JUDICIAL ACADEMY JHARKHAND

SNIPPETS

OF

SUPREME COURT JUDGMENTS

(June,2020)

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1. *Addissery Raghavan v. Cheruvalath Krishnadasan, (2020 SCC OnLine SC 491)*

Decided on: 08-06-2020

Bench:- Hon'ble Mr. Justice R.F. Nariman
Hon'ble Mr. Justice Navin Sinha
Hon'ble Mr. Justice B.R. Gavai

(High Court cannot interfere with Finding of Fact in Revisional Jurisdictionunder section 20 of the Kerala Rent Control Act unless there is perversity or misappreciation of Evidence)

Facts

The appellant is tenant of two shop rooms owned by the respondent landlord. The respondent filed eviction petition in respect of the said rooms and the petition was filed on three grounds of (i) arrears of rent (ii) bonafide requirement for additional accommodation for the landlord's business (iii) material damage to the premises, under Section 11(2)(b), 11(8) and 11(4)(ii) respectively of the Kerala Building (Lease and Rent Control) Act, 1965.

The trial court decreed the eviction petitions under Section 11(8) of the Kerala Rent Control Act on the ground that the landlord would be able to run his establishment in a better manner with the availability of two rooms currently in possession of the tenant. The trial court also stated that the tenant is not able to establish much hardship caused to him. The Rent Control Appellate Authority reversed the judgment of the trial court by stating that as per the report of the Commissioner and as also stated by the appellant, there are suitable vacant rooms in the possession of the respondent in the same building as well as in other buildings that are owned by the landlord. It was stated that the hardship that would be caused to the tenant would outweigh the advantage to the landlord.

Under revision petition filed by the respondent under section 20 of the Kerala Rent Control Act, the High Court upheld the order of the trial court and held that in case the order of eviction is passed, it would not outweigh the advantage to the landlord. Being aggrieved, the appellant-tenant has filed the present appeal.

Decision and observations

In the present case, the Apex Court was required to analyse the parameters of the revisional jurisdiction of the High Court. The Apex Court referring to the five judge bench decision in the case of ***Hindustan Petroleum Corporation Ltd. v. Dilbahar Singh***[1], held that:

> "43. [....] The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts

[1](2014) 9 SCC 78

> recorded by the court/authority below is according to law and does not suffer from any error of law. A finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.

To reach the above observation, the Apex Court discussed the conflicting decisions of three judge benches in the case of ***Rukmini Amma Saradamma v. KallyaniSulochana***[2] and ***Ram Dass v. Ishwar Chander***[3], whereby it upheld the former judgment[4] and with respect to latter judgment[5], it limited its finding by stating that:

> "32. [....] as the expression used conferring revisional jurisdiction is "legality and propriety", the High Court has wider jurisdiction obviously means that the power of revision vested in the High Court in the statute is wider than the power conferred on it under Section 115 of the Code of Civil Procedure; it is not confined to the jurisdictional error alone. However, in dealing with the findings of fact, the examination of findings of fact by the High Court is limited to satisfy itself that the decision is "according to law". Whether or not a finding of fact recorded by the subordinate court/tribunal is according to law, is required to be seen on the touchstone whether such finding of fact is based on some legal evidence or it suffers from any illegality like misreading of the evidence or overlooking and ignoring the material evidence altogether or suffers from perversity or any such illegality or such finding has resulted in gross miscarriage of justice. *Ram Dass*[6]does not lay down as a proposition of law that the revisional power of the High Court under the Rent Control Act is as wide as that of the appellate court or the appellate authority or such power is coextensive with that of the appellate authority or that the concluded finding of fact recorded by the original authority or the appellate authority can be interfered with by the High Court by reappreciating evidence because Revisional Court/authority is not in agreement with the finding of fact recorded by the

[2] (1993) 1 SCC 499
[3](1988) 3 SCC 131
[4] It was held in the said decision that though Section 20 of the said Act provided that the Revisional Court can go into the 'propriety' of the order but it does not entitle the Revisional Court to reappreciate the evidence.
[5] It has been held in that case that the expression 'legality and propriety' enables the High Court in revisional jurisdiction to reappraise the evidence while considering the findings of the first appellate court.
[6] Supra note 3.

> court/authority below. *Ram Dass*[7] does not exposit that the revisional power conferred upon the High Court is as wide as an appellate power to reappraise or reassess the evidence for coming to a different finding contrary to the finding recorded by the court/authority below. Rather, it emphasises that while examining the correctness of findings of fact, the Revisional Court is not the second court of first appeal.

Referring to the facts of the present case, the Apex Court held that the question of eviction was answered by the trial court by merely stating that the landlord will be able to run his establishment in a better manner if he gets the schedule petition rooms, as compared with the tenant, who is not able to establish much hardship to him. It was held that this vague finding was rightly set aside by the Appellate Authority. The judgment of the Appellate Authority was upheld.

[7] Ibid.

2. *Nirbhay Kumar &Ors. v. State of Bihar &Ors. (Writ Petition (C) NO. 227 Of 2019)*

Decided on: 11-06-2020

Bench:- Hon'ble Mr. Justice Ashok Bhushan
Hon'ble Mr. Justice M.R. Shah
Hon'ble Mr. Justice V. Ramasubramanian

(Orders passed under Art. 142 of the Constitution of India by the Apex Court cannot be treated as Precedent in every situation. The order with regard to 133 candidates directing their appointment without any physical test was categorically held not to be treated as a precedent. And when it has been specifically held that a particular order may not be treated as Precedent, no benefit can be claimed of that order by the writ petitioner.)

Background

(i) In the year 2004, an advertisement was issued by Bihar Staff Selection Commission (hereinafter referred as commission) for appointment of 1510 posts of sub-inspector for which physical test and written exam were to be a part of selection process. In pursuance of the advertisement above, tests were conducted and result was declared.

(ii) The result was challenged in Patna HC on the ground that there were certain mistakes in the model answers. The commission appointed an expert committee to re-examine the answer sheets after which it was found that 160 candidates originally selected were required to be removed. The State Government decided to retain those 160 candidates and 639 more vacancies were added to accommodate them.

(iii) Unsatisfied with the steps taken above, writ petition was filed in the HC. The matter was carried to the Apex Court, where it was noticed that requisition for appointment of 299 posts has been received to the commission from the State Government. Accordingly, was directed that fresh examination be held for 299 posts of sub-inspector and only those appellants who were writ petitioners before the HC would be at liberty to appear in the physical as well as written exam. Later on the court permitted all the candidates similarly situated to appear in the exam for those 299 posts.

(iv) In pursuance of selection of 2004, appointments were made, the HC in a writ petition further directed to appoint 67 candidates belonging to backward category. The State appointed those 67 candidates and decided to appoint 186 more candidates, this decision was challenged and the matter came to the Apex Court where it was directed to maintain the status quo.

(v) For the selection to 299 posts, 2479 candidates were required to undertake the selection process, out of which, only 2192 candidates turned up for the selection for physical test and only 232 qualified and ultimately only 97 candidates were finally selected. The Apex Court

permitted the appointment of these 97 candidates and also of the 186 candidates which the state had decided to appoint in order to accommodate 67 OBC candidates.

(vi) There were large number of candidates who had applied but did not appear for the physical test and those who did apply were declared fail. The Apex Court directed that the 1035 candidates who did not turn up for selection be subjected to physical test which would also include 133 candidates if not otherwise selected.

(vii) Contempt petitions were filed of which the appeals were disposed off. The court took a view that 133 candidates were classified into a specific category and were placed along with 186 candidates, thus there would not be any other procedure except the medical examination. It was held that the 133 candidates should not be permitted to take another written and physical test. The order was passed in exercise of Article 142 of the Constitution of India and would not be treated as a precedent.

(viii) The 133 candidates were selected following the directions and after the appointment, the petitioners submitted the representation that they as well as those 133candidates were part of the original 233 candidates who were permitted to participate in selection against 299 posts, thus the benefit of not undergoing physical test which was extended to those 133 candidates should also be extended to the petitioners.

The representations submitted were not acceded to, hence the present petition has been filed praying for issuance of writ of mandamus directing the respondents to issue appointment letters in parity with 133 candidates.

Decision and observation

It was held by the Apex Court that there has been specific order with regard to 133 candidates for not subjecting them to the physical test and directing their appointment without physical test, the Court had categorically held this decision to be not treated as Precedent. It was held that:

> **16.** This Court made it very clear that order of this Court regarding selection and appointment of 133 candidates are passed in peculiar background of litigation in exercise of jurisdiction under Article 142 and the same shall not be treated as a Precedent.
>
> **17.** [....] the order when specifically held that it may not be treated as Precedent, no benefit can be claimed of the said order by the writ petitioner in the present writ petitions especially when otherwise the writ petitioners are not able to satisfy the Court that when they have either not undertaken the physical test or failed in the physical test, why they should be given appointment as Sub-Inspector of Police at this stage.

Thus the court clearly held that:

> **20.** [.....] in event the State of Bihar does not accede to the representation of applicants claiming similar relief to 133 candidates that shall not give rise to any proceedings in any of the Courts. We are not persuaded to grant the said relief in these proceedings under Article 32 of the Constitution.

Accordingly the petitions were dismissed.

3. *Chandrakanta Tiwari v. New India Assurance Company Ltd. and Anr. 2020 (0) AIJEL-SC 66311*

Decided on: 08-06-2020

Bench:- Hon'ble Mr. Justice R.F. Nariman
Hon'ble Mr. Justice Navin Sinha
Hon'ble Mr. Justice B.R. Gavai

(The Insurance Company cannot raise and discuss the issue of negligence,as under Section 163 A petitions it is not necessary that the person insured must be the driver of the vehicle. The question of driving licence having not been raised before the Tribunal or the High Court, the issue should not have been utilized by the High Court to disentitle the relief to the claimant)

Facts

The Claimant-Appellant's 28-year-old son, who was a pillion rider, died in a motor accident due to the rash and negligent driving of Respondent No. 2, who was the owner and the driver of the said motor vehicle. The Motor Accident Claims Tribunal held that the Insurance Company is liable to pay compensation to the Appellant. The said order of the Motor Accident Claims Tribunal was set aside and the Petition under Section 163A of the Act was dismissed by the High Court on the ground that the deceased himself was driving the vehicle and had no valid driving license. Aggrieved by the order, the Appellant filed an appeal before the hon'ble Supreme Court.

