JUDICIAL ACADEMY JHARKHAND

SNIPPETS

OF

SUPREME COURT JUDGMENTS

(July,2020)

Prepared by :-

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1. *Aruna Oswal v. Pankaj Oswal and Others, 2020 SCC OnLine SC 557*

Decided on:06.07.2020
Bench: 1. Hon'ble Mr. Justice Arun Mishra
2. Hon'ble Mr. Justice S. Abdul Nazeer

(The basis of the petition is the claim by way of inheritance of 1/4th shareholding so as to constitute 10% of the holding, which right cannot be decided in proceedings under section 241/242 of the Companies Act,2013.)

Facts

These appeals have been preferred against the judgment and order dated 14.11.2019 passed by the National Company Law Appellate Tribunal, New Delhi, (for short 'the NCLAT') in Company Appeal (AT) No. 411 of 2018, thereby affirming the order passed by the National Company Law Tribunal (for short 'the NCLT') concerning maintainability of the applications filed under sections 241 and 242 of the Companies Act, 2013 (hereinafter referred to as 'the Act').

Late Mr. Abhey Kumar Oswal, during his lifetime, held as many as 5,35,3,960 shares in M/s. OswalAgro Mills Ltd., a listed company. He breathed his last on 29.3.2016 in Russia. On or about 18.6.2015, Mr. Abhey Kumar Oswal filed a nomination according to section 72 of the Act in favour of Mrs. ArunaOswal, his wife. Two witnesses duly attested the nomination in the prescribed manner. As per the appellant, it was explicitly provided therein that: "This nomination shall supersede any prior nomination made by me/us and any testamentary document executed by me/us." The name of Mrs. ArunaOswal, the appellant, was registered as a holder on 16.4.2016 as against the shares held by her deceased husband.

Mr. Pankaj Oswal, respondent No. 1, filed a partition suit being C.S. No. 53/2017 claiming entitlement to one-fourth of the estate of Mr. Abhey Kumar Oswal. He claimed one-fourth of the deceased's shareholdings who was holding shares to the extent of 39.88% in OswalAgro Mills. Ltd., respondent No. 2. The deceased also held 11.11% shares in M/s. Oswal Greentech Ltd., respondent No. 16. The partition suit was filed on 3.2.2017 by respondent No. 1 for 1/4th each of 39.88% shareholding in respondent No. 2 company and 11.11% shareholding in respondent No. 16 company. Prayer was made for an interim injunction in the civil suit. The High Court vide order dated 8.2.2017 directed the parties to maintain the status quo concerning shares and other immoveable property. As on 8.2.2017, the shares stood registered in the ownership of Mrs. ArunaOswal, who continues to be the owner of the shares.

After the demise of Mr. Abhey Kumar Oswal, respondent No. 1 entered into the corporate offices of respondent Nos. 2 and 16 along with his wife for which a criminal complaint was lodged. FIR No. 54/2016 was registered at Police Station Barakhamba Road, New Delhi. As a counterblast, respondent No. 1 also filed a criminal complaint against the appellant as well as the officials of respondent No. 2 and respondent No. 16 companies, alleging illegal transmission of shares. The application filed by respondent No. 1 for registration of the FIR was dismissed vide order dated 13.8.2018, and the revision petition filed against the said dismissal is pending.

Mr. Pankaj Oswal, respondent No. 1 filed Company Petition No. 56/CHD/PB/2018 - *Pankaj Oswal* v. *OswalAgro Mills Ltd.*, alleging oppression and mismanagement in the affairs of respondent No. 2 company. A prayer was also made against M/s. Oswal Greentech. Ltd. Respondent No. 1 claimed eligibility to maintain the petition on the ground of being a holder of 0.03% shareholding and claiming entitlement and legitimate expectation to 9.97% shareholding of M/s. OswalAgro Mills Ltd. by virtue of his being the son of deceased Abhey Kumar Oswal.An application was filed before NCLT in May 2018 by the appellant challenging maintainability of the petition.The NCLT, Chandigarh, directed the appellants and other respondents to file a reply to the company petition sans deciding the question of maintainability, an appeal was preferred before the NCLAT, and the same was disposed of on 29.5.2018 and NCLT was directed to decide the issue of maintainability before proceeding to decide the company petition on merits.The NCLT vide order dated 13.11.2018 dismissed the application, including C.A. No. 146/2018 challenging the company petition's maintainability. NCLT held respondent No. 1 as legal heir was entitled to one-fourth share of the property/shares. Aggrieved thereby, three appeals were filed before NCLAT, which have been dismissed vide judgment and order dated 14.11.2019. Aggrieved thereby, the appellants are before the Apex Court.

Decision and Observations

> **23.** It is admitted by respondent no. 1 that he was not involved in day to day affairs of the company and had shifted to Australia to set up his independent business w.e.f. 2001. His grievance is that the family had not recognised him as holder of the one-fourth shares. They were registered in the ownership of his mother Mrs. ArunaOswal; that also he had submitted to be an act of oppression. He acquired 0.03% share capital after filing of the civil suit, otherwise he was not having any shareholding in M/s. OswalAgro Mills Ltd.
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> **24.** In *Sangramsinh P. Gaekwad* v. *Shantadevi P. Gaekwad (Dead) through LRs.*, (2005) 11 SCC 314, it was held that the dispute as to inheritance of shares is eminently a civil dispute and cannot be said to be a dispute as regards oppression and/or mismanagement so as to attract Company Court's jurisdiction under sections 397 and 398. Adjudication of the question of ownership of shares is not contemplated under Section 397. The relevant portion is extracted hereunder:
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> "**143.** It is also not in dispute that the matter relating to her claim to succeed FRG as his Class I heir is pending adjudication in Civil Suit No. 725 of 1991 in the Baroda Civil Court. She claimed title in respect of 8000 shares by inheritance in terms of the Hindu Succession Act. Indisputably, in terms of Section 15 of the said Act she is a Class I heir but the appellants herein contend that the said provision has no application having regard to Section 5(2) thereof as inheritance in the family is governed by the rule of primogeniture. A pure question of title is alien to an application under Section 397 of the Companies Act wherefor the lack of probity is the only test. Furthermore, it is now well settled that the jurisdiction of the civil court is not completely ousted by the provisions of the Companies Act, 1956. (See *Dwarka Prasad Agarwal* v. *Ramesh Chander Agarwal*, (2003) 6 SCC 220)
>
> 144. A dispute as regards right of inheritance between the parties is eminently a civil dispute and cannot be said to be a dispute as regards oppression of minority shareholders by the majority shareholders and/or mismanagement."
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> (emphasis supplied)

25. In view of the aforesaid decision, we are of the opinion that ***the basis of the petition is the claim by way of inheritance of 1/4th shareholding so as to constitute 10% of the holding, which right cannot be decided in proceedings under section 241/242 of the Act.*** Thus, filing of the petition under sections 241 and 242 seeking waiver is a misconceived exercise, firstly, respondent no. 1 has to firmly establish his right of inheritance before a civil court to the extent of the shares he is claiming; more so, in view of the nomination made as per the provisions contained in Section 71 of the Companies Act, 2013.

26. In *Dale & Carrington Invt. (P) Ltd.* v. *P.K. Prathapan*, AIR 2005 SC 1624, the question of locus standi to entertain the petition under sections 397 and 398 of the Companies Act, 1956, which are parimateria to sections 241 and 242 of the Companies Act, 2013, was considered. This Court held that in order to maintain the petition, one should have requisite number of shares in the company on the date of filing of the petition. It was observed:

"**32.** It is to be further noted that the entire scheme regarding purchase of shares in the name of the mother of Prathapan was suggested by Ramanujam himself. He saw to it that the shares were transferred by the company in the name of Prathapan and his wife. The company has recorded the transfer and corrected its Register of Members in this behalf which, in fact, led Ramanujam to file a petition for rectification of the Register of Members as a counterblast to the petition filed by Prathapan under Sections 397/398 of the Companies Act. It is not open to Ramanujam now to raise the question of FERA violation, more particularly in view of his having recorded the transfer of shares in the name of Prathapan and his wife Pushpa in the records of the Company. This also answers the objection regarding locus standi of Prathapan and his wife to file the Sections 397/398 petition before the Company Law Board. Since they were registered as shareholders of the company on the date of filing of the petition and they held the requisite number of shares in the company, they could maintain the petition."

(emphasis supplied)

27. In *J.P. Srivastava & Sons Pvt. Ltd.* v. *Gwalior Sugar Co. Ltd.*, AIR 2005 SC 83, this Court considered the object of prescribing a qualifying percentage of shares to entertain petition under sections 397 and 398. It was held that the object is to ensure that frivolous litigation is not indulged in by persons, who have no legal stake in the company. If the Court is satisfied that the petitioners represents the body of shareholders holding the requisite percentage, the Court may proceed with the matter. This Court held thus:

"**47.** The object of prescribing a qualifying percentage of shares in petitioners and their supporters to file petitions under Sections 397 and 398 is clearly to ensure that frivolous litigation is not indulged in by persons who have no real stake in the company. However, it is of interest that the English Companies Act contains no such limitation. What is required in these matters is a broad commonsense approach. If the Court is satisfied that the petitioners represent a body of shareholders holding the requisite percentage, it can assume that the involvement of the company in litigation is not lightly done and that it should pass orders to bring to an end the matters complained of and not reject it on a technical requirement. Substance must take precedence over form. Of course, there are some rules which are vital and go to the root of the matter which cannot be broken. There are others where non-compliance may be condoned or dispensed with. In the latter case, the rule is merely directory provided there is substantial compliance with the rules read as a whole and no prejudice is caused. (See *Pratap Singh* v. *Shri Krishna Gupta*, (AIR 1956 SC 140). In our judgment, Section 399(3) and Regulation 18 have been substantially complied with in this case."

(emphasis supplied)

28. In the instant case, considering on the anvil of aforesaid decisions, we are satisfied that respondent no. 1, as pleaded by him, had nothing to do with the affairs of the company and he is not a registered owner. The rights in estate/shares, if any, of respondent no. 1 are protected in the civil suit. Thus, we are satisfied that respondent no. 1 does not represent the body of shareholders holding requisite percentage of shares in the company, necessary in order to maintain such a petition.

29. It is also not disputed that the High Court in the pending civil suit passed an order maintaining the status quo concerning shareholding and other properties. Because of the status quo order, shares have to be held in the name of Mrs. ArunaOswal until the suit is finally decided. It would not be appropriate given the order passed by the civil Court to treat the shareholding in the name of respondent No. 1 by NCLT before ownership rights are finally decided in the civil suit, and propriety also demands it. The question of right, title, and interest is essentially adjudication of civil rights between the parties, as to the effect of the nomination decision in a civil suit is going to govern the parties' rights. It would not be appropriate to entertain these parallel proceedings and give waiver as claimed under section 244 before the civil suit's decision. Respondent No. 1 had himself chosen to avail the remedy of civil suit, as such filing of an application under sections 241 and 242 after that is nothing but an afterthought.

30. Learned senior counsel for appellants argued that respondent No. 1, a disgruntled son disowned by family, settled in Australia for the last 25-30 years. He admittedly did not have anything to do with the affairs of the company. On the other hand, it was vigorously argued by Mr. Siddhartha Dave, learned senior counsel appearing for the respondent, that owing to the rampant COVID-19 pandemic, respondent No. 1 is in Dubai. Be that as it may. Merely disowning a son by late father or by the family, is not going to deprive him of any right in the property to which he may be otherwise entitled in accordance with the law. The pertinent question needs to be tried in a civil suit and adjudicated finally, it cannot be decided by NCLT in proceedings in question. Hence, we refrain from deciding the aforesaid question raised on behalf of the appellants in the present proceedings. In the facts and circumstances, it would not be appropriate to permit respondent No. 1 to continue the proceedings for mismanagement initiated under sections 241 and 242, that too in the absence of having 10% shareholding and firmly establishing his rights in civil proceedings to the extent he is claiming in the shareholding of the companies.

