)	Literature and Education	Gujarat
50.	Shri Chandrakant Sompura	Others-Architecture	Gujarat
51.	Shri Chetan E Chitnis	Science and Engineering	France
52.	Shri David R Syiemlieh	Literature and Education	Meghalaya
53.	Shri Durga Charan Ranbir	Art	Odisha
54.	Shri Farooq Ahmad Mir	Art	Jammu And Kashmir
55.	Shri Ganeshwar Shastri Dravid	Literature and Education	Uttar Pradesh
56.	Smt. Gita Upadhyay	Literature and Education	Assam
57.	Shri Gokul Chandra Das	Art	West Bengal
58.	Shri Guruvayur Dorai	Art	Tamil Nadu
59.	Shri Harchandan Singh Bhatty	Art	Madhya Pradesh
60.	Shri Hariman Sharma	Others-Agriculture	Himachal Pradesh
61.	Shri Harjinder Singh Srinagar Wale	Art	Punjab
62.	Shri Harvinder Singh	Sports	Haryana
63.	Shri Hassan Raghu	Art	Karnataka
64.	Shri Hemant Kumar	Medicine	Bihar
65.	Shri Hriday Narayan Dixit	Literature and	Uttar Pradesh

		Education	
66.	Shri Hugh and Colleen Gantzer(Posthumous)(Duo)*	Literature and Education-Journalism	Uttarakhand
67.	Shri Inivalappil Mani Vijayan	Sports	Kerala
68.	Shri Jagadish Joshila	Literature and Education	Madhya Pradesh
69.	Smt. Jaspinder Narula	Art	Maharashtra
70.	Shri Jonas Masetti	Others-Spiritualism	Brazil
71.	Shri Joynacharan Bathari	Art	Assam
72.	Smt. Jumde Yomgam Gamlin	Social Work	Arunachal Pradesh
73.	Shri K. Damodaran	Others-Culinary	Tamil Nadu
74.	Shri K L Krishna	Literature and Education	Andhra Pradesh
75.	Smt. K Omanakutty Amma	Art	Kerala
76.	Shri Kishore Kunal(Posthumous)	Civil Service	Bihar
77.	Shri L Hangthing	Others-Agriculture	Nagaland
78.	Shri Lakshmipathy Ramasubbaiyer	Literature and Education-Journalism	Tamil Nadu
79.	Shri Lalit Kumar Mangotra	Literature and Education	Jammu And Kashmir
80.	Shri Lama Lobzang(Posthumous)	Others-Spiritualism	Ladakh
81.	Smt. Libia Lobo Sardesai	Social Work	Goa
82.	Shri M D Srinivas	Science and Engineering	Tamil Nadu
83.	Shri Madugula Nagaphani Sarma	Art	Andhra Pradesh
84.	Shri Mahabir Nayak	Art	Jharkhand
85.	Smt. Mamata Shankar	Art	West Bengal
86.	Shri Manda Krishna Madiga	Public Affairs	Telangana
87.	Shri Maruti Bhujangrao Chitampalli	Literature and Education	Maharashtra
88.	Shri Miriyala Apparao(Posthumous)	Art	Andhra Pradesh
89.	Shri Nagendra Nath Roy	Literature and Education	West Bengal
90.	Shri Narayan (Bhulai Bhai)(Posthumous)	Public Affairs	Uttar Pradesh
91.	Shri Naren Gurung	Art	Sikkim

92.	Smt. Neerja Bhatla	Medicine	NCT Delhi
93.	Smt. Nirmala Devi	Art	Bihar
94.	Shri Nitin Nohria	Literature and Education	United States of America
95.	Shri Onkar Singh Pahwa	Trade and Industry	Punjab
96.	Shri P Datchanamoorthy	Art	Puducherry
97.	Shri Pandi Ram Mandavi	Art	Chhattisgarh
98.	Shri Parmar Lavjibhai Nagjibhai	Art	Gujarat
99.	Shri Pawan Goenka	Trade and Industry	West Bengal
100.	Shri Prashanth Prakash	Trade and Industry	Karnataka
101.	Smt. Pratibha Satpathy	Literature and Education	Odisha
102.	Shri Purisai Kannappa Sambandan	Art	Tamil Nadu
103.	Shri R Ashwin	Sports	Tamil Nadu
104.	Shri R G Chandramogan	Trade and Industry	Tamil Nadu
105.	Smt. Radha Bahin Bhatt	Social Work	Uttarakhand
106.	Shri Radhakrishnan Devasenapathy	Art	Tamil Nadu
107.	Shri Ramdarash Mishra	Literature and Education	NCT Delhi
108.	Shri Ranendra Bhanu Majumdar	Art	Maharashtra
109.	Shri Ratan Kumar Parimoo	Art	Gujarat
110.	Shri Reba Kanta Mahanta	Art	Assam
111.	Shri Renthlei Lalrawna	Literature and Education	Mizoram
112.	Shri Ricky Gyan Kej	Art	Karnataka
113.	Shri Sajjan Bhajanka	Trade and Industry	West Bengal
114.	Smt. Sally Holkar	Trade and Industry	Madhya Pradesh
115.	Shri Sant Ram Deswal	Literature and Education	Haryana
116.	Shri Satyapal Singh	Sports	Uttar Pradesh
117.	Shri Seeni Viswanathan	Literature and Education	Tamil Nadu
118.	Shri Sethuraman Panchanathan	Science and Engineering	United States of America
119.	Smt. Sheikha Shaikha Ali Al-Jaber Al-Sabah	Medicine	Kuwait