Decision and observation

The 3-Judge Bench of the Apex Court observed and held that the Petition under Section 163A of the Act is a 'no-fault' petition, where, the claimant need not plead and prove that the rash and negligent act of the driver of the vehicle or of any other person caused the death of a person. In such a petition, the owner of the vehicle or the authorised insurer would be legally liable to pay the compensation.

Thus, the Apex Court did not take into consideration any argument relating to who was driving the vehicle rashly and negligently at the time of the accident, i.e. whether the owner or any third party, as it was a Section 163A Petition. The Court stated that:

> **[3]** [.....] In this view of the matter, it is not relevant that the person insured must be the driver of the vehicle but may well have been riding with somebody else driving a vehicle which resulted in the death of the person driving the vehicle. The High Court, therefore, is clearly wrong in stating that it was necessary under Section 163A to prove that somebody else was driving the vehicle rashly and negligently, as a result of which, the death of the victim would take place."

The Apex Courtheld the Insurance Company liable to pay compensation to the Claimant-Appellant based on the age and income of the deceased at the time of the accident.

4. *S.Kasi v. State through The Inspector of Police, Samaynallur Police Station Madurai District*

Decided on : 19.06.2020

Bench : - Hon'ble Mr. Justice Ashok Bhusan
Hon'ble Mr. Justice M.R. Shah
Hon'ble Mr. Justice V. Ramasubramanian

(Without submission of chargesheet within 60 days or 90 days as applicable, an accused cannot be detained by the Police. In the pandemic situation, the prosecution can very well file the chargesheet even after 60 days/ 90 days but without filing a chargesheet they cannot detain an accused person beyond a said period when he prays to the court to set him at liberty due to non filing of the chargesheet within the period prescribed. The scheme of Code of Criminal Procedure clearly delineates that provisions of Section 167 of Code of Criminal Procedure gives due regard to the personal liberty of a person.)

Background

The appellant was an accused under Sections 457, 380,457(2), 380(2), 411(2) and 414(2) of Indian Penal Code. The appellant was arrested on 21.02.2020 in the above case and the bail application of the appellant under Section 439 was rejected by the trial court. After being in judicial custody for more than 73 days, the appellant filed an application Crl.OP(MD)No.5296 of 2020 before the High Court of Judicature of Madras at Madurai Bench praying for grant of bail on account of passage of such 73 days and non-filing of charge sheet. High Court dismissed the bail application of the Appellant. The High Court referring to an order of this court **dated 23/03/2020 passed in *Suo Moto W.P. (C) No. 3 of 2020*** *took the view : ". . . The Supreme Court order eclipses all provisions prescribing period of limitation until further orders. Undoubtedly it eclipses the time prescribed under Section 167(2) of the Code of Criminal Procedure..",* dismissed the bail application of the Appellant. The learned Single bench also took a contrary view to an earlier judgment delivered by another learned Single judge in ***Settu v The State***, *Crl. O.P. (M.D) No. 5291 of 2020 wherein* it was said that the order of this court dated 23/03/2020 in no manner can be applied on the provisions of section 167 (2) of Code of Criminal Procedure. Aggrieved by the order of the High Court, the Appellant has filed the present appeal before Honorable Supreme Court.

Decision and Observations

The Apex court first discussed the scope and legislative history (historical background) of Section 167(2) reffering to cases such as ***Uday Mohanlal Acharya versus State of Maharashtra,(2001)5 SCC 453; Rakesh Kumar Paul versus State ofAssam, (2017)15 SCC 67. etc.*** Then the Judgment dated 23/03/2020 was discussed and it was observed that the two reasons for passing the aforesaid order for extending the period of limitation w.e.f. 15/03/2020 for filing petitions/ applications/ suits/ appeals/ all other proceedings are indicated, which are :-

i) The situation arising out of the challenge faced by the country on account of Covid-19 virus and resultant difficulties that are being faced by the litigants across the country in applications/ suits/ appeals/ all the petitions/ other proceedings within the period of limitation prescribed.

ii) To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to respective file such proceedings Courts/Tribunals across in the country including this Court.

The Apex court observed that the order was for the benefit of the litigants who have to take remedy in law as per the applicable statute for a right. The law of limitation bars the remedy but not the right. When this Court passed the above order for extending the limitation for filing petitions/ applications/ suits/ appeals/all other proceedings, the order was for the benefit of those who have to take remedy, whose remedy may be barred by time because they were unable to come physically to file such proceedings. The order dated 23.03.2020 cannot be read to mean that it ever intended to extend the period for filing chargesheet by police as contemplated under section 167(2) of Code of Criminal Procedure.

The Hon'ble Supreme Court further held that the order of Madras High court, dated 23/03/2020 never meant to curtail any provision of code of criminal procedure or any other statute which was enacted to protect the personal liberty of a person. The right of prosecution to file a charge sheet even after a period of 60 days/ 90 days is not barred. The prosecution can very well file the chargesheet after the prescribed time but without filing the charge sheet they cannot detain an accused beyond a said period when the accused prays to the court to set him at liberty due to non-filing of chargesheet.

After referring to various landmark cases such as **ADM Jabalpur v Shivakant Shukla (1976) 2 SCC 521 , K.S. Puttaswamy and another v UOI and others, (2017) 10 SCC 1,** it was held that the learned single judge ***erred*** in holding that the lockdown announced by the Government of India is akin to the proclamation of emergency. The view of the learned single judge that the restrictions, which have been imposed during lockdown by Government of India should not give right to an accused to pray for grant of default bail even though charge sheet has not been filed within the time prescribed under Section 167 (2) of the Code of Criminal Procedure, is clearly erroneous and not in accordance with law.

Thus, the Apex Court took the view that neither this court in its order dated 23/03/2020 can be held to have eclipsed the time prescribed under Section 167(2) of Cr.P.C. nor the restrictions which have been imposed during the lockdown announced by the Government shall operate as any restriction on the rights of an accused as protected by Section 167(2) regarding his indefeasible right to get a defaut bail on non-submission of charge sheet within the time prescribed. The learned Single Judge committed serious error in reading the order of this court dated 23/03/2020.

The Apex Court highlighted one more reason due to which the impugned judgment of the learned single judge *deserves to be set aside*. A learned Single Judge of the Madras High Court in **Crl. op(MD)No. 5291 of 2020, *Settu v State,*** had already considered the judgment of this court dated 23/03/2020 and its effect on Section 167(2) of Cr.P.C. , which was also a case of bail where the accused was praying for grant of default bail due to non-submission of charge sheet. The observation in this regard was made in paragraphs 14 and 15 of the very judgment. The view taken by learned Single Judge of Madras High Court in **Settu v State** that the order of this court dated 23/03/2020 passed in Suo Moto W.P(C) No. 3 of 2020 does not extend the period for

filing charge sheet under Section 167(2) Cr.P.C., has also been followed by the Kerela High Courtas well as Rajasthan High Court in similar cases.

It has been held that the contrary view which has been taken in the impugned judgment is not only erronous but also sends wrong signals to the state and the prosecution emboldening them to act in breach of liberty of a person. It has been noticed by the Apex court that learned single judge in the impugned judgment had not only breached the judicial discipline but has also referred to an observation made by learned Single Judge in **Settu v The State** as uncharitable. The course adopted by the learned Single Judge in the impugned Judgment has been strongly disapproved by The Supreme Court.

The appeal was allowed, the impugned judgment of learned Single Judge was set aside and it was directed to release the Appellant on default bail subject to personal bond of Rs. 10,000/- with two sureties to the satisfaction of trial court.

5. *In Re : The proper treatment of Covid 19 patients and dignified handling of dead bodies in the Hospitals etc.*

Decided on : 19.06.2020

Bench : - Hon'ble Mr. Justice Ashok Bhusan
Hon'ble Mr. Justice M.R. Shah
Hon'ble Mr. Justice Sanjay Kishan Kaul

(After going through the affidavits submitted in response to the notice issued in Suo Moto writ petition with object to notice deficiencies, shortcomings and lapses in patient care of Covid-19 in different hospitals in NCT of Delhi and other states. The Supreme Court has issued directions to constitute expert committees and have assigned them with their duties. Direction regarding installation as well as inspection of CCTV footage has been given. Direction regarding attendent of the patient in the hospital premises has been issued. It has been held that the discharge policy framed by the UOI has to be followed by all States/ Union Territories. Moreover, direction has been issued that the Union of India may prescribe reasonable rates of various covid related facilities/tests for all the States/ Union Territories.)

Background

The Supreme Court issued notice on 12/06/2020 in Suo Motu writ petition with object to notice deficiecies, shortcomings and lapses in patient care of Covid-19 in different hospitals in National Capital Territory of Delhi and other States. The object was to take remedial action by all concerned to redeem the plight of patients and other persons who need medical care. In response to notice dated 12/06/2020, Union of India, Delhi Government and other States have filed their affidavits . Several applications for intervention was also filed by different individuals, organisations highlighting one or other aspects of the issue. The affidavit has revealed that a decision was made to constitute a team of senior doctors from various government hospitals. They have been directed to visit all covid hospitals in Delhi and to study the arrangements and suggest improvements. Decision regarding increase of the testing per day in NCT of Delhi has been mentioned in para 13(iv) of the affidavit. It was also mentioned in the affidavit that V.K. Paul Committee has been constituted who has to report regarding reasonable rates of various covidrealated facilities/ tests etc for private hospitals , labs. The Supreme court said that the necessary guidelines on all aspects of patients' care , hospital management, testing, infrastructure are in place as has been highlighted by UOI in its affidavit. The main concern is the faithful and strict implementation of the said guidelines which can only be ensured by constant supervision, monitoring and taking remedial steps with regard to improvement of infrastructure, staff, facilities, etc.

Decision and Observations

The Supreme court said that the necessary guidelines on all aspects of patients' care , hospital management, testing, infrastructure are in place as has been highlighted by UOI in its affidavit. The main concern is the faithful and strict implementation of the said guidelines which can only be ensured by constant supervision, monitoring and taking remedial steps with regard to improvement of infrastructure, staff, facilities, etc.

The Supreme Court noticed that in the entire affidavit, apart from the general statement that all steps are being taken, the affidavit doesnot indicate any mechanism for proper supervision of the functioning of the hospital and steps of improvement. The Apex Court has observed that the affidavit does not indicate any mechanism for proper supervision of the functioning of the hospital and steps for improvement. The affidavit tries to give an impression to the court that everything in the Government Hospital in NCT, Delhi is well and all steps are being taken by the Government of NCT of Delhi. The Apex court said that when the Government does not endeavour to know any shortcomings or lapses in its hospitals and patient care, the chances for remedial action and improvement becomes dim. The Apex Court has suggested that one visit in the hospitals of Delhi by the constituted team is not enough. There has to be constant monitoring, supervision and management.