31. We refrain to decide the question finally in these proceedings concerning the effect of nomination, as it being a civil dispute, cannot be decided in these proceedings and the decision may jeopardise parties' rights and interest in the civil suit. With regard to the dispute as to right, title, and interest in the securities, the finding of the civil Court is going to be final and conclusive and binding on parties. The decision of such a question has to be eschewed in instant proceedings. It would not be appropriate, in the facts and circumstances of the case, to grant a waiver to the respondent of the requirement under the proviso to section 244 of the Act, as ordered by the NCLAT.

32. It prima facie does not appear to be a case of oppression and mismanagement. Our attention was drawn by the learned senior counsel appearing for respondent No. 1 to certain company transactions. From transactions simpliciter, it cannot be inferred that it is a case of oppression and mismanagement.

33. We are of the opinion that the proceedings before the NCLT filed under sections 241 and 242 of the Act should not be entertained because of the pending civil dispute and considering the minuscule extent of holding of 0.03%, that too,

acquired after filing a civil suit in company securities, of respondent no. 1. In the facts and circumstances of the instant case, in order to maintain the proceedings, the respondent should have waited for the decision of the right, title and interest, in the civil suit concerning shares in question. The entitlement of respondent No. 1 is under a cloud of pending civil dispute. We deem it appropriate to direct the dropping of the proceedings filed before the NCLT regarding oppression and mismanagement under sections 241 and 242 of the Act with the liberty to file afresh, on all the questions, in case of necessity, if the suit is decreed in favour of respondent No. 1 and shareholding of respondent No. 1 increases to the extent of 10% required under section 244. We reiterate that we have left all the questions to be decided in the pending civil suit. Impugned orders passed by the NCLT as well as NCLAT are set aside, and the appeals are allowed to the aforesaid extent. We request that the civil suit be decided as expeditiously as possible, subject to cooperation by respondent No. 1. Parties to bear their costs as incurred.

2. ***Dahiben v. Arvindbhai Kalyanji Bhanusali (Gajra) (D) ThrLrs and Others, 2020 SCC OnLine SC 562***

Decided on: 09.07.2020
Bench: 1. Hon'ble Mr. Justice L. Nageswara Rao
2.Hon'ble Ms. Justice Indu Malhotra

(Order VII Rule 11- It is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.)

Facts

The present Civil Appeal has been filed to challenge the impugned Judgment and Order dated 19.10.2016 passed by a Division Bench of the Gujarat High Court, which affirmed the Order of the Trial Court, allowing the application filed by Defendant Nos. 2 and 3/Respondent Nos. 2 and 3 herein under Order VII Rule 11(d), CPC holding that the suit filed by the Appellant and Respondent Nos. 9 to 13 herein (hereinafter referred to as the "Plaintiffs") was barred by limitation.

The subject-matter of the present proceedings pertains to a plot of agricultural land of old tenure, admeasuring approximately 8701 sq. mtrs. in Revenue Survey No. 610, Block No. 573 situated in village MotaVarachha, Sub-District Surat (hereinafter referred to as the "suit property") which was in the ownership of the Plaintiffs.

The land was under restrictive tenure as per Section 73AA of the Land Revenue Code. The Plaintiffs filed an application dated 13.05.2008 before the Collector, Surat to obtain permission for selling the suit property to Respondent No. 1/Defendant No. 1, which was non-irrigated, and stated that they had no objection to the sale of the suit property.

The Collector *vide* Order dated 19.06.2009, after carrying out verification of the title of the Plaintiffs, permitted sale of the suit property, and fixed the sale price of the suit property as per the *jantri* issued by the State Government @ Rs. 2000/- per sq. mtr., which would work out to Rs. 1,74,02,000/-. The Collector granted permission for the sale subject to the terms and conditions contained in Section 73AA of the Land Revenue Code. It was stipulated that the purchaser shall make the payment by cheque, and reference of the payment shall be made in the Sale Deed.

After obtaining permission from the Collector, the Plaintiffs sold the suit property to Respondent No. 1 herein *vide* registered Sale Deed dated 02.07.2009. Respondent No. 1 - purchaser issued 36 cheques for Rs. 1,74,02,000 towards payment of the sale consideration in favour of the Plaintiffs, the details of which were set out in the registered Sale Deed dated

02.07.2009.The Respondent No. 1 subsequently sold the suit property to Respondent Nos. 2 and 3 herein *vide* registered Sale Deed dated 01.04.2013, for a sale consideration of Rs. 2,01,00,000/-. On 15.12.2014, the Plaintiffs filed Special Civil Suit No. 718/2014 before the Principal Civil Judge, Surat against the original purchaser i.e. Respondent No. 1, and also impleaded the subsequent purchasers i.e. Respondent Nos. 2 and 3 as defendants. It was *inter alia* prayed that the Sale Deed dated 02.07.2009 be cancelled and declared as being illegal, void, ineffective and not binding on them, on the ground that the sale consideration fixed by the Collector, had not been paid in entirety by Respondent No. 1.

It was *inter alia* submitted that the Plaintiffs had admitted the execution of the Sale Deed dated 02.07.2009 in favour of Respondent No. 1 before the Sub-Registrar, Surat. The only dispute now sought to be raised was that they had not received a part of the sale consideration. This plea was denied as being incorrect. It was further submitted that if the Sale Deed dated 02.07.2009 was being challenged, then the suit ought to have been filed within three years i.e. on or before 02.07.2012.

Decision and Observations

Regarding the remedy under Order VII Rule 11, the opinion of the Apex court can be culled out as follows:

- It is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.
- In *Azhar Hussain* v. *Rajiv Gandhi* [1986 Supp SCC 315] the Apex court has held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words :
- The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order VII Rule 11 are required to be strictly adhered to.
- Under Order VII Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law.
- Having regard to Order VII Rule 14 CPC, the documents filed alongwith the plaint, are required to be taken into consideration for deciding the application under Order VII Rule 11(a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.
- The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied

upon, would the same result in a decree being passed. This test was laid down in *Liverpool & London S.P. & I Assn. Ltd.* v. *M.V. Sea Success I* [(2004) 9 SCC 512].

- In *Hardesh Ores (P.) Ltd.* v. *Hede& Co.*[(2007) 5 SCC 614] it was held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint *prima facie* show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact.
- If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order VII Rule 11 CPC.
- The power under Order VII Rule 11 CPC may be exercised by the Court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of *Saleem Bhai* v. *State of Maharashtra*[(2003) 1 SCC 557].The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in *Azhar Hussain* (supra).
- The provision of Order VII Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clause (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint.
- "Cause of action" means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit. On this point the Apex court referred to *SwamyAtmanand* v. *Sri Ramakrishna Tapovanam[*(2005) 10 SCC 51].
- In *T. Arivandandam* v. *T.V. Satyapal [*(1977) 4 SCC 467] it was held that while considering an application under Order VII Rule 11 CPC what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory. In *I.T.C. Ltd.* v. *Debt Recovery Appellate Tribunal*,[(1998) 2 SCC 70] it was held that law cannot permit clever drafting which creates illusions of a cause of action. What is required is that a clear right must be made out in the plaint. If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, it should be nipped in the bud, so that bogus litigation will end at the earliest stage.*[Madanuri Sri Ramachandra Murthy* v. *Syed Jalal,* (2017) 13 SCC 174]

Regarding the present case, the Apex court came to the following findings:

> **67.** The Sale Deed records that the 36 cheques covering the entire sale consideration of Rs. 1,74,02,000 were "paid" to the Plaintiffs, during the period between 07.07.2008 to 02.07.2009.

68. If the case made out in the Plaint is to be believed, it would mean that almost 99% of the sale consideration i.e. Rs. 1,73,62,000 allegedly remained unpaid throughout. It is, however inconceivable that if the payments had remained unpaid, the Plaintiffs would have remained completely silent for a period of over 5 and ½ years, without even issuing a legal notice for payment of the unpaid sale consideration, or instituting any proceeding for recovery of the amount, till the filing of the present suit in December 2014.

69. The Plaintiffs have made out a case of alleged non-payment of a part of the sale consideration in the Plaint, and prayed for the relief of cancellation of the Sale Deed on this ground.

70. Section 54 of the Transfer of Property Act, 1882 provides as under :

"54. 'Sale' defined.—'Sale' is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised."

71. The definition of "sale" indicates that there must be a transfer of ownership from one person to another i.e. transfer of all rights and interest in the property, which was possessed by the transferor to the transferee. The transferor cannot retain any part of the interest or right in the property, or else it would not be a sale. The definition further indicates that the transfer of ownership has to be made for a "price paid or promised or part paid and part promised". Price thus constitutes an essential ingredient of the transaction of sale.

72. In *Vidyadhar* v. *Manikrao [*(1999) 3 SCC 573*]*this Court held that the words "price paid or promised or part paid and part promised" indicates that actual payment of the whole of the price at the time of the execution of the Sale Deed is not a *sine qua non* for completion of the sale. Even if the whole of the price is not paid, but the document is executed, and thereafter registered, the sale would be complete, and the title would pass on to the transferee under the transaction. The non-payment of a part of the sale price would not affect the validity of the sale. Once the title in the property has already passed, even if the balance sale consideration is not paid, the sale could not be invalidated on this ground. In order to constitute a "sale", the parties must intend to transfer the ownership of the property, on the agreement to pay the price either in *praesenti*, or in future. The intention is to be gathered from the recitals of the sale deed, the conduct of the parties, and the evidence on record.

73. In view of the law laid down by this Court, even if the averments of the Plaintiffs are taken to be true, that the entire sale consideration had not in fact been paid, it could not be a ground for cancellation of the Sale Deed. The Plaintiffs may have other remedies in law for recovery of the balance consideration, but could not be granted the relief of cancellation of the registered Sale Deed.

74. We find that the suit filed by the Plaintiffs is vexatious, meritless, and does not disclose a right to sue. The plaint is liable to be rejected under Order VII Rule 11(a).

(emphasis supplied)

3. *Arjun PanditraoKhotkar v. Kailash KushanraoGorantyal and Others, 2020 SCC OnLine SC 571*

Decided on: 14.07.2020
Bench: 1. Hon'ble Mr. Justice R. F. Nariman
2. Hon'ble Mr. Justice S. Ravindra Bhat
3. Hon'ble Mr. Justice V. Ramasubramanian

(Section 65B of the Evidence Act- Shafhi Mohammad overruled, Anvar P.V. declared to be the law)

Background

These Civil Appeals have been referred to a Bench of three honourable Judges of the Apex Court by a Division Bench reference order dated 26.07.2019, dealing with the interpretation of Section 65B of the Indian Evidence Act, 1872 ("**Evidence Act**") by two judgments of this Court. In the reference order, after quoting from *Anvar P.V.* v. *P.K. Basheer*, (2014) 10 SCC 473 (a three Judge Bench decision of this Court), it was found that a Division Bench judgment in SLP (Crl.) No. 9431 of 2011 reported as *Shafhi Mohammad* v. *State of Himachal Pradesh*, (2018) 2 SCC 801 may need reconsideration by a Bench of a larger strength.

Decision and observations

> **80.** The reference is thus answered by stating that:
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> (a) *Anvar P.V.* (supra), as clarified by us hereinabove, is the law declared by this Court on Section 65B of the Evidence Act. The judgment in *Tomaso Bruno* (supra), being *per incuriam*, does not lay down the law correctly. Also, the judgment in SLP (Crl.) No. 9431 of 2011 reported as *Shafhi Mohammad* (supra) and the judgment dated 03.04.2018 reported as (2018) 5 SCC 311, do not lay down the law correctly and are therefore overruled.
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> (b) The clarification referred to above is that the required certificate under Section 65B(4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him. In cases where the "computer" happens to be a part of a "computer system" or "computer network" and it becomes impossible to physically bring such system or network to the Court, then the only means of providing information contained in such electronic record can be in accordance with Section 65B(1), together with the requisite certificate under Section 65B(4). The last sentence in *Anvar P.V.* (supra) which reads as "*...if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act...*" is thus clarified; it is to be read without the words "*under Section 62 of the Evidence Act...*", With this clarification, the law stated in paragraph 24 of *Anvar P.V.* (supra) does not need to be revisited.

(c) The general directions issued in paragraph 62 (supra) shall hereafter be followed by courts that deal with electronic evidence, to ensure their preservation, and production of certificate at the appropriate stage. These directions shall apply in all proceedings, till rules and directions under Section 67C of the Information Technology Act and data retention conditions are formulated for compliance by telecom and internet service providers.