120.	Shri Sheen Kaaf Nizam (Shiv Kishan Bissa)	Literature and Education	Rajasthan
121.	Shri Shyam Bihari Agrawal	Art	Uttar Pradesh
122.	Smt. Soniya Nityanand	Medicine	Uttar Pradesh
123.	Shri Stephen Knapp	Literature and Education	United States of America
124.	Shri Subhash Khetulal Sharma	Others-Agriculture	Maharashtra
125.	Shri Suresh Harilal Soni	Social Work	Gujarat
126.	Shri Surinder Kumar Vasal	Science and Engineering	Delhi
127.	Shri Swami Pradiptananda (Kartik Maharaj)	Others-Spiritualism	West Bengal
128.	Shri Syed Ainul Hasan	Literature and Education	Uttar Pradesh
129.	Shri Tejendra Narayan Majumdar	Art	West Bengal
130.	Smt. Thiyam Suryamukhi Devi	Art	Manipur
131.	Shri Tushar Durgeshbhai Shukla	Literature and Education	Gujarat
132.	Shri Vadiraj Raghawendracharya Panchamukhi	Literature and Education	Andhra Pradesh
133.	Shri Vasudeo Kamath	Art	Maharashtra
134.	Shri Velu Aasaan	Art	Tamil Nadu
135.	Shri Venkappa Ambaji Sugatekar	Art	Karnataka
136.	Shri Vijay Nityanand Surishwar Ji Maharaj	Others-Spiritualism	Bihar
137.	Smt. Vijayalakshmi Deshamane	Medicine	Karnataka
138.	Shri Vilas Dangre	Medicine	Maharashtra
139.	Shri Vinayak Lohani	Social Work	West Bengal

Note: * In Duo case, the Award is counted as one.

6. 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.

1. General Knowledge	2. Law
1. Current Affairs 2. G.K.MCQs 3. History of India and Indian Culture 4. Geography of India 5. Indian Polity 6. Current National Issues 7. Topic of Social Relevance with special reference to newly added 9 Social Acts 8. India and the World 9. Indian Economy 10. International Affairs and Institutions 11. Development in the field of: (i) Science and Technology (ii) Communications and Space	1. Constitutional Law 2. Law of Evidence 3. Criminal Procedure Code 4. Code of Civil Procedure, 5. Indian Panel Code 6. Law of Contract 7. Partnership Act 8. Easements Act 9. Law of Torts 10. Transfer of Property Act 11. Principles of Equity , 12. Law of Trust 13. Specific Relief Act 14. Hindu Law 15. Muslim Law 16. U.P. Revenue Code. 17. U.P. Municipalities Act 1916 18. U.P. Panchayat Raj Act 1947 19. U.P. Consolidation of Holdings Act, 1953 20. U.P. Urban (Planning and Development) Act, 1973
3. CLAT 1. General Knowledge 2. A Guide for CLAT	

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7. Vacancies of Judicial Services/APO (As on 31.01.2025)

S.N.	State	Vacancies	Important Dates
1.	Gujarat Judicial Service	212	**Form Filing Starts –** 01/02/2025 **Last Date of Filing Forms –** 01/03/2025 **Prelims Exam –** 23/03/2025 **Mains –** 15/06/2025
2.	Chhattigarh Judicial Service	57	**Form Filing Starts –** 26/12/2024 **Last Date of Filing Forms –** 23/02/2025
3.	Goa APO	14	**Form Filing Starts –** 24/01/2025 **Last Date of Filing Forms –** 24/02/2025