The Apex Court has stated that :

12. [.....] With the object of continuous supervision and monitoring of Government hospitals, covid dedicated hospitals and other hospitals, **directions no. (I to IV)** has been issued :

(I) The Ministry of Health and Family Welfare, Union of India, shall constitute Expert Committees consisting of:

a) Senior Doctors from Central Government hospitals in Delhi,

b) Doctors from GNCTD hospitals or other hospitals of Delhi Government,

c) Doctors from All India Institute of Medical Sciences,

d) Responsible officer from Ministry of Health and Family Welfare.

(II) The Expert Committee shall inspect, supervise and issue necessary directions to all Government hospitals, Covid hospitals and other hospitals in NCT of Delhi taking care of Covid patients; The Expert Committees shall ensure that at least one visit in each hospital be done weekly.

(III) The above team may in addition to normal inspection shall also conduct surprise visits to assess the preparedness of the hospitals. The expert team as indicated above after visiting may issue necessary instructions for improvement to the hospital concerned and also forward its report to the Government of NCT of Delhi and the Union of India, Ministry of Health and Family Welfare.

(IV) We further direct that all States shall also constitute an expert team of Doctors andother experts for inspection, supervision and guidance of Government hospitals and other hospitals dedicated to Covid-19 in each State who may inspect, supervise the hospitals in the State and issue necessary directions for the improvement to the concerned hospital and report to the Government. Chief Secretary of each State shall ensure that such Committees are immediately constituted and start their works within a period of seven days.

The Apex court observed that installation of CCTV Cameras in all the wards is a welcome step which shall not only help the hospital management to immediately find out the requirement of proper care with regard to patients admitted in the wards but also ensure transparency in the patients' care in the hospital. In this regard, The Supreme Court issued following directions as **direction nos. (V to VII) :**

13. [.....] **(V)** Footage from the CCTV Cameras shall be made available by the hospitals in NCT ofDelhi to the inspecting/supervising expert team or to any other authority or body as perdirections of the Union of India, Ministry ofHealth and Family Welfare for screening the footage and issuing necessary directions thereon.

(VI) In Government hospitals of GNCT, Delhi which are Covid dedicated hospitals, where CCTV cameras have not been installed, steps shall be taken to install CCTV Cameras in the wards.

(VII) The Chief Secretaries of other States shall also take steps regarding installation of CCTV Cameras in Covid dedicated hospitals where Covid patients are taking treatment to facilitate the management of such patients and for the screening of the footage by designated authorities or bodies so that remedial actionmay be suggested and ensured.

Direction regarding permit of one willing attendent to the Covid patient has been issued as **direction no. (VIII and IX) :**

14. [.....] **(VIII)** All Covid-dedicated hospitals shall permit one willing attendant of the patient in the hospital premise, who can remain in an area earmarked by the hospital.

(IX) All Covid dedicated hospitals shall create a helpdesk accessible physically as well as by telephone from where well being of patients admitted in the hospitals can be enquired.

These were the directions issued by the Apex Court in the present suo moto writ petition.

6. *Shakti Bhog Food Industries Ltd. v. The Central Bank of India and Another*

Decided on :05.06.2020

Bench : - Hon'ble Mr. Justice A.M. Khanwilkar
Hon'ble Ms. Justice Indira Banerjee
Hon'ble Mr. Justice Dinesh Maheshwari

(It has to be noted that while deciding an application under Order VII Rule 11, few lines or passage from the plaint should not be read in isolation rather the pleadings has to be read as a whole to ascertain its true import. Moreover, it was stated that power under Order VII Rule 11 can be exercised by the court at any stage of the suit.)

Background

The appellant had filed the stated suit for a decree for rendition of true and correct accounts in respect of the interest/commission charged and deducted by the respondent Bank for the period between 1.4.1997 and 31.12.2000 and also for recovery of the excess amount charged by the respondent Bank consequent to rendition of accounts with interest at the rate of 18% per annum from the date of deduction including interest pendente lite realization of the amount and future interest. The trial Court rejected the plaint under Order VII Rule 11(d) of the CPC stating that it was barred by law of limitation, as it was filed beyond the period of three years prescribed in Article 113 of the Limitation Act, 1963. (The Appellant filed the suit on 23/2/2005). First Appeal and second appeal was filed in District court and Hon'ble High Court respectively. The decision of trial court was upheld on the same ground as mentioned above. Hence the present appeal.

Decision and Observations

The Apex court first discussed the scope of Order VII Rule 11 of the CPC, referring through various leading cases on this aspect; such as **Church of Christ Charitable Trust & Educational Charitable Society vs. Ponniamman Educational Trust, SopanSukhdeoSablev. Asstt. Charity Commr and some other cases,** finally reached to the conclusion that in order to consider Order 7 Rule 11, the court has to look into the averments in the plaint and the same can be exercised by the trial court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinize the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. on reading the plaint as a whole, it is seen that the essence of the case made out in the plaint is that the appellant noticed the discrepancy in July,2000 and immediately took up the matter with the officials of therespondent Bank at different levels. The Apex court stated that :

> 20[....]*The trial Court had failed to advert to and analyse the averments in the plaint, but selectively took notice of the assertion in the plaint in question that the appellant became aware about the discrepancies in July, 2000, and then proceeded to reject the plaint being barred by law of limitation having been filed in February, 2005.*

Therefore, after making the above observation the Apex court stated that the decisions of the trial Court, the first appellate Court and the High Court in the situation of the present case whereby the plaint in question was rejected under Order VII Rule 11(d) of CPC cannot be sustained. Therefore the Apex court, set aside the impugned judgment and held that while deciding an application under Order VII Rule 11 of the CPC, the pleadings need to be read as a awhole to ascertain its true import. It was further held that the power under Order VII Rule 11 can be exercised by the court at any stage of the suit.

7. *Mohd. Inam v. Sanjay Kumar Singhal &Ors., (Civil Appeal No._2697 OF 2020*

Decided on : -26.06.2020

Bench :- 1. Hon'ble Mr. Justice Navin Sinha

2. Hon'ble Mr. Justice B.R. Gavai

(While hearing a petition under Article 227 of the Constitution of India, a High Court can't convert itself into a 'Court of Appeal' as the power under Article 227 are wide, they must be exercised sparingly and only to keep subordinate courts and Tribunals within the bounds of their authority and not to correct mere errors".)

Facts

Rashid Ahmed, the father of the present appellant, was the original tenant of suit premise since 1965. The Landlord of the above premises sold it to the respondent in the year 1998 so the respondent became the landlord.The respondents – landlord moved an application before the Rent Controller and Eviction Officer, Mussoorie on 10.6.1999, contending therein, that Rashid Ahmed had sublet the property to some other persons who were not the family members of the tenant praying for declaration of vacancy under the provisions of Section 16(1)(b) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972.

The Rent Control and Eviction Officer came to the conclusion that the persons, who were presently residing in the premises had not produced any evidence to prove, that they were living as tenants since 1965 along with late Rashid Ahmed. As such, he came to the conclusion, that the tenants had allowed persons to reside in the premises, who are not members of the family and, as such, declared the suit premises as vacant vide order dated 4.6.2003.

Being aggrieved thereby, the present appellant along filed Writ Petition before the High Court of Uttaranchal at Nainital being Writ Petition No. 7 (MS) of 2003. The High Court vide order dated 23.8.2006 by referring to the judgment of this Court in the case of ***AchalMisra v. Rama Shanker Singh and others***[8] granted liberty to the petitioners therein to challenge the order dated4.6.2003 after the final order i.e. order of release/allotment was passed under Section 16 of the U.P. Act, 1972.

The Rent Controller and Eviction Officer passed a final order under Section 16 of the U.P. Act, 1972 on 31.5.2007 thereby, declaring the suit premises 'vacant' in favour of the respondents – landlord.

Aggrieved by the order, the appellant herein approached the District Judge as provided under Section 18 of the U.P. Act, 1972 The learned District Judge, by a well-reasonedorder dated 5.6.2008, allowed the revision thereby, setting aside the order of vacancy dated 4.6.2003 and the final order dated 31.5.2007.

The Landlord went to High Court and filed a petition under Article 227 of the Constitution which the Court duly allowed and accordingly set aside the order of District Judge stating that the District Judge had committed illegality in entertaining the joint revision filed against the vacancy order as well as the final orderby the impugned order dated 26.10.2017.

Being aggrieved bythe above order of the High Court of Uttarakhand at Nainital in Writ Petition No.1074 of 2008, the present Special Leave Petition was filed before The Supreme Court.

Decision and observations

[8] (2005) 5 SCC 531

The main ground before The Supreme Court in this appeal is that whether the decision of the High Court that the learned District Judge had committed illegality in entertaining the joint revision filed against the vacancy order as well as the final order and had committed patent illegality in entertaining the revision.

The Supreme Court observed in this case that the High Court ignored the legal position taken by the three judge bench judgment in ***AchalMisra v. Rama Shanker Singh (Supra)***wherein it was specifically held, that even if a party does not challenge the vacancy order by way of writ petition, it is still open to it to challenge the same order along with the final order passed under Section 16 in the revision under Section 18. So, the judgment delivered by the High Court is not only on misreading of the law but also misreading of the facts.

It will be relevant to refer to the judgment of the Supreme Court mentioned in the case of ***Tirlok Singh and Co.*** vs. ***District Magistrate, Lucknow***[9]The Supreme Court had held, that under the scheme of the Act, an order notifying a vacancy by itself does no injury and causes no prejudice to the interests of any party. It was held, that a notification of the vacancy was only a step in aid of an order of allotment or release and only when such orders are passed, the landlord or the tenant can have a grievance.

The decision in this case was held bytwo learned Judges of this Court had held, that under the scheme of the Act, an order notifying a vacancy by itself does no injury and causes no prejudice to the interests of any party. It was held, that a notification of the vacancy was only a step in aid of an order of allotment or release and only when such orders are passed, the landlord or the tenant can have a grievance. After considering the provisions of Section 16 and Section 18 of the U.P. Act, 1972, as they existed at the time of delivery of the judgment, it was held that, a writ petition filed against an order declaring a vacancy only, was premature, as the order did not affect the rights of the person who challenges that order.