(d) Appropriate rules and directions should be framed in exercise of the Information Technology Act, by exercising powers such as in Section 67C, and also framing suitable rules for the retention of data involved in trial of offences, their segregation, rules of chain of custody, stamping and record maintenance, for the entire duration of trials and appeals, and also in regard to preservation of the meta data to avoid corruption. Likewise, appropriate rules for preservation, retrieval and production of electronic record, should be framed as indicated earlier, after considering the report of the Committee constituted by the Chief Justice's Conference in April, 2016.

4. ***Director General (Road Development) National Highways Authority of India v. AamAadmiLokmanch and Others , 2020 SCC OnLine SC 572***

Decided on: 14.07.2020
Bench: 1. Hon'ble Mr. Justice R.F. Nariman
2. Hon'ble Mr. Justice S. Ravindra Bhat
3. Hon'ble Mr. Justice V. Ramasubramanian

(General directions for future guidance, to avoid or prevent injury to the environment for appropriate assimilation in relevant rules, can be given by the NGT.)

Facts

On 06 June, 2013, when Ms. VishakhaWadekar, was driving her car with her young daughter, SanskrutiWadekar, over-mining resulted in the destruction of a small hill by the side of the national highway. The resultant debris and a part of the hill collapsed and slid down to the road, claiming the lives of Ms. Vishakha and her daughter. The directions made by the Pune bench of the National Green Tribunal, on an application by a registered organization, (the respondent in the appeal, the AamAadmiLokmanch, hereafter "Lokmanch") are the subject matter of the appeals (CA 6932/2015 by NHAI; CA 5971/2019; CA 11803/2018 and CA 6862/2018) before this court. The other appeals by special leave question the judgments and orders of the Bombay High Court, which upheld the regulations framed pursuant to the order of the NGT. The High Court negatived the challenge to those regulations in the writ petitions presented before it.

Issues

- the jurisdiction of the NGT to award compensation
- the merits and soundness of the NGT's decision to award compensation and the legal principles applicable
- the NGT's wide directions with respect to the ban on construction in and around foothills

Decision and Observations

Regarding the jurisdiction of the NGT, the Apex court referred to sections 2,14,15,16,17,18,29 and 33 of the NGT Act.

The Apex court referred to ***Mantri TechzonePvt. Ltd. v. Forward Foundation***[1]regarding the legal position and jurisdiction of NGT wherein it was held that the NGT has special jurisdiction for enforcement of environmental rights.

[1](2019) 18 SCC 494, It was held in this case that

The Apex court then stated the following:

> **45.** It is noteworthy that this court clearly held that under Section 15(1)(b) and 15(1)(c), the NGT has the power to make directions and provide for "*restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1)(b) & (c) have not been made relatable to Schedule I enactments of the Act.*" Though a direction for compensation under Section 15(1)(a) is relatable to violation of enactments specified under the first schedule, the power under Section 17 appears to be cast in wider terms.
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> **46.** As noticed earlier, Section 17 (1) refers to first schedule enactments; it talks of death of, or injury to, any person "or damage to any property or environment"

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*"**41.** The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the Act. Section 14 provides the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved. However, such question should arise out of implementation of the enactments specified in Schedule I.*

***42.** The Tribunal has also jurisdiction under Section 15(1)(a) of the Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Further, under Section 15(1)(b) and 15(1)(c) the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1)(b) & (c) have not been made relatable to Schedule I enactments of the Act. Rightly so, this grants a glimpse into the wide range of powers that the Tribunal has been cloaked with respect to restoration of the environment.*

***43.** Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment.*

***44.** The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See* Kishsore Lal *v.* Chairman, Employees' State Insurance Corpn. *(2007) 4 SCC 579, para 17). The existence of the Tribunal without its broad restorative powers under Section 15(1)(c) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialized Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with Experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment.*

***45.** Section 15 of the Act provides power & jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the Act, are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation, thereby amply demonstrating that jurisdiction of the Tribunal flows from these Sections (i.e. Sections 14 and 15 of the Act) independently. The limitation provided in Section 14 is a period of 6 months from the date on which the cause of action first arose and whereas in Section 15 it is 5 years. Therefore, the legislative intent is clear to keep Section 14 and 15 as self-contained jurisdictions.*

***46.** Further, Section 18 of the Act recognizes the right to file applications each under Sections 14 as well as 15. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers. As stated supra the typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well as the Scheduled enactments, cumulatively, leaves no manner of doubt that the only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction.*

***47.** Section 33 of the Act provides an overriding effect to the provisions of the Act over anything inconsistent contained in any other law or in any instrument having effect by virtue of law other than this Act. This gives the Tribunal overriding powers over anything inconsistent contained in the KIAD Act, Planning Act, Karnataka Municipal Corporations Act, 1976 ("KMC Act"); and the Revised Master Plan of Bengaluru, 2015 ("RMP"). A Central legislation enacted under Entry 13 of List I Schedule VII of the Constitution of India will have the overriding effect over State legislations. The corollary is that the Tribunal while providing for restoration of environment in an area, can specify buffer zones around specific lakes & water bodies in contradiction with zoning regulations under these statutes or the RMP."*

which "*has resulted from an accident or the adverse impact of an activity or operation or process, under any enactment*" in Schedule I. One of the enactments is the Environment Protection Act, 1986 (hereafter "EPA").

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54. This court is of the considered opinion that the expression "environment" and "environmental pollution" have to be given a broader meaning, having regard to Parliamentary intent to ensure the objective of the EPA. It effectuates the principles underlying Article 48A of the Constitution of India. The EPA is in essence, an umbrella legislation enacting a broad framework for the central government to coordinate the activities of various central and state authorities established under other laws, such as the Water Act and Air Act. The EPA also effectively enunciates the critical legislative policy for environment protection. It changes the narrative and emphasis from a narrow concept of pollution control to a wider facet of environment protection. The expansive definition of environment that includes water, air and land "*and the interrelation which exist among and between water, air and land, other human creatures, plants, micro-organisms and property*" give an indication of the wide powers conferred on the Central Government. A wide net is cast over the environment related laws. The EPA also empowers the central government to comprehensively control environmental pollution by industrial and related activities. For these reasons, and in view of the above discussion, it is held that the NGT correctly assumed jurisdiction, having regard to the nature of the accident in the facts of this case.

Regarding the second issue as to whether the direction to pay compensation towards death, and damages towards restitution justified, the Apex Court stated the following:

70. Having regard to the duty imposed on the NHAI by virtue of Sections 4 and 5 of the Highways Act, read with Section 16 of the NHAI Act, there can be no manner of doubt that the NHAI was responsible for the maintenance of the highway, including the stretch upon which the accident occurred. The report of the sub-divisional officer clearly shows that inspection reports were furnished to the NHAI shortly before the incident, highlighting the deficiencies; also, the NHAI's correspondence with Rathod, and the local administration, reveal that it was aware of the danger and likelihood of risk to human life, and the foreseeability of the event that actually occurred later. Further, letters addressed by the local administration and the NHAI to Rathod similarly show that it was incumbent upon him to take remedial action. The failure of the NHAI to ensure remedial action, and likewise the failure by Rathod to take measures to prevent the accident, *prima facie*, disclose their liability.

71. The absence of legal representatives or heirs of the deceased in the proceedings, or the fact that they had initiated independent civil action, in the opinion of this court, was not an impediment, nor could it have precluded the NGT from exercising its jurisdiction, given the gravity of the matter and the danger posed to the members of the public. The initiation of civil action did not mean that the NGT had to either reject the application (as far as it claimed relief for the accident), or await the outcome of the civil suit. This position is clear from the proviso to Section 18(1) which reads as follows:

"Provided that where all the legal representatives of the deceased have not joined in any such application for compensation or relief or settlement of dispute, the application shall be made on behalf of, or, for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application."

72. The above provision clearly implies that an application without impleading the legal heirs cannot be rejected. At the most, the tribunal has to implead all legal heirs. In the present case, that procedure was not followed. However, the legal heirs

have instituted a suit. The ends of justice would be served if that suit (Special Civil Suit No. 890 of 2014 before the Court of the Civil Judge Senior Division, Pune) is directed to revive and continue it; a direction is issued to the concerned court (Court of the Civil Judge Senior Division, Pune). The directions in this regard by the NGT, towards payment of compensation are to be regarded as indicative of a *prima facie* determination. Consequently, the direction to the NHAI and Rathod, jointly making them liable to pay Rs. 15 lakhs is justified. It is clarified that the civil suit will now proceed, and based on evidence, the court would finally decide the issue of liability, and make such further consequential orders or decrees as may be found necessary in this regard, towards apportioning of liability of the NHAI, Rathod, the state or any other party (including the concessionaire). This court's order shall not be treated as conclusive; the trial court shall independently proceed to evaluate the evidence and hear the parties on the merits of their submissions. The restitutionary order by the NGT, directing payment by Rathod and NHAI of Rs. 10 lakhs too, in this court's opinion, cannot be found to be at fault. It is upheld. The NHAI and Rathod shall comply with the directions of the NGT and deposit the sum of Rs. 15 lakhs with the said court within four weeks, in equal proportion. The sum Rs. 10 lakhs shall be deposited in the same proportion, in court, to be disbursed to the state government for restoring the environment and carrying out afforestation/planting of trees etc.

Regarding the issue 3 as to the correctness of NGT's directions of its impugned order, the Apex Court stated the following:

> **80.** The NGT's directions, though placed in the context of its adjudicatory role, have a wider ramification in the sense that its rulings constitute the appropriate norm which are to be followed by all those engaging in similar activities. Therefore, its orders, contextually in the course of adjudication, also establish and direct behaviour appropriate for future guidance. In these circumstances, given the panoply of the NGT's powers under the NGT Act, which include considering regulatory directions issued by expert regulatory bodies under the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Biodiversity Act, 2002 it has to be held that ***general directions for future guidance, to avoid or prevent injury to the environment for appropriate assimilation in relevant rules, can be given by the NGT.***
>
> **81.** Turning next to the question of the correctness of the general directions contained in Para 17(e) of the NGT's order, this court has no manner of doubt that such directions were improper and not justified in the facts of this case. What the NGT had before it, was the report of the SDM and a report commissioned about the nature of the incident. Based on these limited inputs, the tribunal concluded- without any *rationale* and based on no scientific or technical evidence, or experts' opinion, that development and construction should not be carried out within 100 feet of a "*lowest slope i.e. incline of any hill within its territorial limits, as well as hill-tops"*. The decisions of this court, including the *All Dimasa Students Union case* (f.n. 9); *Mantri TechnozePvt. Ltd. case* (f.n.3); the *Hanuman Laxman Aroskar case* (f.n. 4) and the *Tamil Nadu Pollution Control Board case* (f.n. 2) all show that the NGT resorted to the appointment of technical and scientific experts in the relevant field, who studied the issue, made site inspections and furnished reports. Such reports were subjected to discussion by the parties before the NGT, who were also given the opportunity of objecting to or making representations against such reports. Based on a final consideration of all these materials, and the submissions of parties before it, the NGT proceeded to issue directions. This procedure was wholly overlooked by the NGT in the present case. As a result, it is held that the said tribunal's directions were improper and are procedurally indefensible. The directions contained in Para 17(e) are therefore set aside.

5. ***V. Kalyanaswamy(D) By Lrs. and Another v. L. Bakthavatsalam(D) By Lrs. and Others, 2020 SCC OnLine SC 584***

Decided on: 17.07.2020
Bench: 1. Hon'ble Mr. Justice S. K.Kaul
2. Hon'ble Mr. Justice K.M.Joseph

(In a case covered under Section 69 of the Evidence Act, what is to be proved as far as the attesting witness is concerned, is, that the attestation of one of the attesting witness is in his handwriting. The language of the Section is clear and unambiguous. Section 68 of the Evidence Act, as interpreted by this Court, contemplates attestation of both attesting witnesses to be proved. But that is not the requirement in Section 69 of the Evidence Act.)

Issues:

a. Is it still the requirement of law when both the attesting witnesses are dead that:

under Section 69 of the Evidence Act, the attestation as required under Section 63 of the Indian Succession Act, *viz.*, attestation by the two witnesses has to be proved? Or,

Is it sufficient to prove that the attestation of at least one attesting witness is in his handwriting, which is the literal command of Section 69 of the Evidence Act apart from proving the latter limb?

b. The further question which would arise is whether exhibit B7, which is the copy of the evidence of the one of the attesting witnesses in the Will, in the proceedings under Section 145 of the CrPC sufficiently fulfils the requirements under Section 33 of the Evidence Act?

Decision and observations

78. [...] Section 33 of the Evidence Act reads as follows:

"33. Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.—Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable:

Provided— that the proceeding was between the same parties or their representatives in interest; that the adverse party in the first proceeding had the right and opportunity to cross-examine; that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section."

(Emphasis supplied)

79. .....

80. [....] The interpretation of the word 'representative in interest' has fallen for consideration before the Privy Council in the decision reported in *Krishnayya Surya Rao Bahadur Garu* v. *Venkata Kumara Mahitathi Surya Rao Bahadur Garu*[34] wherein the Court referred to a large body of case law and after an exhaustive review, held as follows:

"20. Nothing would have been easier, had it been desired so to do, than to follow the English rule, or to require that the party to the first proceeding should be privy in estate with or the predecessor in title of the party to the second proceeding. Instead of using such well-known terms, a much more elastic phrase is employed, and one which is neither technical nor a term of art. The legislative authority was, it must be remembered, dealing with a country in which (amongst other institutions) the Hindu joint family involved representation of interest of a kind and degree and in circumstances unfamiliar to English law. In view of this fact, their Lordships cannot but surmise that the omission of strict English legal terminology and the employment of the less restricted phrase 'representatives in interest" was deliberate and intentional. It will be a question depending for its correct answer upon the circumstances of each case where the question arises, whether there was a party to the first proceeding who was a representative in interest of a party to the second proceeding within the wider meaning which their Lord- 'ships attribute to these words. Turning back to the first proviso, it requires, in their Lordships' view, that the party to the first proceeding should have represented in interest the party to the second proceeding in relation to the question in issue in the first proceeding to which "the facts which the evidence states" were relevant. It covers not only cases of privity in estate and succession of title, but also cases where both the following conditions exist, viz. (1) the interest of the relevant party to the second proceeding in the subject-matter of the first proceeding is consistent with and not antagonistic to the interest therein of the relevant party to the first proceeding; and (2) the interest of both in the answer to be given to the particular question in issue in the first proceeding is identical. There may be other cases covered by the first proviso; but if both the above conditions are fulfilled, the relevant party to the first proceeding in fact represented in the first proceeding the relevant party to the second proceeding in regard to his interest in relation to the particular question in issue in the first proceeding, land may grammatically and truthfully be described as a representative in interest of the party to the second proceeding."

[Emphasis supplied]

81. The word 'representative in interest', in other words, is to be understood liberally and not confined to cases where there is privity of estate and succession of title. He is be such representative of the party in the later proceedings. Answering the two tests, which have been evolved in the facts of this case, the respondents cannot contend that the interest of the appellants was inconsistent with the interest of R. Krishnammal and in particular the executor of the Will. It was certainly not antagonistic to their interest. The Will was indeed set-up by R. Krishnammal and

the executor. Therefore, it can be safely concluded that the interest of both persons comprised of A Party, which was the protection of the possession, was also in the interest of the appellants. It may be true that the appellants do not derive their title under R. Krishnammal. But the requirements under Section 33 of the Evidence Act are not to be confused with the ingredients to be fulfilled even in a case under Section 11 of the CPC. It cannot be contended that the interest of the appellants lay in answering the question posed in Section 145 of the CrPC proceedings against R. Krishnammal and the Executor in favour of the respondents, who were parties before the Magistrate. The case of the Will was explicitly set up as also the declaration dated 10.5.1955 and further developments. Therefore, the contention based on the third proviso also does not appeal to us. Also not only was there opportunity to cross examine to the B party, it was availed of. The applicability of Section 33 of the Evidence Act also does not depend upon the nature of the decision which is rendered in the earlier proceeding. We would think that on this basis, as Exhibit-B7 and even B13 (deposition by the Executor) indeed is evidence which was tendered in the previous proceeding before the Magistrate who was certainly authorised by law to take evidence, which is relevant for proving the truth of the facts contained therein under Section 33.

82. The further question is, as posed by us, whether despite the fact that both the attesting witnesses were dead, the matter to be proved under Section 69 of the Evidence Act, is the same as a matter to be proved under Section 68 of the Evidence Act. In other words, under Section 68 of the Evidence Act, in the case of a Will covered under Section 63 of the Indian Succession Act, it is indispensable that at least one attesting witness must not only be examined to prove attestation by him but he must also prove the attestation by the other attesting witness [See (1995) 6 SCC 213]. This Court has taken the view that while it is open to prove the will and the attestation by examining a single attesting witness, it is incumbent upon him to prove attestation not only by himself but also attestation by the other attesting witness. It is the contention of the respondents that under Section 69 of the Evidence Act, Exhibit-B7 falls short of the requirement of law that attestation of the execution by both the witnesses be proved. After taking us through Exhibit-B7, it was pointed out that it is clear that even in the said deposition, the witness has not deposed about the attestation by the other witness, *viz.*, Dr. C.S. Ramaswamy Iyer. On the other hand, the contention of the appellants and which has found approval with the First Appellate Court, is that Section 69 of the Evidence Act only requires that the attestation of at least one attesting witness in his handwriting be proved. This is, of course apart from proving that the signature of the testator executing the document is in the handwriting of that person.

83. We are of the view that Section 69 of the Evidence Act manifests a departure from the requirement embodied in Section 68 of the Evidence Act. In the case of a Will, which is required to be executed in the mode provided in Section 63 of the Indian Succession Act, when there is an attesting witness available, the Will is to be proved by examining him. He must not only prove that the attestation was done by him but he must also prove the attestation by the other attesting witness. This is, no doubt, subject to the situation which is contemplated in Section 71 of the Evidence Act which allows other evidence to be adduced in proof of the Will among other documents where the attesting witness denies or does not recollect the execution of the Will or the other document. In other words, the fate of the transferee or a legatee

under a document, which is required by law to be attested, is not placed at the mercy of the attesting witness and the law enables proof to be effected of the document despite denial of the execution of the document by the attesting witness.

84. Reverting back to Section 69 of the Evidence Act, we are of the view that the requirement therein would be if the signature of the person executing the document is proved to be in his handwriting, then attestation of one attesting witness is to be proved to be in his handwriting. In other words, in a case covered under Section 69 of the Evidence Act, the requirement pertinent to Section 68 of the Evidence Act that the attestation by both the witnesses is to be proved by examining at least one attesting witness, is dispensed with. It may be that the proof given by the attesting witness, within the meaning of Section 69 of the Evidence Act, may contain evidence relating to the attestation by the other attesting witness but that is not the same thing as stating it to be the legal requirement under the Section to be that attestation by both the witnesses is to be proved in a case covered by Section 69 of the Evidence Act. In short, in a case covered under Section 69 of the Evidence Act, what is to be proved as far as the attesting witness is concerned, is, that the attestation of one of the attesting witness is in his handwriting. The language of the Section is clear and unambiguous. Section 68 of the Evidence Act, as interpreted by this Court, contemplates attestation of both attesting witnesses to be proved. But that is not the requirement in Section 69 of the Evidence Act.

6. *Director of Income Tax-II (International Taxation) New Delhi and Another v. Samsung Heavy Industries Co. Ltd, 2020 SCC OnLine SC 590*

Decided on : 22.07.2020
Bench: 1. Hon'ble Mr. Justice R.F.Nariman
2. Hon'ble Mr. Justice Navin Sinha
3. Hon'ble Mr. Justice B.R. Gavai

(When it comes to "fixed place" permanent establishments under double taxation avoidance treaties, the condition precedent for applicability of Article 5(1) of the double taxation treaty and the ascertainment of a "permanent establishment" is that it should be an establishment "through which the business of an enterprise" is wholly or partly carried on. Further, the profits of the foreign enterprise are taxable only where the said enterprise carries on its core business through a permanent establishment. What is equally clear is that the maintenance of a fixed place of business which is of a preparatory or auxiliary character in the trade or business of the enterprise would not be considered to be a permanent establishment under Article 5.)

This appeal by the Department revisits the question as to the taxability of income attributable to a "permanent establishment" set up in a fixed place in India, arising from the 'Agreement for avoidance of double taxation of income and the prevention of fiscal evasion' with the Republic of Korea ("**DTAA**").

On 28.02.2006, the Oil and Natural Gas Company ("**ONGC**") awarded a "turnkey" contract to a consortium comprising of the Respondent/Assessee, i.e. Samsung Heavy Industries Co. Ltd. (a Company incorporated in South Korea), and Larsen & Toubro Limited, being a contract for carrying out the "Work", *inter alia,* of surveys, design, engineering, procurement, fabrication, installation and modification at existing facilities, and start-up and commissioning of entire facilities covered under the 'Vasai East Development Project' ("**Project**").

On 24.05.2006, the Assessee set up a Project Office in Mumbai, India, which, as per the Assessee, was to act as "a communication channel" between the Assessee and ONGC in respect of the Project. Pre-engineering, survey, engineering, procurement and fabrication activities which took place abroad, all took place in the year 2006. Commencing from November, 2007, these platforms were then brought outside Mumbai to be installed at the Vasai East Development Project. The Project was to be completed by 26.07.2009.

With regard to Assessment Year 2007-2008, the Assessee filed a Return of Income on 21.08.2007 showing nil profit, as a loss of INR 23.5 lacs had allegedly been incurred in relation to the activities carried out by it in India.

On 29.08.2008, a show-cause notice was issued to the Assessee by the Income Tax authorities requiring it to show cause as to why the Return of Income had been filed only at nil, which

was replied to in detail by the Assessee on 02.02.2009. Being dissatisfied with the reply, a draft Assessment Order was then passed on 31.12.2009 ("**Draft Order**") by the Assistant Director of Income Tax International Transactions at Dehradun ("**Assessing Officer**"). This Draft Order went into the terms of the agreement in great detail, and concluded that the Project in question is a single indivisible "turnkey" project, whereby ONGC was to take over a project that is completed only in India. Resultantly, profits arising from the successful commissioning of the Project would also arise only in India.

Having so held, the Draft Order then went on to attribute 25% of the revenues allegedly earned outside India (which totalled INR 113,43,78,960) as being the income of the Assesseeexigible to tax, which came to INR 28,35,94,740. The Dispute Resolution Panel, by its order dated 30.9.2010 then confirmed the finding contained in the Draft Order that the agreement was a "turnkey" project which could not be split up, as a result of which the entire profit earned from the Project would be earned within India. Basing itself on data obtained from the database "Capital Line", the Panel picked up four similar projects executed by companies outside India, and found the average profit margin to be 24.7%, which, according to the Panel, would therefore justify the figure of 25% arrived at in the Draft Order. The Panel having dismissed the Assessee's objections, the Draft Order was made final by the Assessing Officer on 25.10.2010. The Assessee then filed an appeal against the Assessment Order before the Income Tax Appellate Tribunal ("**ITAT**").

The ITAT thus confirmed the decisions of the Assessing Officer and the Dispute Resolution Panel that the contract was indivisible. It then went on to deal with the argument on behalf of the Assessee that the Project Office was only an auxiliary office, and did not involve itself in any core activity of business, as accounts that were produced would show that there was no expenditure which related to execution of the project.

The ITAT found that there was a lack of material to ascertain as to what extent activities of the business were carried on by the Assessee through the Mumbai Project Office, and therefore it was considered just and proper to set aside the attribution of 25% of gross revenue earned outside India - which was attributed as income earned from the Mumbai project office - the matter being sent back to the Assessing Officer to ascertain profits attributable to the Mumbai project office after examining the necessary facts. An appeal from the ITAT was filed in the High Court at Uttarakhand by theAssessee. Five substantial questions of law[2] were framed by the High Court in the appeal. The High Court held that the

[2]"(i) Whether, on the facts and in the circumstances of the case, the Tribunal erred in law in holding that the appellant had a fixed place 'Permanent Establishment' (PE) in India under Article 5(1)/(2) of the Double Taxation Avoidance Agreement between India and Korea ('the Treaty'), in the form of project office in Mumbai?