In the case of ***Ganpat Roy vs. ADM***[10]case the Bench of three learned Judges disagreed with the proposition laid down in ***Tirlok Singh (supra),***that the rights of the landlord or the tenant are not affected merely by the notification of a vacancy so it was held that the scheme of the Act would show that a tenant of a premises, in whose case it was found that there was a deemed vacancy, had *"no efficacious or adequate remedy under the Act to challenge that finding."* It was, therefore, held, that a petition under Article 226 or 227 of the Constitution filed by such a tenant in order to challenge that finding could not, therefore, be said to be premature.

In***AchalMisra***(Supra)the High Court had allowed the writ petitions filed by the allottees on the ground, that the landlord not having challenged the original order notifying the vacancy then and there, was precluded from challenging the order notifying the vacancy in revision against the final order or in further challenges to it in the High Court. It was noticed, that it could not be said that the question of vacancy, if not challenged by a separate writ petition on its notification, could not be questioned along with the final order, in the revision filed under Section 18 of the Act. It was observed, that the question of vacancy pertained to a jurisdictional fact and can be challenged in the revision filed against the allotment order passed by the District Magistrate. It was further observed, that in case it was found, that there was no vacancy, the order of allotment had to be set aside.

- In Paragraph 24 The Supreme Court relied on a Constitution Bench Judgment-

[9](1976) 3 SCC 726
[10](1985) 2 SCC 307

24. The Constitution Bench of The Supreme Court in the case of ***Hindustan Petroleum Corporation Limited vs. Dilbahar Singh***[11] *had an occasion to consider the scope of revisional powers as contained in the Kerala Buildings (Lease and Rent Control) Act, 1965, T.N. Buildings (Lease and Rent Control) Act, 1960 and Haryana Urban (Control of Rent and Eviction) Act, 1973.*

It can thus be seen, that the Constitution Bench has settled the position, that the revisional power does not entitle the High Court to interfere with the finding of the fact recorded by the first appellate court/first appellate authority because on reappreciation of the evidence, its view is different from the court/authority below. The consideration of examination of the evidence is confined to find out as to whether the finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law. It has been held, that a finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, in such a case, it is open to correction because it is not treated as a finding according to law.

- On the Revisional power of The District Court paragraph 26 of the judgment mentions-

26. The revisional powers conferred upon the District Judge under the U.P. Act, 1972 are almost analogous with the revisional powers of the High Court that have been interpreted by this Court in the aforesaid judgments. We find, that the said principles can be aptly made applicable to the revisional powers of the District Judge under the U.P. Act, 1972. If the said principles are applied to the facts of the present case, it could be seen, that the learned District Judge was fully justified in interfering with the order passed by the Rent Controller and Eviction Officer.

- In the present case, the Apex Court held in paragraph 31 to 33:

31. We find, that the learned single judge of the High Court has also erred in interfering with the well-reasoned

order passed by the learned District Judge while exercising the jurisdiction of the High Court under Article 227 of the Constitution of India.

32. It is a well settled principle of law, that in the guise of exercising jurisdiction under Article 227 of the Constitution of India, the High Court cannot convert itself into a court of appeal. It is equally well settled, that the supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and seeing that they obey the law. It has been held, that though the powers under Article 227 are wide, they must be exercised sparingly and only to keep subordinate courts and Tribunals within the bounds of their authority and not to correct mere errors.

33. In the present case, we are of the considered view, that the approach of the High Court in exercising the jurisdiction under Article 227 of the Constitution of India was totally erroneous. The learned District Judge while exercising his power under Section 18 of the U.P. Act, 1972 and after finding that the order passed by the Rent Controller and Eviction Officer was totally contrary to the law laid down by this Court in ***Harish Tandon vs. Addl. District Magistrate, Allahabad, U.P. and others***[12]*, while interpreting clause (b) of subsection (1) of Section 12 of the U.P. Act,*

[11](2014) 9 SCC 78
[12](1995) 1 SCC 537

> *1972 and also that the order passed was totally on a perverse reading of the evidence, had interfered with the said order and reversed the same. The High Court totally misinterpreting the order passed by the earlier learned judge in Writ Petition No.7(MS) of 2003 dated 23.8.2006, on an erroneous premise, held that the vacancy order could not have been challenged along with the final order. The finding is totally contrary to the law laid down by the bench of three learned judges of this Court in* ***AchalMisra(supra)****,a relevant part of which was reproduced by the High Court in its earlier order dated 23.8.2006. The learned judge ignoring* ***AchalMisra****(supra), which is a binding precedent, relies on an order of one paragraph of the two learned judges of this Court while holding that the revision was not maintainable.*

So, the Supreme Court came to the conclusion that:

> *The High Court has erred in interfering with the well-reasoned order passed by the learned District Judge while exercising the jurisdiction of the High Court under Article 227 of the Constitution of India. So, the exercise of jurisdiction by the High Court under Article 227 in the present case was patently unwarranted and unjustified.*
>
> *In the result, the appeal is allowed. The order of the High Court dated 26.10.2017 is quashed and set aside.*

8. ***M/S. Centrotrade Minerals and Metals Inc . v. Hindustan Copper Ltd. (Civil Appeal No. 2562 OF 2006)***

Decided on : -02.06.2020

Bench :- 1. Hon'ble Mr. Justice R. F Nariman

2. Hon'ble Mr. Justice S. Ravindra Bhat

3. Hon'ble Mr. Justice V. Ramasubramanian

(The Supreme Court examines Scope of Challenge Against Enforcement of Award under Section 48(1)(B) of The Arbitration and Conciliation Act, 1996 – "Otherwise Unable to Present Its Case as, The Supreme Court in this case held that the plea of inability to present your case under Section 48(1)(B) is applicable only if the party was not given an opportunity to present its case through circumstances outside the party's control.)

Facts

The appellant in this case is a U.S. Corporation who had entered into a contract for sale of 15,500 DMT copper concentrate to be delivered at the Kandla Port in the State of Gujarat, the said goods to be used at the Khetri Plant of the respondent Hindustan Copper Ltd which is an Indian company and is the respondent in this case.

The dispute arose between the two parties relating to the weight of the dry copper concentrate supplied. In the case of dispute, the parties had a *two tier arbitration agreement* as mentioned in the Clause 14 of the agreement. The appellant invoked the arbitration clause according to the arbitration agreement the first tier arbitration the first tier was to be settled by arbitration in India. If either party disagrees with the result, that party will have the right to appeal to a second arbitration to be held by the ICC in London. The appellant invoked the arbitration clause. By an award dated 15.06.1999 the arbitrator appointed by the Indian Council of Arbitration made a Nil Award. Thereupon, the appellant invoked the second part of the arbitration agreement, as a result of which Jeremy Cook QC, appointed by the ICC, delivered an award in London, dated 29.09.2001 in the favour of the appellant.

During the pendency of the proceedings before the arbitrator in London, the respondent filed a suit in the Court at Khetri, in the State of Rajasthan, challenging the arbitration clause.By an Order dated 27.04.2000, in a revision petition filed against the Order of the Khetri Court, the High Court at Rajasthan restrained the appellant from taking further steps in the London arbitration, pending hearing and disposal of the revision petition which was stayed by the order of Supreme Court.

Proceedings before the Calcutta High Court-

When the appellant sought to enforce the arbitration award objection was filed by the respondent under Section 48 the Arbitration and Conciliation Act, 1996 which was dismissed by the learned Single Judge of Calcutta High Court as a result of which the aforesaid foreign award became executable in India. However, a Division Bench of the Calcutta High Court, by its judgment dated 28.07.2004, held that an appeal would be maintainable inasmuch as the London award could not be said to be a foreign award, but that a two-tier arbitration clause would be valid. However, since the Indian award and the London Award, being arbitration awards by arbitrators who had concurrent jurisdiction, were mutually destructive of each other, neither could be enforced, as a result of which the appeal was allowed and the judgment of the learned single Judge was set aside.

The present case was first placed before The Supreme Court in the case of ***Centrotrade Minerals & Metals Inc. v. Hindustan Copper Ltd***[13]***.(2006)***it had two issues –

i. Whether a settlement of disputes or differences through a two-tier arbitration procedure is permissible under the laws of India?

ii. Whether HCL was given proper opportunity to present its case before the ICC arbitration the Standard of 'What Is Inability to Present Your Case Within the Meaning of Section 48(1)(b) in enforcement of foreign awards'?

As, the issues were not resolved in the***Centrotrade Minerals & Metals Inc. v. Hindustan Copper Ltd (2006)***further it was referred to larger bench ***Centrotrade Minerals & Metals Inc. v. Hindustan Copper Ltd (2017)***and further referred in the present case to resolve the third issue.

- On the issue of validity of the two-tier arbitration agreement matter was referred to The Supreme Court-

The matter went before a division bench of the Supreme Court in the case of ***Centrotrade Minerals & Metals Inc. v. Hindustan Copper Ltd (2006)***, which was divided in opinion as to the enforceability of a two-tiered arbitration process. Justice Sinha ruled that such a two-tiered arbitration was violative of public policy and hence void (under Section 23 of the Indian Contract Act, 1872) on the basis that the Arbitration and Conciliation Act, 1996, did not envisage an appeal procedure. and thus, the foreign award could not be enforced. On the contrary, Justice Chatterjee came to a finding that a two-tiered arbitration clause was valid and enforceable, that the ICC tribunal was permitted to sit in appeal over the Indian award and that the ICC award was a foreign award. Justice Chatterjee, however, also came to a finding that HCL had not been given adequate opportunity to present its case and on that basis, the ICC award was not enforceable under the Act.

Since the judges were divided in their opinions, the matter was referred to a three-judge bench of the Supreme Court in the case of ***Centrotrade Minerals & Metal Inc. v. Hindustan Copper Ltd.***[14] (2017) which ruled that parties are free to enter into an agreement providing for non-statutory appeals so that their disputes and differences are settled without resorting to court processes. It also observed that the Act does not prohibit a two-tier system, nor does it exclude the autonomy of the parties to mutually agree to a procedure whereby an award might be reconsidered by another arbitrator(s) by way of an appeal acceptable to the parties, subject to a challenge under the Act. This being precisely what the parties had agreed upon, the Apex Court ruled that there was no difficulty in honouring their mutual decision and accepting the validity of their agreement.So, the two-tier system of arbitration was given validity by this judgment.

The Court, however, refused to consider the actual enforceability of the ICC Award as a foreign award, dealing instead only with the question of validity of a two-tier arbitration clause.

Decision and Observations

The issue remains before the three judge Bench of the Supreme Court in the present case is that-

- **Whether HCL was given proper opportunity to present its case before the ICC arbitration the Standard of 'What Is Inability to Present Your Case Within the Meaning of Section 48(1)(b) in enforcement of foreign award'?**

[13] (2006) 11 SCC 245
[14] (2017) 2 SCC 228.

The Supreme Court, following ***Vijay Karia v. PrsymianCavi E Sistemi SRL***[15], held that the factum of not making a challenge before the supervisory courts in the juridical seat of arbitration was a relevant factor while considering objections under section 48 of the Act. Further, the Court relying upon ***Vijay Karia (Supra),*** the decision of the England and Wales High Court in ***Minmetals Germany GmbH v. Ferco Steel Ltd,***[16] and the decision of the English Court of Appeal in ***Ajay Kanoria v. Tony Guinness,***[17] held that the defence under Article V(1)(b)(section 48(1)(b)) would be available to a party, who for reasons beyond his control, was unable to afford himself an opportunity to represent before the tribunal. However, where a party, for reasons attributable to himself, has not availed the opportunity to adequately represent himself before the tribunal, the defence under Article V(1)(b) (section 48(1)(b)) cannot be availed. Further, the Court noted that the test laid down in Minmetals had been approved by the Privy Council in ***Cuckurova Holding A.S. v. Sonera Holding B.V,***[18] which had held that where a party has been afforded every opportunity to develop its case, it cannot complain at a later stage on grounds of non-consideration or lack of opportunity

This Court then set out the parameters of a Section 48 challenge which reaches this Court as follows:

> *"24. Before referring to the wide ranging arguments on both sides, it is important to emphasise that, unlike Section 37 of the Arbitration Act, which is contained in Part I of the said Act, and which provides an appeal against either setting aside or refusing to set aside a 'domestic' arbitration award, the legislative policy so far as recognition and enforcement of foreign awards is that an appeal is provided against a judgment refusing to recognise and enforce a foreign award but not the other way around (i.e. an order recognising and enforcing an award). This is because the policy of the legislature is that there ought to be only one bite at the cherry in a case where objections are made to the foreign award on the extremely narrow grounds contained in Section 48 of the Act and which have been rejected. This is in consonance with the fact that India is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (hereinafter referred to as "New York Convention") and intends - through this legislation - to ensure that a person who belongs to a Convention country, and who, in most cases, has gone through a challenge procedure to the said award in the country of its origin, must then be able to get such award recognised and enforced in India as soon as possible. This is so that such person may enjoy the fruits of an award which has been challenged and which challenge has been turned down in the country of its origin, subject to grounds to resist enforcement being made out under Section 48 of the Arbitration Act. Bearing this in mind, it is important to remember that the Supreme Court's jurisdiction under Article 136 should not be used to circumvent the legislative policy so contained. We are saying this because this matter has been argued for several days before us as if it was a first appeal from a judgment recognising and enforcing a foreign award. Given the restricted parameters of Article 136, it is important to note that in cases like the present - where no appeal is granted against a judgment which recognises and enforces a foreign award - this Court should be very slow in interfering with such judgments, and should entertain an appeal only with a view to settle the law if some new or unique point is raised which has not been answered by the Supreme Court before, so that the Supreme Court judgment may then be used to guide the course of future litigation in this regard. Also, it would only be in a very exceptional case of a blatant disregard of Section 48 of the Arbitration Act that the Supreme Court would*

[15] 2020 (3) SCALE 494.
[16] (1999) C.L.C. 647
[17] (2006) EWCA Civ 222
[18] (2014) UKPC 15

interfere with a judgment which recognises and enforces a foreign award however inelegantly drafted the judgment may be.

The Court then also relied on following cases as ***Ssangyong Engineering and Construction Co. Ltd. vs. National Highways Authority of India (NHAI)***[19]as well as the present judgment, The Court has heavily relied on foreign judgments in order to elucidate the importance of foreign awards with minimal interference by national courts various foreign judgments like***Minmetals Germany GmbH v. Ferco Steel Ltd.(Supra), DongwooMann+Hummel Co. Ltd. v. Mann+Hummel GmbH***[20],which highlights Supreme Court's effort towards effective enforcement of awards in India. This approach is highly essential as the parties while enjoying the benefits of the arbitration mechanism, lose the "the right to seek redress from the court for all but the most exceptional errors at arbitration."

Under Section 48(1)(b)[21] Enforcement of a foreign award can be refused if: the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case;"

In line with the aforesaid judgments, the Court held that in the context of the Arbitration and Conciliation Act, 1996, where the expression "otherwise" in section 48(1)(b) is susceptible to two meanings, the narrower meaning has to preferred, as it is in consonance with the pro-enforcement bias recognized in the New York Convention and international arbitration jurisprudence. Applying the said principle to the facts of the case, the Court held that Centrotrade had chosen to not appropriately present its case before the tribunal, as a result of which, its challenge under section 48(1)(b) of the Arbitration and Conciliation Act, 1996 must fail. Accordingly, the Court allowed enforcement of the London award in India.

The Court found that HCL had been given several opportunities to present its case but had failed to exercise those opportunities even though matters were in its control. The Court found that if HCL had chosen not to adhere to the timelines and had acted as a recalcitrant party by filing proceedings in India before courts in Rajasthan, it would have to face the consequences of an adverse award against it. The Court thus held that a "refusal to adjourn the proceedings at the behest of one party cannot be said to be perverse, keeping in mind the object of speedy resolution of disputes of the Arbitration Act." On the basis of the above, the Court found that there was no denial of opportunity preventing HCL from presenting its case and, thus, no breach of natural justice took place.

The Court accordingly enforced the ICC foreign awardas discussed in paragraph 34 to 36 of the jugdgment-

Supreme Court observation (Paragraph 34 to 36)-

> 34. At this stage, it is important to point out that the learned arbitrator had given a large number of opportunities to file documents and legal submissions. On 03.05.2001 the learned arbitrator directed that the appellant serve submissions along with supporting documents, following the respondent's response and evidence therein, with

[19]CIVIL APPEAL NO. 4779 OF 2019
[20] (2008) SGHC 275
[21] The Arbitration and Conciliation Act, 1996.

a right in the appellant to put in a reply, in accordance with a clear time table that was set out. On 30.07.2001, since no defence submissions or supporting evidence was served by the respondent within the time prescribed, the time was extended, giving the respondent one last opportunity to put in their defence and to seek extension of time for so doing. Until August 2001, it may be stated that respondent did not participate in the arbitral proceedings, even though invited to do so. It is only on 09.08.2001, when the learned arbitrator informed the parties that he is proceeding with the award, that on 11.08.2001, the learned arbitrator received a fax from Fox & Mandal, Attorneys for HCL, requesting for an extension of one month's time to put in their defence. This was acceded to by the learned arbitrator on 16.08.2001, giving time upto 31.08.2001. However, on 27.08.2001, Fox & Mandal sought for a further three weeks' extension of time, which was also granted by the learned arbitrator, allowing a final extension of time until 12.09.2001. Despite the fact that the legal submissions running into 75 pages were submitted beyond time, that is only on 13.9.2001, in view of the 11.09.2001 attack in New York, the learned arbitrator received the same and took the same into account despite being beyond time. It was only on 29.09.2001 that the learned arbitrator then passed his award. Given the aforesaid timeline, it is clear that the learned arbitrator was extremely fair to the respondent. Having noticed that the respondent wanted to stall the arbitral proceedings by approaching the Courts in Rajasthan and having succeeded partially, at least till February 2001, the conduct of the respondent leaves much to be called for. Despite being informed time and again to appear before the Tribunal and submit their response and evidence in support thereof, it is only after the arbitrator indicated that he was going to pass an award that the respondent's attorneys woke up and started asking for time to present their response. This too was granted by the learned arbitrator, by not only granting extension of time, but by extending this time even further. Finally, when the legal submissions of 75 pages were sent even beyond the time that was granted, the learned Arbitrator took this into account and then passed his award. This being the case, on facts we can find no fault whatsoever with the conduct of the arbitral proceedings.

35. Justice Chatterjee, however, in his judgment, made several errors of fact. First and foremost, in paragraph 166 of *Centrotrade [2006] (supra),*the learned Judge quoted the penultimate line in paragraph 8 of the award, without even adverting to the line just before the aforesaid line which indicated that the material that was received from HCL was in fact taken into consideration while making the award, even beyond the stipulated time of 12.09.2001. Secondly, in paragraph 167, Chatterjee,J. conjectured that between 13th and 29th September, 2001, the Arbitrator did receive further material from HCL which he did not consider while making the award, on the ground that they were received after the time limit granted by him to HCL. Factually, there is no supporting material to show that any such further material was received by the learned arbitrator, except documents that have been presented by Shri Raval for the first time before us. They were clearly not before Chatterjee,J. when this surmise was made by the learned Judge, Further, the arbitrator cannot be faulted on this ground as, given the authorities referred to by us hereinabove, the arbitrator is in control of the arbitral proceedings and procedural orders which give time limits must be strictly adhered to. In paragraph 168, the learned Judge then said that given the attack in New York on 11.09.2001, the learned arbitrator should have excused further delay and should not have acted on frivolous technicalities. This approach of a Court enforcing a foreign award flies in the face of the judgments referred to by us hereinabove. Even otherwise, Chatterjee, J., refers to the judgment in *Hari Om Maheshwari (supra)*as well as *Minmetals (supra),*but then does not proceed to apply the ratio of the said

judgments. Had he applied the ratio of even these two judgments, it would have been clear that an arbitrator's refusal to adjourn the proceedings at the behest of one party cannot be said to be perverse, keeping in mind the object of speedy resolution of disputes of the Arbitration Act. Further, the *Minmetals (supra)*test was not even adverted to by Chatterjee,J., which is that HCL was never unable to present its case as it was at no time outside its control to furnish documents and legal submissions within the time given by the learned arbitrator. HCL chose not to appear before the arbitrator, and thereafter chose to submit documents and legal submissions outside the timelines granted by the arbitrator.

36. Even otherwise, remanding the matter to the ICC arbitrator to pass a fresh award in paragraph 169, is clearly outside the jurisdiction of an enforcing court under Section 48 of the 1996 Act.