(ii) Whether, on the facts and circumstances of the case and in law, the finding of the Tribunal that the project office was opened for co-ordination and execution of the VED project and all activities to be carried out in relation to the said project were routed through the project office only, is perverse

question as to whether the Project Office opened at Mumbai cannot be said to be a "permanent establishment" within the meaning of Article 5 of the DTAA would be of no consequence. The High Court then held that there was no finding that 25% of the gross revenue of the Assessee outside India was attributable to the business carried out by the Project Office of the Assessee. According to the High Court, neither the Assessing Officer nor the ITAT made any effort to bring on record any evidence to justify this figure. This being the position, the appeal of the Assessee was allowed.

Decision and Observations

With regard to similar double taxation avoidance treaty provisions,[3] the Apex court referred to its decisions in*DIT (International Taxation), Mumbai v. Morgan Stanley & Co. Inc.,* (2007)

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inasmuch as the same is based on selective and/or incomplete reference to the material on record, irrelevant considerations and incorrect appreciation of the role of the project office?

(iii) Without prejudice, whether, on the facts and the circumstances of the case and in law, the Tribunal erred in not holding that even if the appellant had fixed place PE in India, no income on account of offshore activities, i.e. the operations carried out outside India (viz., designing, engineering, material procurement, fabrication, transportation activities) was attributable to the said PE, instead, in setting the issue to the file of the assessing officer?

(iv) Without prejudice, whether, on the facts and circumstances of the case and in law, the Tribunal erred in not holding that even if the appellant had fixed place PE in India, no income could be brought to tax in India since the appellant had incurred overall losses in respect of the VED project?

(v) Whether, on the facts and circumstances of the case, the contract was divisible/distinguishable pertaining to the activities associated with designing, fabrication and installation of platforms and, if so, whether the activities pertaining to designing and fabrication took place in any part of India?"

[3] "ARTICLE 5 - Permanent establishment—

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" shall include especially— (a) a place of management; (b) a branch; (c) an office; (d) a factory; (e) a workshop; and (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. The term "permanent establishment" likewise encompasses a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than nine months.
4. Notwithstanding the preceding provisions of this article, the term "permanent establishment" shall be deemed not to include—
   (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
   (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
   (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
   (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or for collecting information, for the enterprise;
   (e) the maintenance of a fixed place of business solely for the purpose of advertising, the supply of information, scientific research or any other activity, if it has a preparatory or auxiliary character in the trade or business of the enterprise;
   (f) the maintenance of a fixed place if business solely for any combination of activities mentioned in sub-paragraphs (a) to (e) of this paragraph, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

7 SCC 1, ***Commissioner of Income Tax v. Hyundai Heavy Industries Co.*** Ltd., (2007) 7 SCC 422, ***Ishikawajma-Harima Heavy Industries Ltd. v. Director of Income Tax, Mumbai***, (2007) 3 SCC 481, ***Asst. Director of Income Tax, New Delhi v. E-Funds IT Solution Inc.***, (2018) 13 SCC 294.

The Apex Court then stated the following:

> **23.** A reading of the aforesaid judgments makes it clear that when it comes to "fixed place" permanent establishments under double taxation avoidance treaties, the condition precedent for applicability of Article 5(1) of the double taxation treaty and the ascertainment of a "permanent establishment" is that it should be an establishment "through which the business of an enterprise" is wholly or partly carried on. Further, the profits of the foreign enterprise are taxable only where the said enterprise carries on its core business through a permanent establishment. What is equally clear is that the maintenance of a fixed place of business which is of a preparatory or auxiliary character in the trade or business of the enterprise would not be considered to be a permanent establishment under Article 5. Also, it is only so much of the profits of the enterprise that may be taxed in the other State as is attributable to that permanent establishment.
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> **27.** A reading of the Board Resolution would show that the Project Office was established to coordinate and execute "delivery documents in connection with construction of offshore platform modification of existing facilities for ONGC". Unfortunately, the ITAT relied upon only the first paragraph of the Board Resolution, and then jumped to the conclusion that the Mumbai office was for coordination and execution of the project itself. The finding, therefore, that the Mumbai office was not a mere liaison office, but was involved in the core activity of execution of the project itself is therefore clearly perverse. Equally, when it was pointed out that the accounts of the Mumbai office showed that no expenditure relating to the execution of the contract was incurred, the ITAT rejected the argument, stating that as accounts are in the hands of the Assessee, the mere mode of maintaining accounts alone cannot determine the character of permanent establishment. This is another perverse finding which is set aside. *Equally the finding that the onus is on the Assessee and not on the Tax Authorities to first show that the project office at Mumbai is a permanent establishment is again in the teeth of our judgment in E-Funds IT Solution Inc.* (supra).
>
> **28.** Though it was pointed out to the ITAT that there were only two persons working in the Mumbai office, neither of whom was qualified to perform any core activity of the Assessee, the ITAT chose to ignore the same. This being the case, it is clear, therefore, that no permanent establishment has been set up within the meaning of Article 5(1) of the DTAA, as the Mumbai Project Office cannot be said to be a fixed place of business through which the core business of the Assessee was wholly or partly carried on. Also, as correctly argued by Shri Ganesh, the Mumbai Project Office, on the facts of the present case, would fall within Article 5(4)(e) of the DTAA, inasmuch as the office is solely an auxiliary office, meant to act as a liaison office between the Assessee and ONGC. This being the case, it is not necessary to go into any of the other questions that have been argued before us.

7. *Sunil Rathee and Others v. State of Haryana and Others, 2020 SCC OnLine SC 594*

Decided on: 23.07.2020

Bench: 1. Hon'ble Mr. Justice Aniruddha Bose

(The provision of Article 139A of the Constitution relating to withdrawal of a case from a High Court to this Court on the ground of pendency before this Court of a case involving same or similar questions of law contemplates fulfilment of two conditions. First, in the case pending before this Court, the questions of law involved ought to be the same or substantially the same as those involved in the case in the High Court, the withdrawal of which can be asked for. Secondly, this Court, while exercising the jurisdiction vested in it under Article 139A of the Constitution must be satisfied that such questions are substantial questions of general importance.)

Facts:

The petitioners in this proceeding seek transfer of a writ petition registered as CWP No. 7607 of 2019 (O & M) (the writ petition) pending in the High Court of Punjab and Haryana to this Court. The main ground on which such plea is made is that this Court is hearing certain appeals on near identical point to the one which forms subject of controversy in the aforesaid Writ Petition. The said appeals are registered as Civil Appeal Nos. 9546-9549 of 2016 (*State of Gujarat* v. *Ms. Dulari Mahesh Basagre*). In the writ petition, under challenge is a notification issued by the State of Haryana bearing no. 733 SW (1|)- 2013 dated 27th September 2013 providing for 10% vertical reservation for economically backward persons in general category in certain fields of public employment. According to the petitioners, such reservation would take the total number of reserved posts beyond the 50% limit laid down by this Court in the cases of *Indra Sawhney* v. *Union of India* [1992) Supp (3) 217] and *M. Nagraj* v. *Union of India* [(2006) 8 SCC 212]. The petitioners' specific grievance is in relation to such reservation in recruitment of shift attendants, category-I for which posts they are aspirants from the general category. The process of such recruitment was initiated by a recruitment advertisement issued by the Haryana Staff Selection Commission (the Commission) on 20th February 2016. It appears from the pleadings in the writ petition, a copy of which has been annexed to the present petition, that out of the 2426 posts of "shift attendants" in category-I advertised, 674 posts were for general category and the rest were reserved.

The writ petitioners have participated in the selection process for category I of shift attendant which was initiated by a public advertisement issued on 20th February 2016. There was 10% reservation for economically backward persons category, commonly referred to as (EBPG category) in terms of the said notification of 2013. The petitioners in their writ petition have contended that they are hopeful of being selected for the job in the event the 10% reservation

of the EBPG category is removed. It is in this perspective they brought the writ petition before the Punjab and Haryana High Court questioning the reservation provisions contained in the said notification of 2013. I am apprised by the learned counsel appearing for the parties that several other writ petitions have also been filed in the same High Court with similar grievances. The main reason for pressing the present petition under Article 139A of the Constitution of India is that on identical point the Gujarat High Court has, in the case of *Dayaram Khemkaran* v. *State of Gujarat*, invalidated an ordinance issued by the State of Gujarat (Gujarat Ordinance No. 1 of 2016) providing reservation of seats in the educational institutions in that State and of appointments and posts in the services under the state in favour of economically weaker sections of the unreserved categories and that decision is under appeal before this Court. The Gujarat High Court has relied on, inter-alia, the case of *Indra Sawhney* (supra), for coming to such conclusion in the judgment under appeal. Leave has been granted by this Court under Article 136 of the Constitution of India in the petitions for special leave to appeal filed by the State of Gujarat (C.A 9546-49/16) and these appeals involve the same or similar constitutional and legal questions on the basis of which the writ petition has been instituted before the Punjab and Haryana High Court.

Decision and Observations

6. ***The provision of Article 139A of the Constitution relating to withdrawal of a case from a High Court to this Court on the ground of pendency before this Court of a case involving same or similar questions of law contemplates fulfilment of two conditions. First, in the case pending before this Court, the questions of law involved ought to be the same or substantially the same as those involved in the case in the High Court, the withdrawal of which can be asked for. Secondly, this Court, while exercising the jurisdiction vested in it under Article 139A of the Constitution must be satisfied that such questions are substantial questions of general importance.*** Such satisfaction can be on this Court's own motion, on an application made by the Attorney General or on the basis of an application made by a party to any such case. One of the key points involved in the appeal of the State of Gujarat in the case of *Ms. Dulari Mahesh Basagre* (supra) is as to whether the Ordinance involved therein is contrary to the ratio laid down by this Court in the case of *Indra Sawhney* (supra) or not. The writ petition before the Punjab and Haryana High Court is also anchored on the same authority, in assailing the notification of 27th September 2013. I am also satisfied that the writ petition pending before the Punjab and Haryana High Court as also the appeal in the case of *State of Gujarat* (supra) involve substantially the same questions of law and these questions are of general importance. The fact that the Gujarat Ordinance was promulgated before coming into effect of the Constitution (One Hundred and Third amendment) Act, 2019 does not have significant distinguishing impact so far as the questions forming the basis of the said Civil Appeal and the Writ Petition pending before the Punjab and Haryana High Court are concerned. I have already referred to the key point forming the subject of controversy in the said Appeal and the Writ Petition.

7. The decision in the case of *Sri Selvaganapathy* (supra) was cited by the State respondents in support of their contention that the pending writ proceedings could wait for the final outcome of the Civil Appeal. On behalf of the petitioners, on the other hand, the case of *L.K. Venkat* v. *Union of India* [(2012) 5 SCC 292] was referred to. This was a case arising out of a Writ Petition filed in the Madras High Court for quashing of order of rejection of clemency petition by the President. In that case, one of the grounds for seeking transfer was that the questions raised in the writ petition was identical to the question raised in two other cases pending before this Court, being Writ Petition (Criminal) D. No. 16039 of 2011 and S.L.P (Criminal) No. 1105 of 2012. This Court found in the case of *L.K. Venkat* (supra) that the common question was whether long delay in deciding a mercy petition entitled the convict to seek commutation of death sentence or not. The petition was allowed by this Court.

8. Article 139A vests this Court with jurisdiction to direct transfer or withdrawal of a case pending in a High Court to this Court on two grounds, to which I have referred earlier. On satisfaction of these conditions, this Court can make direction in exercise of its discretion for withdrawing the case for disposal of the same by itself. The manner in which such discretion would be exercised would vary from case to case. The decision of this Court in *Sri Selvaganapathy and Co.* (supra) cannot be held to have laid down any absolute proposition of law guiding transfer or withdrawal of a case from a High Court to this Court. The course mandated by this Court in the case of *Sri Selvaganapathy and Co.* (supra) was in the facts of that particular case. So far as the three intervention applications are concerned, in dealing with a petition under Article 139A of the Constitution of India, I do not find any reason to allow the applicants' plea for being impleaded. I do not see any possibility of their interest being prejudiced if I direct withdrawal of the writ petition from the Punjab and Haryana High Court to this Court. Once the writ petition is withdrawn or transferred to this Court, they can always come back with similar plea for impleadment. All the three applications for intervention shall accordingly stand dismissed.