So, The Supreme Court came to the conclusion that-

37. For all these reasons, it is clear that Chatterjee, J.'s judgment cannot be sustained. As a result, ***Centrotrade's appeal, being Civil Appeal No. 2562 of 2006,*** is allowed. Resultantly, the foreign award, dated 29.09.2001, shall now be enforced.

9. *M.H. Uma Maheshwari &Ors. vs. United India Insurance Co. Ltd. &Anr. (Civil Appeal No. 2558 OF 2020*

Decided on : -12.06.2020

Bench :- 1. Hon'ble Mr. Justice N.V Ramana

2. Hon'ble Mr. Justice R. Subhash Reddy

3. Hon'ble Mr. Justice Surya Kant

(In awarding the compensation in Motor Accident claims the award of future prospects has to be as per age-group of deceased and if the compensation awarded by the Tribunal is just and reasonable it should not be interfered with by the High Court without any valid grounds.)

Facts

The appellant's husband met with an accident on 16.07.2012 when he was travelling in the car, viz., Tata the deceased Devaraju suffered severe injuries and subsequently died. The deceased Devaraju was working as Commissioner of Raichur City Municipal Corporation during the relevant time.

The appellants herein, alleging that accident occurred due to rash and negligent driving of the driver of the vehicle, filed claim petition under Section 166 of the Act claiming compensation of Rs.2,00,00,000/- with interest at the rate of 12% p.a. It was the case of the appellants that the deceased was drawing monthly salary of Rs. 55,000/- and he was the KGS Cadre officer selected through Public Service Commission. Further pleading that due to untimely death of the deceased, the appellants lost dependency and the deceased was having bright future, the above said claim was made.

Decision by the Tribunal on estimation of Compensation-

The Tribunal, by recording a finding that the deceased was earning Rs.50,463/- p.m. by way of salary, by applying the principles laid down in the case of ***Sarla Verma &Ors. v. Delhi Transport Corporation &Anr***[22]. applied the multiplier of 13 and by giving 30% towards future prospects, arrived at a compensation of Rs.1,02,33,912. Out of the said sum, by deducting 1/3rd towards the personal expenditure and 10% towards income tax, the Tribunal has held that the appellant-claimants were entitled to a compensation of Rs.61,40,347.20 towards loss of dependency. By further awarding an amount of Rs.1,00,000/- towards loss of consortium to the first appellant and Rs.3,00,000/- for all the appellants towards loss of love and affection and Rs.20,000/- towards funeral expenses against the claim of Rs.2,00,000/-, the Tribunal has awarded the total compensation of Rs.65,60,347.20.

Aggrieved by the award of the Tribunal, the first respondent United India Insurance Co. Ltd. has preferred Misc. First Appeal No.4903 of 2016 before the High Court of Karnataka at Bengaluru. The award of the Tribunal was reduced by the High Court.

[22](2009) 6 SCC 121

High Court Decision on the appeal of the respondent -

i. The High Court, on the ground that the deceased was aged 50 years 3 months on the date of accident, has come to the conclusion that the appellants are entitled to compensation on account of loss of dependency by computing future prospects of the deceased at 15% and not 30%.

ii. Further it was held that by awarding an amount of Rs.1,00,000/- towards loss of consortium to the first appellant, the Tribunal has committed error by awarding Rs.1,00,000/- to the first appellant towards the head 'loss of love and affection'. With the aforesaid findings, the High Court has recalculated the compensation payable to the appellants at Rs.57,78,480/-, i.e., Rs.54,33,480/- towards loss of dependency;

iii. Rs.1,00,000/- towards loss of consortium; Rs.2,00,000/- towards of love and affection to the children; Rs.25,000/- towards funeral expenses and Rs.20,000/- towards transportation of dead body.

This civil appeal is filed by the claimants in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988 MVC No.1639 of 2012 before the Motor Accident Claims Tribunal-VI and III Addl. Sr. Civil Judge, Mangalore, aggrieved by the judgment dated 20.07.2017 passed in Misc. First Appeal No.4903 of 2016 by the High Court of Karnataka at Bengaluru which reduced the compensation award by reducing the future prospects from 30% to 15%.

The Appellant has filed this Petition against the above High Court order.

Decision and Observations

The Supreme Court differed with the judgment of The High Court as the age of the deceased was considered in the group of 40 to 50 years, the High Court committed error in granting only 15% towards future prospects instead of 30%. It was held that as per the judgments of The High Court primarily the general age group was not considered as considering the age group as 40 to 50 years, when the multiplier of 13 is maintained by the High Court, there is no reason or justification for reducing the compensation by granting 15% towards future prospects as applicable for 50 years age bracket by considering different age group for different heads error was committed by The High Court.

As, discussed in paragraph 8 of the judgment as follows-

> 8. The Tribunal, by recording a finding that the deceased was in the age group of 40 to 50 years, applied the multiplier of 13 while calculating the compensation. The High Court, curiously while maintaining the multiplier of 13 as per the judgment of this Court in the case of ***Sarla Verma (Supra),*** has reduced the compensation only on the ground that the deceased was aged 50 years 3 months on the date of the accident, as such the compensation is to be calculated on account of loss of dependency by granting future prospects at 15% but not 30%. So far as the application of multiplier of 13 by the Tribunal is concerned, the High Court has not interfered with the same. When the age of the deceased was considered in the group of 40 to 50 years, we are of the view that the High Court has committed error in granting only 15% towards future prospects instead of 30%. As per the judgments of this Court primarily the age group is to be considered. Considering the age group as 40 to 50 years, when the multiplier of 13 is maintained by the High Court, there is no reason or justification for reducing the compensation by granting 15% towards future prospects. Though the learned counsel

> appearing for respondent no.1-Insurance Company has submitted that the compensation towards future prospects was awarded as per the Constitution Bench judgment of this Court in the case of ***National Insurance Company Limited v. Pranay Sethi&Ors.***[23]but at the same time it is to be noticed that in the very same judgment in paragraph 59.3 while considering the grant of future prospects, this Court has specifically said that the addition should be 30% if the age of the deceased was in the age group of 40 to 50 years. For application of multiplier, the High Court has also accepted the age group of the deceased between 40 and 50 years. In that view of the matter, there is no reason for reducing the compensation by granting future prospects at 15% only. In absence of any challenge to the findings recorded by then High Court confirming the application of multiplier of 13, we are of the view that the High Court has committed error in reducing the compensation on account of loss of dependency. For loss of love and affection, when the compensation of Rs.1,00,000/- on account of loss of consortium was awarded to the first appellant, she was not entitled for another Rs.1,00,000/- towards the same but, at the same time though the appellants have claimed Rs.2,00,000/- towards transportation of dead body and funeral expenses, only an amount of Rs.20,000/- and Rs.25,000/- was awarded towards the respective heads. Taking into account the facts and circumstances of the case, we are of the view that even such grant of Rs.1,00,000/- ought not have been reduced by the High Court.

So, The Supreme Court came to the conclusion that-

> 9. For the aforesaid reasons, we are of the view that the compensation awarded by the Tribunal is just and reasonable and the same was interfered with by the High Court without any valid grounds, as such, we allow this appeal and set aside the judgment dated 20.07.2016 passed in Misc. First Appeal No.4903 of 2016 (MV-D) by the High Court of Karnataka at Bengaluru and restore the award dated 29.09.2015 passed in MVC No.1639 of 2012 by the Motor Accident Claims Tribunal-VI and III Addl. Sr. Civil Judge, Mangalore. No order as to costs.

[23](2017) 16 SCC 680

10. ***Sri Anthony alias Anthony Swamy v. The Managing Director, K.S.R.T.C. , (CIVIL APPEAL NO(s). 2551 OF 2020)***

Decided on : - 10.06.2020

Bench :- 1.Hon'ble Mr. Justice R. F.Nariman
2.Hon'ble Ms. Justice Navin Sinha
3.Hon'ble Mr. Justice B.R.Gavai

(Compensation for loss of future earning has to be proper and just to enable to live a life of dignity and not compensation which is elusive.)

Facts

On 19.02.2010, while travelling in a bus, belonging to the respondent Corporation, the appellant met with an accident. The accident occurred due to rash and negligent driving by the bus driver, as a result of which the appellant suffered injuries and his left leg had to be amputated.

A compensation of Rs. 4,08,850 was granted by the Tribunal, which was further enhanced to Rs. 5,10,350 by the High Court. Hence, lies the present appeal claiming inadequacy of compensation granted by the High court in considering the nature of injuries suffered.

Decision and Observations

The Apex Court referred a judgment whichlucidly sets out the principles for grant of compensation in cases of permanent physical functional disability. ***"Raj Kumar vs. Ajay Kumar and another"***[24], states as follows:

13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (*i*) the claimant is totally disabled from earning any kind of livelihood, or (*ii*) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (*iii*) whether he was prevented or restricted

[24]2011 (1) SCC 343

from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

The Apex Court in view of *"Nagarajappa vs. Divisional Manager, Oriental Insurance Company Limited"*[25], wherein the physical disability of the upper limb was determined as 68% in proportion to 22-23% of the whole-body. This court opined as follows:

> 10. The appellant is working as a manual labourer, for which he requires the use of both his hands. The fact that the accident has left him with one useless hand will severely affect his ability to perform his work as a coolie or any other manual work, and this has also been certified by the doctor. Thus, while awarding compensation it has to be kept in mind that the appellant is to do manual work for the rest of his life without full use of his left hand, and this is bound to affect the quality of his work and also his ability to find work considering his disability. Hence, while computing loss of future income, disability should be taken to be 68% and not 20%, as was done by the Tribunal and the High Court. Our view is supported by the ratio in *Raj Kumar*[26]and from the fact that the appellant is severely hampered and perhaps forever handicapped from performing his occupation as a coolie."

With regard to enhancing compensation, the Apex Court held that the appellant is entitled to compensation for loss of future earning based on his 75% permanent physical functional disability recalculated with the salary of Rs.5,500/with multiplier of 14 at Rs. 6,93,000/, stating that as the appellant has been rendered permanently incapable of working as a painter or for doing any manual work, the "compensation for loss of future earning therefore has to be proper and just to enable him to live a life of dignity and not compensation which is elusive."

While holding that the High Court erred in granting a compensation of 50,000/- only towards future medical expenses, the Apex Court took note that the appellant would require three more replacements of the artificial left leg during his lifetime and enhanced the compensation by Rs.2,50,000/ in addition to that granted by the High Court. The compensation granted towards loss of amenities is also enhanced to Rs.50,000/ considering that the appellant was deprived of

social mixing, thereby modifying the award of the High Court to be paid along with interest @ 6 per cent from the date of petition till the realization.

[25]2011 (13) SCC 323
[26] See supra note 1.

11. *Mustak @ Kanio Ahmed Shaikh v. State of Gujarat, (Criminal APPEAL NOS. 488-489 OF 2017)*

Decided on : - 18.06.2020

Bench :- 1. Hon'ble Ms. Justice R. Banumathi

2.Hon'ble Ms. Indira Banerjee

(The involvement of the accused in the alleged offences establishes the gravity and seriousness of the offence.)

Facts

On 03.12.2002, the victim at around 4.45 pm on way to his laboratory from his residence, was shot near the Galaxy Cinema from a pistol fired by the accused who was on a motorbike, driven by the Appellant. As the Indica Car of the victim, driven by the driver/ complainant slowed down at a speed breaker, the accused shot the pistol and the bullet pierced the glass window and hit the face of the victim.

On instructions of the victim, his driver took him to the nearby hospital of Dr. Pareshbhai, who was not available. He was then taken to Anand Surgical Hospital where he was given preliminary treatment and was asked to be taken to a better equipped hospital, when he was rushed to Sterling Hospital. The driver/ complainant filed a complaint under Section 157 of the Criminal Procedure Code, registered as ICR 530/02.

After investigation, the first accused and the Appellant were arrested on 30.12.2002 and 31.12.2002 respectively. The Trial Court found that the first accused and second accused had positively been identified by both the concerned eye witnesses.

The learned Sessions Judge by conviction order dated 18.01.2006., sentenced the Appellant and the first accused to undergo rigorous imprisonment for six years for offence under Section 307 read with Section 114 of the Indian Penal Code, rigorous imprisonment for three years for offence under Section 25(1)(B)(a) of the Arms Act and rigorous imprisonment of six months for violation of Section 135(1) of the Bombay Police Act, to run concurrently.

Upon hearing the prosecution and appellant, both the Sessions Court and the High Court, it was affirmed that the Appellant was identified by both the victim, the complainant and

witness, and the testimony of an injured witness was sufficient for conviction. The High Court confirmed the judgment and order of conviction but enhanced sentence under Section 307 read with 114 of the Indian Penal Code to seven years instead of six.

Being aggrieved, by the common judgment and order dated 29.09.2015. passed by Division Bench of the High Court of Gujarat at Ahmedabad , the appellant filed the present appeal.

Decision and Observations

The Apex Court considered the proposition of law[27] cited by the counsel Appellant in ***"Iqbal and Another v. State of Uttar Pradesh"***[28] as unexceptionable. However, in this case, the Appellant had actually been identified by both the victim and the complainant and also in Court by the Pancha witness, as observed in the present case. The identification cannot be said to be erroneous. Nor did the Test Identification Parade suffer from such infirmity as to vitiate the identification itself.

As per opinion of the Apex Court, the involvement of the Appellant in the offences had duly been established inter alia by the injury of the victim; extraction of bullet from the body of the victim; linking of the bullet to the weapon recovered on the confession of the Appellant upon Forensic examination; the evidence of two eye-witnesses to the crime, identification by the complainant and the victim of the Appellant in the Identification Parades; identification by the Pancha witness of the Appellant as the person at whose instance the weapon of offence was recovered.

In view of the Apex Court, the High Court rightly dismissed the Criminal Appeal No.1145 of 2006, and allowed Criminal Appeal No.567 of 2006 filed by the Respondent State, only to the extent of enhancing the sentence of imprisonment inter alia of the Appellant to 7 years under Section 307 read with Section 114 of the Indian Penal Code, considering the gravity and seriousness of the offence and dismissed this Appeal, affirming the conviction of the Appellant and the sentence imposed upon the Appellant as enhanced by the High Court.

[27] Para 41 of the present judgment.

[28](2015) 6 SCC 623

12. *Siri Chand (Deceased) Thr. Lrs. v. Surinder Singh,(CIVIL APPEAL NO. 2617 OF 2020)*

Decided on: 17.06.2020

Bench:-1. Hon'ble Mr. Justice Ashok Bhushan

2. Hon'ble Mr. Justice M. R. Shah

3. Hon'ble Mr. Justice V. Ramasubramanian

(The rule of construction has to be applied when there is no period agreed upon between the parties in a lease deed.)

Facts

The appellant is a landlord of a shop measuring 14 sq. yds. The Respondent took the shop on a monthly rent of Rs. Rs.2,000/- for running a hair cutting and dressing work, by executing a agreement/ rent deed on 27.07.1993, the rent deed being applicable w.e.f. 28.07.1993. The house tax and electricity bills were undertaken to be paid by the tenant. The rent was agreed to be paid up to fifth day in each month to the owner. Also, if, the tenant failed to make the payment of rent up to the prescribed date in advance, the owner shall have right to get the shop vacated. The shop owner, if is in need of the shop, can get his shop vacated by serving a prior notice of one month. The tenant also undertook to make the payment of rent money by increasing 10% each year.

The rent was not paid from 28.01.2004 to 28.02.2005 and house tax since 1999 to 2005 amounting to Rs.22,302/- was not paid. On this, an application under Section 13 of East Punjab Urban Rent Restriction Act, 1949 was filed by the appellant-landlord dated 18.03.2006 praying for eviction of the tenant along with arrears of rent and house tax and interest on the arrears of rent.

The Rent Controller held that the tenant was in arrears of rent and house tax so the respondent-tenant is liable to eviction from the premises in dispute. The Appellate Court did not rely on the order of Rent Controller was accordingly set it aside and allowed the appeal.[29]

[29]The Appellate Court after holding that document was compulsorily registrable took the view that the clause regarding 10% yearly increase cannot be relied.

The High Court dismissed the revision referring to the finding of the Appellate Court that rent note was compulsorily registrable. The case of the landlord to enforce condition in lease deed regarding increase of the rent was not relied. Aggrieved by the said dismissal of revision judgment of the Punjab and Haryana High Court dated 05.09.2018, this appeal has been filed.

Issues

i. Whether the rent note dated 27.07.1993, which is brought on record to the appeal was a document, which required compulsory registration under Section 17(1)(d) of the Registration Act, 1908.

ii. Whether the Appellate Court could have set aside the decree of eviction without recording finding that there was no default on the part of the tenant in payment of rent and house tax etc. and the amount deposited by the tenant was sufficient to save him from eviction.

Decision and Observations

The Apex Court had the occasion to consider the provision of Section 106 of the Transfer of Property Act, 1882 and noted the rule of construction, which is to be applied when there is no period agreed upon between the parties in a lease deed.

The Apex Court in Para 14 referred to *"Ram Kumar Das Vs. Jagdish Chandra Deo, Dhabal Deb and Another"*[30], after quoting Section 106 of the Transfer of Property Act, 1882, this Court held that when there is no period agreed upon between the parties, duration has to be determined by referring to the purpose and object with which the tenancy is created. Following observations were made: -

> "**13.** The section lays down a rule of construction which is to be applied when there is no period agreed upon between the parties. In such cases the duration has to be determined by reference to the object or purpose for which the tenancy is created. The rule of construction embodied in this section applies not only to express leases of uncertain duration but also to leases implied by law which may be inferred from possession and acceptance of rent and other circumstances. It is conceded that in the case before us the tenancy was not for manufacturing or agricultural purposes. The object was to enable the lessee to build structures upon the land. In these circumstances, it could be regarded as a tenancy from month to month, unless there was a contract to the contrary....."

[30]AIR 1952 SC 23

The Apex Court also took into note a judgment of Allahabad High Court in *"Kashi Nath and Ors. Vs. Abdur Rahman Khan and Ors.,"*[31]where Allahabad High Court had occasion to consider an agreement where defendant had contracted to pay eight annas a year as a rent of the site. Section 17 of the Registration Act, 1866 was also referred to and relied by the High Court. The High Court held that when the terms of the lease are looked at, one sees that though in fact it might continue for an undefined number of years, there was no certainty that it would last for more than one year, lease was held not exceeding a term of one year.

The Apex Court considered another judgment of Lahore High Court in *"Mengh Raj Vs. Nand Lal and Ors.,"*[32]**.**The High Court noted the condition of the lease and has also applied the provisions of Section 17(1)(d)[33] of the Registration Act, 1908 and held that the said lease was not registrable. In paragraph 1 of the judgment, the contents of the lease have been quoted, which are to the following effect: -

> ".....The main provisions of the lease in question may be translated as follows:
>
> We, Nand Lal and Murli, sweepers of Hazro, have taken on rent a house from MenghBaj of Hazro on condition of payment of an annual rent of Rs. 40-8-0 for a period of one year certain. We agree that we will live as tenants in this house and will pay rent at the rate of Rs. 3-6-0 per mensem, month by month on a receipt being granted to us by the landlord. In default of payment of rent the landlord can eject us and recover arrears of rent in any manner he likes. After the expiry of the term it will be the option of the landlord to give the house to us on rent or eject us and give it to other tenants. We will have no objection to this. The term of the lease is from the 1st Har, Sambat 1984 to the end of Jeth, Sambat 1985. We have been tenants under the landlord for a long time and have been paying rent."

The Apex Court observed that as per law laid down by this Court in Ram Kumar Das(supra) there shall be a presumption that the tenancy in the present case is monthly tenancy. Present was a case of tenancy for which no period was specified and looking to all the clauses cumulatively, the rent note was not such kind of rent note, which requires compulsory registration under Section 17(1)(d).

[31]AIR 1922 All. 54
[32] AIR 1939 Lah.558.
[33] As per Section 17(1)(d), leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent requires compulsory registration.

The Apex Court held that the judgment and decree of the Rent Controller directing eviction ought not to have been interfered by the Appellate Court and allowed the appeal directing eviction of the tenant with no costs.

13. *Subhash Sahebrao Deshmukh v.Satish AtmaramTalekar and Others, (Crl. A. No.-002183-002183 / 2011)*

Decided on:-18.06. 2020

Bench:- 1. Hon'ble Mr. Justice Rohinton Fali Nariman
2. Hon'ble Mr. Justice Navin Sinha
3. Hon'ble Mr. Justice B.R. Gavai

(The plain requirement of Section 401(2) of Cr.P.C that no order shall be made to the prejudice of the accused unless an opportunity of being heard is given to him in his own defence. However, the said requirement shall not be necessary if the Revisional Court overturns the case to the Magistrate for fresh consideration, until consideration of the matter by Magistrate for issuance of process.)