9. The points involved in the said Civil Appeal and the Writ Petition pending in the High Court of Punjab and Haryana require adjudication of substantially the same questions of law. These questions have arisen in two different States and in my opinion these are substantial questions of general importance.

10. I accordingly direct withdrawal of CWP No. 7607 of 2019 (*Sunil Rathee* v. *State of Haryana*) pending in the High Court of Punjab and Haryana to this Court for disposal of the said Writ Petition.

(emphasis supplied)

8. ***Erudhaya Priya v. State Express Transport Corporation Ltd., 2020 SCC OnLine SC 601***

Decided on: 27.07.2020

Bench: 1. Hon'ble Mr. Justice Sanjay Kishan Kaul
2. Hon'ble Mr. Justice Ajay Rastogi
3. Hon'ble Mr. Justice Aniruddha Bose

(It has been opined in para 12 of *Sandeep Khanuja* case that while applying the multiplier method, future prospects on advancement in life and career are also to be taken into consideration.)

Facts

On 16.08.2011, the appellant was travelling from Chennai to Bangalore in a bus owned by the respondent State Corporation bearing registration No. TN-01-N-7531. At about 5.40 a.m., while the bus was moving on the Kolar Bangalore National Highway, it ran into a stationary lorry. The collision resulted in multiple injuries to numerous passengers including the appellant, and caused death of the bus conductor on the spot. The appellant was rushed to Hospital, Tamak, Kolar and further treatment was administered at the Manipal Hospital, Bangalore where she remained admitted for 8 months. The injuries to the appellant were grievous including fractures in the arms and legs and she suffered a disability of 31.1% of the whole body.

An FIR was registered in pursuance of investigation naming the driver of the bus as an accused. Chargesheet was filed. The appellant filed a claim petition before the Motor Accident Claims Tribunal ("MACT"), Madurai under Section 166 of the Motor Vehicles Act, 1988 ("MV Act") read with Rule 3(1) of the Tamil Nadu Motor Vehicles Accident Claims Tribunal Rules, 1989 claiming a compensation of Rupees One Crore for injuries sustained in the accident.The MACTcame to the conclusion that the accident occurred due to the rash and negligent manner of driving of the bus driver of the bus owned by the respondent State Corporation and, thus, held the respondent liable to pay compensation to the appellant.

In terms of the judgment dated 20.10.2014, the MACT opined that the permanent disability of 31.1% would have to be considered and applied the multiplier method to calculate the loss of earning power. Since the appellant was 23 years of age, multiplier of 17 was applied on the monthly salary of the appellant as a software engineer and the compensation was worked out for loss of earning power to Rs. 9,27,424/. The compensation was also attributed under various heads of extra nourishment, medical expenses, physiotherapy, loss of matrimonial aspects, loss of comfort and amenities, mental agony, and pain and suffering. The total quantification of the compensation by the MACT was of Rs. 35,24,288/- payable by

the respondent State Corporation along with interest @ 7.5% per annum from the date of petition till the date of realization with costs.

The respondent State Corporation filed an appeal against this order and the appellant filed cross objections. Both of them were decided by the impugned judgment of the High Court dated 27.10.2017 by a common order. The High Court, confirming the findings of negligence of the bus driver, reduced the compensation to Rs. 25,00,000/- primarily on the ground that the multiplier method for quantifying loss of earning power has been wrongly applied as it had not come on record as to how the injuries suffered by the appellant would have a bearing on her earning capacity as a software engineer. The interest rate was sustained.

The appellant has claimed that she is entitled to enhancement of compensation even over and above what was granted by the MACT and has quantified the same as Rs. 41,69,831/- under various heads along with claiming a revised interest rate @ 12% per annum.

Decision and Observations

(a) the application of multiplier of '17' instead of '18';

8. The aforesaid increase of multiplier is sought on the basis of age of the appellant as 23 years relying on the judgment in *National Insurance Company Limited* v. *Pranay Sethi*[(2017) 16 SCC 680].In para 42 of the said judgment, the Constitution Bench effectively affirmed the multiplier method to be used as mentioned in the table in the case of *Sarla Verma (Smt)* v. *Delhi Transport Corporation*[(2009) 6 SCC 121]. In the age group of 15-25 years, the multiplier has to be '18' along with factoring in the extent of disability.

9. The aforesaid position is not really disputed by learned counsel for the respondent State Corporation and, thus, we come to the conclusion that the multiplier to be applied in the case of the appellant has to be '18' and not '17'.

(b) Loss of earning capacity of the appellant with permanent disability of 31.1%

10. In respect of the aforesaid, the appellant has claimed compensation on what is stated to be the settled principle set out in *Jagdish* v. *Mohan* [(2018) 4 SCC 571]and *Sandeep Khanuja* v. *Atul Dande*[(2017) 3 SCC 351]. We extract below the principle set out in the *Jagdish case* (supra) in para 8:

"8. In assessing the compensation payable the settled principles need to be borne in mind. A victim who suffers a permanent or temporary disability occasioned by an accident is entitled to the award of compensation. The award of compensation must cover among others, the following aspects:

(i) Pain, suffering and trauma resulting from the accident;

(ii) Loss of income including future income;

(iii) The inability of the victim to lead a normal life together with its amenities;

(iv) Medical expenses including those that the victim may be required to undertake in future; and

(v) Loss of expectation of life."

[emphasis supplied]

11. The aforesaid principle has also been emphasized in an earlier judgment, i.e. the *Sandeep Khanuja case* (supra) opining that the multiplier method was logically sound and legally well established to quantify the loss of income as a result of death or permanent disability suffered in an accident.

12. In the factual contours of the present case, if we examine the disability certificate, it shows the admission/hospitalization on 8 occasions for various number of days over 1½ years from August 2011 to January 2013.

.....

13. We have also perused the photographs annexed to the petition showing the current physical state of the appellant, though it is stated by learned counsel for the respondent State Corporation that the same was not on record in the trial court. Be that as it may, this is the position even after treatment and the nature of injuries itself show their extent. Further, it has been opined in para 12 of *Sandeep Khanuja case* (supra) that while applying the multiplier method, future prospects on advancement in life and career are also to be taken into consideration.

14. We are, thus, unequivocally of the view that there is merit in the contention of the appellant and the aforesaid principles with regard to future prospects must also be applied in the case of the appellant taking the permanent disability as 31.1%. The quantification of the same on the basis of the judgment in *National Insurance Co. Ltd. case* (supra), more specifically para 59.3, considering the age of the appellant, would be 50% of the actual salary in the present case.

(c) The third and the last aspect is the interest rate claimed as 12%

15. In respect of the aforesaid, the appellant has watered down the interest rate during the course of hearing to 9% in view of the judicial pronouncements including in the *Jagdish case* (supra). On this aspect, once again, there was no serious dispute raised by the learned counsel for the respondent once the claim was confined to 9% in line with the interest rates applied by this Court.

9. *Parminder Kaur alias P.P. Kaur alias Soni v. State of Punjab, 2020 SCC OnLine SC 605*

Decided on : 28.07.2020

Bench: 1. Hon'ble Mr. Justice N.V.Ramana
2. Hon'ble Mr. Justice Surya Kant
3. Hon'ble Mr. Justice Krishna Murari

(Any alternate version of events or interpretation proffered by the accused must be carefully analysed and considered by the trial Court in compliance with the mandate of Section 313(4). Such opportunity is a valuable right of the accused to seek justice and defend oneself. Failure of the trial Court to fairly apply its mind and consider the defence, could endanger the conviction itself.

Proving the intention of the appellant to cause alarm or compel doing/abstaining from some act, and not mere utterances of words, is a pre-requisite of successful conviction under Section 506 of IPC)

Facts

The prosecution story, as recorded in the FIR at around noon on 24.02.1996, was that the appellant was a single lady living with her child, mother and a young boy as her tenant in the neighbourhood of the prosecutrix's house. About a week prior to registration of the police complaint, the appellant called the prosecutrix to her house and tried to entice her to indulge in illicit intercourse with the rich tenant boy in return for clothes and trips from him. The appellant at about 6.00 A.M. on 19.02.1996, allegedly pushed the visiting prosecutrix into the room occupied by the tenant boy and bolted it from the outside. It was only on hearing the prosecutrix's screams that after five minutes the door was unlocked, with her father (Hari Singh, PW-2), Bhan Singh and Karnail Singh standing outside. Swiftly, the boy ran out of the room and successfully escaped. Upon the prosecutrix emerging from the room, her father protested and expressed his dismay to the by-standing appellant. Scared for their reputation, the prosecutrix and her father returned to their home without reporting the matter to anyone, except the prosecutrix's mother. However, on 24.02.1996 at 7.00 A.M., the appellant caught hold of the prosecutrix outside her house and threatened to kill her brother if anyone was informed of the matter. The prosecutrix was able to escape the appellant's clutches and worried at this high-handedness, proceeded with her father towards the police station to report these two incidents and lodged a complaint.

The appellant, in turn, both denied all allegations and examined one witness of her own - a neighbour, Gurnail Singh (DW-1) and offered an alternate version in her statement under Section 313 of the Code of Criminal Procedure, 1973 ("CrPC"), claiming that there was no tenant at all in her home and that the complaint was nothing but motivated revenge at the

instance of one Bhola Singh against whom she had levelled allegations of rape a few months ago.

The present Criminal Appeal has been preferred by Parminder Kaur, impugning the judgment dated 30.11.2009 of the High Court of Punjab and Haryana through which her challenge to a judgment dated 27.02.1999 passed by the Additional Sessions Judge, Barnala was turned down, thereby confirming her conviction of three years rigorous imprisonment and fine of Rs. 2000 under Sections 366A and 506 of the Penal Code, 1860 ("IPC").

Decision and Observations

The Apex court was of the following opinion:

> 10. [...] It is indisputable that parents would not ordinarily endanger the reputation of their minor daughter merely to falsely implicate their opponents, but such clichés ought not to be the sole basis of dismissing reasonable doubts created and/or defences set out by the accused.
> **11.** Similarly, the five-day delay in registration of the FIR, in the facts and circumstances of this case, gains importance as the father of the victim is an eye-witness to a part of the occurrence. It is difficult to appreciate that a father would await a second incident to happen before moving the law into motion. Sweeping assumptions concerning delays in registration of FIRs for sexual offences, send a problematic signal to society and create opportunities for abuse by miscreants. Instead, the facts of each individual case and the behaviour of the parties involved ought to be analysed by courts before reaching a conclusion on the reason and effect of delay in registration of FIR. In the facts of the present case, neither is Section 366A by itself a sexual offence in the strict sense nor do the inactions of the prosecutrix or her father inspire confidence on genuineness of the prosecution story. No steps were taken to avail of medical examination of the victim, nor was the Panchayat or any social forum approached for any form of redress till the occurrence of the second alleged incident.

Regarding the non examination of the material independent witnesses, the Apex court relied upon ***TakhajiHiraji* v. *Thakore KubersingChamansing***[4] wherein it was stated:

> *"19. ... It is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case. ..."*

Regarding the section 313 CrPC statement in this case, the Apex court was of the following opinion :

> **21.** Under the Code of Criminal Procedure, 1973 after the prosecution closes its evidence and examines all its witnesses, the accused is given an opportunity of

[4] (2001) 6 SCC 145.

> explanation through Section 313(1)(b). Any alternate version of events or interpretation proffered by the accused must be carefully analysed and considered by the trial Court in compliance with the mandate of Section 313(4). Such opportunity is a valuable right of the accused to seek justice and defend oneself. Failure of the trial Court to fairly apply its mind and consider the defence, could endanger the conviction itself. Unlike the prosecution which needs to prove its case beyond reasonable doubt, the accused merely needs to create reasonable doubt or prove their alternate version by mere preponderance of probabilities. Thus, once a plausible version has been put forth in defence at the Section 313 CrPC examination stage, then it is for the prosecution to negate such defense plea.
>
> **(emphasis supplied)**

Regarding the charge of criminal intimidation, the Apex court stated:

> **25.** Proving the intention of the appellant to cause alarm or compel doing/abstaining from some act, and not mere utterances of words, is a pre-requisite of successful conviction under Section 506 of IPC….
>
> **26.** We are thus of the considered view that the prosecution has failed to discharge its burden of proving the guilt of the appellant under Section 366A and 506 of the IPC beyond reasonable doubt. Thus, for the reasons aforesaid, the appeal is allowed and the conviction and sentence awarded by the Courts below are set aside. The appellant is acquitted and consequently set free.

10. Union of India and Others v. Lt. Col. S.S. Bedi, 2020 SCC OnLine SC 609

Decided on: 29.07.2020

Bench: 1. Hon'ble Mr. Justice L. Nageswara Rao
2. Hon'ble Mr. Justice Hemant Gupta
3. Hon'ble Mr. justice S. Ravindra Bhat

(The punishment of penalty of cashiering by taking into account the reprehensible conduct of the Appellant abusing a position of trust being a Doctor which is not condonable, restored)

These Appeals have been preferred against the judgment of the Armed Forces Tribunal, Principal Bench, New Delhi (hereinafter, '*the Tribunal*') by which the conviction of Ex. Lt. Col. S.S. Bedi by the General Court Martial was affirmed. However, the sentence of cashiering from service was converted into a fine of Rs. 50,000/- by the Tribunal. An application filed by Ex. Lt. Col. S.S. Bedi for granting permission to file an Appeal was dismissed by the Tribunal. The Appellant has filed Criminal Appeal No. 997 of 2013 aggrieved by the judgment of the Tribunal upholding the conviction ordered by the General Court Martial and imposition of fine of Rs. 50,000/-. The Union of India has filed Criminal Appeal No. 13 of 2013 aggrieved by the alteration of sentence from cashiering from service to imposition of fine. For the sake of convenience, we will refer to the parties as they are arrayed in Criminal Appeal No. 997 of 2013.

The Appellant was commissioned in the Indian Army Medical Corps on 24.07.1966. He was posted at Base Hospital Lucknow as a Medical Specialist on 03.04.1984. A complaint was made by two women against the Appellant on 15.05.1986 that he misbehaved with them during checkup by inappropriately touching their private parts. The GOC-in-C directed attachment of the Appellant for recording of summary evidence which was completed on 30.09.1986. Due to certain procedural irregularities, the summary of evidence was cancelled on 01.10.1986 and a de novo recording of summary of evidence was directed. On the basis of the summary of evidence, the convening authority directed trial of the Appellant by the General Court Martial. On 29.11.1986, a charge sheet was filed against the Appellant. He was charged for committing a civil offence that is to say, using criminal force on two women with intent to outrage their modesty, contrary to Section 354 of the Penal Code, 1860 (IPC). The Appellant was held guilty by the General Court Martial on 09.12.1986 and was sentenced to be cashiered from service on 14.01.1987.

The Petition filed by the Appellant under Section 164(2) of the Army Act, 1950 was rejected on 30.05.1988. The conviction and sentence of the General Court Martial were challenged by the Petitioner before the Delhi High Court in the year 2010. The Writ Petition filed by the Appellant was transferred by the Delhi High Court to the Principal Bench of the Armed Forces Tribunal, New Delhi. The Tribunal upheld the conviction of the Appellant but

converted the punishment of cashiering to a fine of Rs. 50,000/-. Being dissatisfied, the Appellant filed the above Appeal. The Respondents have also filed an appeal aggrieved by the judgment of the Tribunal converting the sentence of cashiering to a fine of Rs. 50,000/-.

Decision and Observations

The Apex court referred to ***Union of India v. Brig. P.K. Dutta (Retd.)***[5] wherein the Court was of the opinion that Section 71 relating to the punishments awardable by the Courts Martials and Regulation 16(a) operate in distinct fields. Regulation 16(a) contemplates a situation where an officer is cashiered on dismissal or removal from service and provides how his pension is to be dealt with. Section 71(h) provides for a punishment relating to forfeiture of pension at the conclusion of Court Martial. Finally, it was concluded that the nature and content of both the impositions is different and there is no inconsistency between Section 71(h) and Regulation 16(a). Also, in ***Union of India v. P.D. Yadav***[6] it was held that punishment imposed under Section 71 of the Army Act and order passed under Regulation 16(a) of the Pension Regulations are entirely different.

The Apex court then held the following:

> **13.** The Tribunal converted the sentence of cashiering into a fine of Rs. 50,000/- by holding that the Appellant has a blemishless record of service. The Tribunal found the imposition of the punishment of cashiering from service shockingly disproportionate. The Tribunal also highlighted the delay in the complaint made against the Appellant. We are not convinced with the reasons given by the Tribunal for converting the sentence from cashiering to imposition of fine of Rs. 50,000/-. We *restore the punishment of penalty of cashiering by taking into account the reprehensible conduct of the Appellant abusing a position of trust being a Doctor which is not condonable*. However, we direct the Respondents to consider the entire record of service of the Appellant and his advanced age while taking a decision to initiate proceedings under the Army Pension Regulations. In case the Respondents decide not to initiate proceedings under Army Pension Regulations, the Appellant shall be entitled for all pensionary benefits. The amount of Rs. 50,000/- deposited by the Appellant shall be refunded to him with interest accrued therefrom.

[5] 1995 Supp (2) SCC 29
[6] (2002) 1 SCC 405

11. Shree Choudhary Transport Company v. Income Tax Officer, 2020 SCC OnLine SC 610

Decided on: 29.07.2020

Bench: 1. Hon'ble Mr. Justice A. M. Khanwilkar
2. Hon'ble Mr. Justice Dinesh Maheshwari

(In income tax matters, the law to be applied is that in force in the assessment year in question, unless stated otherwise by express intendment or by necessary implication.)

Issues

1. As to whether Section 194C of the Income Tax Act,1961 does not apply to the present case?
2. As to whether disallowance under Section 40(a)(ia) of the Act is confined/limited to the amount "payable" and not to the amount "already paid"; and whether the decision of this Court in *Palam Gas Service* v. *Commissioner of Income-Tax* : **(2017) 394 ITR 300** requires reconsideration?
3. As to whether sub-clause (ia) of Section 40(a) of the Act, as inserted by the Finance (No. 2) Act, 2004 with effect from 01.04.2005, is applicable only from the financial year 2005-2006 and, hence, is not applicable to the present case relating to the financial year 2004-2005; and, at any rate, whole of the rigour of this provision cannot be applied to the present case?
4. As to whether the payments in question have rightly been disallowed from deduction while computing the total income of the assessee-appellant?

Decision and Observations

Issue 1

> **47.** The nature of contract entered into by the appellant with the consignor company makes it clear that the appellant was to transport the goods (cement) of the consignor company; and in order to execute this contract, the appellant hired the transport vehicles, namely, the trucks from different operators/owners. The appellant received freight charges from the consignor company, who indeed deducted tax at source while making such payment to the appellant. Thereafter, the appellant paid the charges to the persons whose vehicles were hired for the purpose of the said work of transportation of goods. Thus, the goods in question were transported through the trucks employed by the appellant but, there was no privity of contract between the truck operators/owners and the said consignor company. Indisputably, it was the responsibility of the appellant to transport the goods (cement) of the company; and how to accomplish this task of transportation was a matter exclusively within the domain of the appellant. Hence, hiring the services of truck operators/owners for this purpose could have only been under a contract

between the appellant and the said truck operators/owners. Whether such a contract was reduced into writing or not carries hardly any relevance. In the given scenario and set up, the said truck operators/owners answered to the description of "sub-contractor" for carrying out the whole or part of the work undertaken by the contractor (i.e., the appellant) for the purpose of Section 194C(2) of the Act.

*****

51. Thus, we have no hesitation in affirming the concurrent findings in regard to the applicability of Section 194C to the present case. Question No. 1 is, therefore, answered in the negative; against the assessee-appellant and in favour of the revenue.

Issue 2

59. We may profitably observe that in the case of *P.M.S. Diesels* (supra), the Punjab and Haryana High Court had extensively dealt with myriad features of Section 40(a)(ia) of the Act, including the term "payable" used therein as also the proviso thereto; and expounded on the entire gamut of this provision while making reference to Finance (No. 2) Bill of 2004 introducing the provision and while also drawing support from the views expressed by Calcutta High Court in the case of *Crescent Export Syndicate* (supra). As regards the interpretation of the term "payable", it was observed in *P.M.S. Diesels* as under (at pp. 574-575 of ITR):—

"21. Section 40(a)(ia), therefore, applies not merely to assessees following the mercantile system but also to assessees following the cash system.

If this view is correct and indeed we must proceed on the footing that it is, it goes a long way in indicating the fallacy in the appellant's main contention, namely, if the payments have already been made by the assessee to the payee/contracting party, the provisions of section 40(a)(ia) would not be attracted even if the tax is not deducted and/or paid over to the Government account.

22. Section 40(a)(ia) refers to the nature of the default and the consequence of the default. The default is a failure to deduct the tax at source under Chapter XVII-B or after deduction the failure to pay over the same to the Government account. **The term "payable" only indicates the type or nature of the payments by the assessees to the persons/payees referred to in section 40(a)(ia), such as, contractors**. It is not in respect of every payment to a payee referred to in Chapter XVII-B that an assessee is bound to deduct tax. There may be payments to persons referred to in Chapter XVII-B, which do not attract the provisions of Chapter XVII-B. The consequences under section 40(a)(ia) would only operate on account of failure to deduct tax where the tax is liable to be deducted under the provisions of the Act and in particular Chapter XVII-B thereof. **It is in that sense that the term "payable" has been used. The term "payable" is descriptive of the payments which attract the liability to deduct tax at source. It does not categorize defaults on the basis of when the payments are made to the payees of such amounts which attract the liability to deduct tax at source**."

(emphasis in bold supplied)

60. We find the above-extracted observations and reasonings, which have already been approved by this Court in *Palam Gas Service* (supra), to be precisely in accord with the scheme and purpose of Section 40(a)(ia) of the Act; and are in complete answer to the contentions urged by the learned counsel for the appellant. It is *ex facie* evident that the term "payable" has been used in Section 40(a)(ia) of

the Act only to indicate the type or nature of the payments by the assessees to the payees referred therein. In other words, the expression "payable" is descriptive of the payments which attract the liability for deducting tax at source and it has not been used in the provision in question to specify any particular class of default on the basis as to whether payment has been made or not. The semantical suggestion by the learned counsel for the appellant, that this expression "payable" be read in contradistinction to the expression "paid", sans merit and could only be rejected. In a nutshell, while respectfully following *Palam Gas Service* (supra), we could only iterate our approval to the interpretation by the Punjab and Haryana High Court in *P.M.S. Diesels* (supra).

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65. In view of the above, Question No. 2 is also answered in the negative; against the assessee-appellant and in favour of the revenue.

Issue 3

71. It needs hardly any detailed discussion that in income tax matters, the law to be applied is that in force in the assessment year in question, unless stated otherwise by express intendment or by necessary implication. As per Section 4 of the Act of 1961, the charge of income tax is with reference to any assessment year, at such rate or rates as provided in any central enactment for the purpose, in respect of the total income of the previous year of any person. The expression "previous year" is defined in Section 3 of the Act to mean '*the financial year immediately preceding the assessment year*'; and the expression "assessment year" is defined in clause (9) of Section 2 of the Act to mean '*the period of twelve months commencing on the 1st day of April every year*'.

72. In the case of *Commissioner of Income-Tax, West Bengal* v. *Isthmian Steamship Lines* : **(1951) 20 ITR 572**, a 3-Judge Bench of this Court exposited on the fundamental principle that *'in income-tax matters the law to be applied is the law in force in the assessment year unless otherwise stated or implied.'* This decision and various other decisions were considered by the Constitution Bench of this Court in the case of *Karimtharuvi Tea Estate Ltd.* v. *State of Kerala* : **(1966) 60 ITR 262** and the principles were laid down in the following terms (at pp. 264-266 of ITR):—

"Now, **it is well-settled that the Income-tax Act, as it stands amended on the first day of April of any financial year must apply to the assessments of that year. Any amendments in the Act which come into force after the first day of April of a financial year, would not apply to the assessment for that year**, even if the assessment is actually made after the amendments come into force.

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The High Court has, however relied upon a decision of this court in *Commissioner of Income-tax* v. *Isthmian Steamship Lines*, where it was held as follows:

"It will be observed that we are here concerned with two datum lines : (1) the 1st of April, 1940, when the Act came into force, and (2) the 1st of April, 1939, which is the date mentioned in the amended proviso. The first question to be answered is whether these dates are to apply to the accounting year or the year of assessment. They must be held to apply to the assessment year, because in income-tax matters the law to be applied is the law in force in the assessment year unless otherwise

stated or implied. The first datum line therefore affected only the assessment year of 1940-41, because the amendment did not come into force till the 1st of April 1940. That means that the old law applied to every assessment year up to and including the assessment year 1939-40."

This decision is authority for the proposition that though the subject of the charge is the income of the previous year, the law to be applied is that in force in the assessment year, unless otherwise stated or implied. The facts of the said decision are different and distinguishable and the High Court was clearly in error in applying that decision to the facts of the present case."

(emphasis in bold supplied)

73. We need not multiply on the case law on the subject as the principles aforesaid remain settled and unquestionable. Applying these principles to the case at hand, we are clearly of the view that the provision in question, having come into effect from 01.04.2005, would apply from and for the assessment year 2005-2006 and would be applicable for the assessment in question. Putting it differently, the legislature consciously made the said sub-clause (ia) of Section 40(a) of the Act effective from 01.04.2005, meaning thereby that the same was to be applicable from and for the assessment year 2005-2006; and neither there had been express intendment nor any implication that it would apply only from the financial year 2005-2006.

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86. Hence, Question No. 3 is also answered in the negative, i.e., against the assessee-appellant and in favour of the revenue.

Issue 4

87. Before finally answering the root question in the matter as to whether the payments in question have rightly been disallowed from deduction, we may usefully summarise the answers to Question Nos. 1 to 3 that the provisions of Section 194C were indeed applicable and the assessee-appellant was under obligation to deduct the tax at source in relation to the payments made by it for hiring the vehicles for the purpose of its business of transportation of goods; that disallowance under Section 40(a)(ia) of the Act is not limited only to the amount outstanding and this provision equally applies in relation to the expenses that had already been incurred and paid by the assessee; that disallowance under Section 40(a)(ia) of the Act of 961 as introduced by the Finance (No. 2) Act, 2004 with effect from 01.04.2005 is applicable to the case at hand relating to the assessment year 2005-2006; and that the benefit of amendment made in the year 2014 to the provision in question is not available to the appellant in the present case. These answers practically conclude the matter but we have formulated Question No. 4 essentially to deal with the last limb of submissions regarding the prejudice likely to be suffered by the appellant.

88. The suggestion on behalf of the appellant about the likely prejudice because of disallowance deserves to be rejected for three major reasons. In the first place, it is clear from the provisions dealing with disallowance of deductions in part D of Chapter IV of the Act, particularly those contained in Sections 40(a)(ia) and 40A(3) of the Act, that the said provisions are intended to enforce due compliance of the requirement of other provisions of the Act and to ensure proper collection of tax as also transparency in dealings of the parties. The necessity of disallowance comes into operation only when default of the nature specified in the provisions takes place. Looking to the object of these provisions, the suggestions about prejudice or hardship carry no meaning at all. Secondly, as noticed, by way of the proviso as originally inserted and its amendments in the years 2008 and 2010, requisite relief to a bonafide tax payer who had collected TDS but could not deposit within time

before submission of the return was also provided; and as regards the amendment of 2010, this Court ruled it to be retrospective in operation. The proviso so amended, obviously, safeguarded the interest of a bonafideassessee who had made the deduction as required and had paid the same to the revenue. The appellant having failed to avail the benefit of such relaxation too, cannot now raise a grievance of alleged hardship. Thirdly, as noticed, the appellant had shown total payments in Truck Freight Account at Rs. 1,37,71,206/- and total receipts from the company at Rs. 1,43,90,632/-. What has been disallowed is that amount of Rs. 57,11,625/- on which the appellant failed to deduct the tax at source and not the entire amount received from the company or paid to the truck operators/owners. Viewed from any angle, we do not find any case of prejudice or legal grievance with the appellant.

89. Hence, answer to Question No. 4 is clearly in the affirmative i.e., against the appellant and in favour of the revenue that the payments in question have rightly been disallowed from deduction while computing the total income of the assessee-appellant.

12. Prem Chand v. State of Haryana, 2020 SCC OnLine SC 611

Decided on: 30.07.2020

Bench: 1. Hon'ble Mr. Justice N.V.Ramana
2. Hon'ble Mr. Justice Surya Kant
3. Hon'ble Mr. Justice Krishna Murari

(The report of the public analyst does not mention that the sample was either "insect infested" or was "unfit for human consumption", in the absence of such an opinion, the prosecution has failed to establish the requirements of Section 2(1a)(f) of the Prevention of Food Adulteration Act, 1954)

Facts

The present appeal arises out of the impugned judgment dated 09.12.2009 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal no. 492-DBA of 1996, whereby the High Court set aside the judgment of the trial court acquitting the appellant herein and convicted him for the offences under Section 2(1a)(f) of the Prevention of Food Adulteration Act, 1954 (in short, 'the Act') punishable under Section 16(1A) and Section 16(1)(a)(ii) of the Act for selling adulterated Haldi Powder and selling it without licence.

The case of the prosecution is that, on 18.8.1982, at about 11 A.M., the Food Inspector, along with Medical Officer, inspected the shop of the accused-appellant in the presence of the witnesses and found 10 kgs of Haldi Powder in his shop. The Food Inspector purchased 600 grams Haldi Powder out of which one sample was made and then that sealed sample was sent to the Public Analyst. The report of the public analyst dated 07.09.1982, revealed that the sample was found to contain four living meal worms and two live weevils. The trial court vide order dated 31.08.1995 acquitted the appellant. However, upon appeal, the High Court vide impugned judgment dated 09.12.2009, convicted the appellant under Section 2(la)(f) of the Act for selling adulterated Haldi Powder and sentenced to undergo imprisonment for six months and to pay fine of Rs. 2,000/- in default whereof to undergo further imprisonment for one month under Section 16(1A) of the Act. The High Court further convicted the appellant for offence under Section 16(1)(a)(ii) of the Act for selling Haldi Powder without licence and sentenced to undergo imprisonment for one month and to pay fine of Rs. 500/- in default whereof to undergo further imprisonment for fifteen days.

Decision and Observation

5. Having heard the learned counsel appearing for the parties and carefully perusing the material available on record, we note that the cross-examination of the medical officer (P.W-2) reveals that he did not find any weevils/worms in the sample on seeing it with naked eyes. Although, the food inspector (P.W-1) stated that the sample was dispatched to the public analyst on the next date, however, no parcel receipt was produced to that extent. Although, the sample was received in the office of the public analyst on 20.08.1982 and the report was finalized on 07.09.1982 after the delay of 18 days. There is no evidence that the samples were not tampered within the intervening period, therefore benefit of doubt accrues in favor of the accused. Moreover, the report of the public analyst does not mention that the sample was either "insect infested" or was "unfit for human consumption", in the absence of such an opinion, the prosecution has failed to establish the requirements of Section 2(1a)(f) of the Act(See *Delhi Administration*. v. *Sat Sarup Sharma*, 1994 Supp (3) SCC 324). Moreover, no evidence has been adduced by the prosecution to prove the offence under Section 16(1) of the Act either before the trial court or the High Court.

6. Therefore, the impugned order of conviction passed by the High Court is not sustainable for the aforementioned reasons. We set aside the same and uphold the order of acquittal passed by the trial court. Accordingly, the appeal stands allowed.

13. ***Ravinder Kaur Grewal and Others v. Manjit Kaur and Others, 2020 SCC OnLine SC 612***

Decided on: 31.07.2020

Bench: 1. Hon'ble Mr. Justice A. M. Khanwilkar
2. Hon'ble Mr. justice Dinesh Maheshwari

(Memorandum of a family settlement not required to be registered, although binding on the parties)

Issue

Whether the document Exhibit P-6 was required to be registered as interest in immovable property worth more than Rs. 100/- was transferred in favour of the plaintiff?

Decision and Observations

> **19.** [.....] The settled legal position is that when by virtue of a family settlement or arrangement, members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once and for all in order to buy peace of mind and bring about complete harmony and goodwill in the family, such arrangement ought to be governed by a special equity peculiar to them and would be enforced if honestly made. The object of such arrangement is to protect the family from long drawn litigation or perpetual strives which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family, as observed in *Kale* [(1976) 3 SCC 119)]. In the said reported decision, a three-Judge Bench of this Court had observed thus:—
>
> "9. ..... A family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the hands of a few is undoubtedly a milestone in the administration of social justice. That is why the term "family" has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim or even if they have a spessuccessionis so that future disputes are sealed for ever and the family instead of fighting claims inter se and wasting time, money and energy on such fruitless or futile litigation is able to devote its attention to more constructive work in the larger interest of the country. **The courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Where the courts find that the family arrangement suffers from a legal lacuna or a formal defect the rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement under which he has himself enjoyed some material benefits**. ....."
>
> (emphasis supplied)

20. In paragraph 10 of the said decision, the Court has delineated the contours of essentials of a family settlement as follows:—

"10. In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions:

"(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

(3) **The family arrangement may be even oral in which case no registration is necessary**;

(4) It is well-settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. **Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation**. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. **Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the courts will find no difficulty in giving assent to the same**;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement."

(emphasis supplied)

21. Again, in paragraph 24, this Court restated that a family arrangement being binding on the parties, clearly operates as an estoppel, so as to preclude any of the parties who have taken advantage under the agreement from revoking or challenging the same. In paragraph 35, the Court noted as follows:—

"35. … We have already pointed out that this Court has widened the concept of an antecedent title by holding that an antecedent title would be assumed in a person who may not have any title but who has been allotted a particular property by other party to the family arrangement by relinquishing his claim in favour of such a donee. In such a case the party in whose favour the relinquishment is made would be assumed to have an antecedent title. ….."

22. And again, in paragraph 36, the Court noted as follows:—

"36. … Yet having regard to the near relationship which the brother and the son-in-law bore to the widow the Privy Council held that the family settlement by which the properties were divided between these three parties was a valid one. In the instant case also putting the case of Respondents Nos. 4 and 5 at the highest, the position is that Lachman died leaving a grandson and two daughters. Assuming that the grandson had no legal title, so long as the daughters were there, still as the settlement was made to end the disputes and to benefit all the near relations of the family, it would be sustained as a valid and binding family settlement. …"

23. While rejecting the argument regarding inapplicability of principle of estoppel, the Court observed as follows:—

"38. … **Assuming, however, that the said document was compulsorily registrable the courts have generally held that a family arrangement being binding on the parties to it would operate as an estoppel by preventing the parties after having taken advantage under the arrangement to resile from the same or try to revoke it**. ….."

(emphasis supplied)

24. And in paragraph 42, the Court observed as follows:—

42. ….. **In these circumstances there can be no doubt that even if the family settlement was not registered it would operate as a complete estoppel against Respondents Nos. 4 and 5**. Respondent No. 1 as also the High Court, therefore, committed substantial error of law in not giving effect to the doctrine of estoppel as spelt out by this Court in so many cases. …"

(emphasis supplied)

25. The view so taken is backed by the consistent exposition in previous decisions referred to and duly analysed in the reported judgment. The question formulated by the High Court, in our opinion, stands answered in favour of the appellants (plaintiff), in light of exposition of this Court in *Kale* (supra). A priori, we have no hesitation in affirming the conclusion reached by the first appellate Court that the document Exhibit P-6 was nothing but a memorandum of a family settlement. The established facts and circumstances clearly establish that a family settlement was arrived at in 1970 and also acted upon by the concerned parties. That finding of fact recorded by the first appellate Court being unexceptionable, it must follow that the document Exhibit P-6 was merely a memorandum of a family settlement so arrived at. Resultantly, it was not required to be registered and in any case, keeping in mind the settled legal position, the contesting defendants were estopped from resiling from the stated arrangement in the subject memorandum, which had recorded the settlement terms arrived at in the past and even acted upon relating to all the existing or future disputes qua the subject property amongst the (signatories) family members despite absence of antecedent title to the concerned property.