Facts

The Respondent no. l filed a complaint under Section 156(3) Cr.P.C. alleging offences under Sections 420, 467, 468, 120-B, 114 and 34 of the Indian Penal Code. The Magistrate, under Section 156 (3) Cr.P.C. directed the police to register a criminal case, investigate and submit its police report within 90 days. The police after investigation submitted a report dated 05.04.2006 under Section 173(2) that the allegations were false. The Magistrate did not consider it necessary to proceed under Section 173(8) and issued notice to the complainant as to why the final report by the police be not accepted. The complainant, then filed a protest petition seeking an order of cognizance and issuance of process. The Magistrate, after hearing the respondent and not being satisfied dismissed the complaint under section 203 of Cr.P.C on 13.07.2006.

The complainant preferred a criminal revision before the Additional Sessions Judge whereby the dismissal order was set aside on 08.10.2007, effectively restoring the complaint case arising out of a protest petition and directed further inquiry by the Magistrate. The High Court declined to interfere with the order. Hence, this appeal is filed.

Decision and Observations

The Apex Court referred to ***B. Chandrika*** v. ***Santhosh***[34], wherein it was held that "The power of the Magistrate to take cognizance of an offence on a complaint or a protest petition on the same or similar allegations even after accepting the final report, cannot be disputed. It is settled law that when a complaint is filed and sent to police under Section 156(3) for investigation and then a protest petition is filed, the Magistrate after accepting the final report of the police under Section 173 and discharging the accused persons has the power to deal with the protest petition. However, the protest

[34] (2014) 13 SCC 699

petition has to satisfy the ingredients of complaint before the Magistrate takes cognizance under Section 190(1) (a) Cr.P.C."

The Apex Court further added that the restoration of the complaint by the Additional Sessions Judge was undoubtedly to the prejudice of the appellant. The right of the appellant to be heard at the appealable stage need not detain the Apex Court any further in view of ***ManharibhaiMuljibhaiKakadia and another v. ShaileshbhaiMohanbhai Patel and others***[35] , wherein the Apex Court hold that in a revision petition preferred by the complainant before the High Court or the Sessions Judge challenging an order of the Magistrate dismissing the complaint under Section 203 of the Code at the stage under Section 200 or after following the process contemplated under Section 202 of the Code, the accused or a person who is suspected to have committed the crime is entitled to hearing by the Revisional Court. In other words, where the complaint has been dismissed by the Magistrate under Section 203 of the Code, upon challenge to the legality of the said order being laid by the complainant in a revision petition before the High Court or the Sessions Judge, the persons who are arraigned as accused in the complaint have a right to be heard in such revision petition. This is a plain requirement of Section 401(2) of the Code. If the Revisional Court overturns the order of the Magistrate dismissing the complaint and the complaint is restored to the file of the Magistrate and it is sent back for fresh consideration, the persons who are alleged in the complaint to have committed the crime have, however, no right to participate in the proceedings nor are they entitled to any hearing of any sort whatsoever by the Magistrate until the consideration of the matter by the Magistrate for issuance of process. The judgements of the High Courts to the contrary are overruled. Therefore, Apex Court set aside the impugned order dated 6.03.2009 and 08.10.2007 and the matter is remanded to the Additional Sessions Judge, Greater Mumbai to hear the revision application afresh after notice to the appellant and then pass a fresh order to his satisfaction.

[35] 2012 (10) SCC 517

14. Laxmi Singh and Others v. Rekha Singh and others, (C.A. No.-002638-002639/2020)

Decided on: - 19.06 2020

Bench : - 1. Hon'ble Mr. Justice A.M. Khanwilkar
2. Hon'ble Mr. Justice Dinesh Maheshwari
3. Hon'ble Mr. Justice Sanjiv Khanna

(The waiver of secrecy by individual voters is not allowable in the election process where the Rules specifically mandate that voting in a no confidence motion would take place by secret ballot.)

Facts

Sixty-four out of the ninety-two elected members of the Zila Panchayat, Prayagraj, Uttar Pradesh had on 1st October 2018 moved a motion of no confidence ("the Motion", for short) against the Panchayat Adhyaksha, Ms. Rekha Singh (Respondent). Thereupon, the District Judge, Allahabad nominated the Additional District Judge, Allahabad to act as the Presiding Officer in the meeting of the Zila Panchayat summoned to consider the Motion. On 25th October 2018 the Motion was passed by majority of more than half of the total elected members of the Zila Panchayat.

The Respondent then challenged it in High Court of Judicature at Allahabad. The High Court of Judicature, Allahabad on 13th March 2019 vide the impugned judgment set aside the minutes of the Zila Panchayat meeting dated 25th October 2018 approving the Motion, on the ground that some of the members had violated the rule of secrecy of ballot. Reliance was placed on the CCTV footage that was played in the Court, to observe that some of the members had displayed the ballot papers or by their conduct revealed the manner in which they had voted. The High Court further added that there was a violation of Rules 4[36]and 7[37] of Uttar Pradesh (Zila Panchayats) (Voting on Motions of Non-Confidence) Rules 1966, and held that disclosure of vote during the non-confidence motion was in violation of the statutory scheme governing the same in the State and would affect the purity of elections. Hence, this appeal is filed.

Decision and Observations

[36]Rule 4 of the Uttar Pradesh (Zila Panchayats) (Voting on Motions of Non-Confidence) Rules 1966 casts a duty and obligation on the Presiding Officer to cause such arrangements to be made as would ensure secrecy of the ballot.

[37] Sub-rule (2) of Rule 7 of the Uttar Pradesh (Zila Panchayats) (Voting on Motions of Non-Confidence) Rules 1966, which requires the members to put a specified mark on the ballot paper to indicate their choice without disclosing their names and proscribes any signature or any other mark by which the secrecy of the ballot may be infringed. Further, sub-rule (3) of Rule 7 of the 1966 Rules, which requires members to fold their ballot paper to conceal the mark made by them and to put the same in the ballot box.

The Apex Court referred to ***Shri BanwariDass v. Shri Sumer Chand and Others***[38] wherein referring to the Delhi Municipal Corporation Act, 1957, it was observed that an election contest is not an action at law or a suit in equity but purely a statutory proceeding, provision for which have to be strictly construed. The court cannot bridge the gap and supply an apparent omission by applying principles of common law and equity.

The Apex Court observed that one of the fundamental principles of election law pertains to the maintenance of free and fair elections, ensuring the purity of elections. The principle of secrecy of ballots is an important postulate of constitutional democracy whose aim is to achieve this goal. But the question of whether the waiver of secrecy by individual voters is allowable during the election process, in the present case, where the Uttar Pradesh Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961 and the 1966 Rules mandate that voting in a no confidence motion would take place by secret ballot requires detailed argumentation and analysis.

In order to ensure that the ends of justice being met, the Apex Court put the motion dated 1st October 2018 to revote at a meeting of the Zila Panchayat by way of secret ballot with the District Judge, Allahabad himself or his nominee Additional District Judge, Allahabad, acting as the Presiding Officer on a date and time to be fixed by the District Judge, which shall not be later than two months from the date of Judgment.

[38](1974) 4 SCC 817

15. *Rajendra Singh and Others v. National Insurance Company Limited and Others, (C.A. No.-002624-002624/2020)*

Decided on: - 18.06. 2020

Bench : - 1. Hon'ble Mr. Justice Rohinton Fali Nariman
2. Hon'ble Mr. Justice Navin Sinha
3. Hon'ble Mr. Justice B.R. Gavai

(Deceased travelling by horse cart as passengers cannot be said to be liable to contributory negligence and making the claimant denial of full compensation. Therefore claimant is entitled to compensation related to future prospects of deceased housewife and not minor child as the notional income of deceased wife would have been enhanced by time but the notional income of deceased minor child is incapable of precise fixation, hence, not sustainable.)

Facts

The deceased in the first appeal was a housewife aged about 30 years and the second deceased was her daughter aged about 12 years. The claimants are the husband/father of the deceased and three minor siblings. On 25.12.2012, the two deceased were travelling in a horse cart along with some others to a religious congregation. The horse cart was hit by a bus resulting in their death. The Motor Accident Claim Tribunal (hereby "Tribunal") assessed the notional income of the first deceased at Rs.36, 000/- per annum and after 1/4th deduction towards personal expenses, with a multiplier of 17 awarded a compensation of Rs.4, 59,000/-. The Tribunal then deducted 50% on ground of contributory negligence as the horse cart was stated to have been in the middle of the road when the accident took place. A sum of Rs.1,00,000/- was then added as loss of consortium and Rs.25,000/- towards funeral expenses leading to an award total of Rs.3,54,500/- with interest at the rate of 7.5%. In case of minor child the tribunal assessed the notional income Rs. 36,000/- per annum, applying a 50% deduction towards personal expenses with a multiplier of 15, the compensation was awarded at Rs.2,70,000/- out of which 50% was again deducted towards contributory negligence. A sum of Rs.25, 000/- was added towards funeral expenses, leading to an award total of Rs.1, 60,000/- with interest at the rate of 7.5%. The claimant preferred an appeal for the enhancement of compensation before the High Court which was dismissed by impugned judgment and thus, this appeal is filed.

Decision and Observations

The Apex Court held that the deduction of 50% towards contributory negligence in both the appeals to be unjustified and unsustainable on the ground that the deceased were travelling as a passengers on a horse cart along with others and the same was driven under supervision so no fault could be attributed to them on the ground of contributory negligence and therefore, it was set aside.

In order to analyse the notional income of the first deceased the Apex Court referred to ***Lata Wadhwa* v. *State of Bihar***[39]wherein it was held that considering the multifarious services rendered by housewives, even on a modest estimation, the income of a housewife between the age group of 34 to 59 years who were active in life should be assessed at Rs 36,000 per annum. Relying upon ***Arun Kumar Agrawal vs. National Insurance Co. Ltd.***[40]**,** the Apex Court held that the notional income of the first deceased to be Rs.5000/- per month at the time of death. The compensation on that basis with a deduction of 1/4th i.e. Rs.15, 000/- towards personal expenses with a multiplier of 17 is assessed at Rs.7, 65,000/-. The Apex Court also observed in view of ***Lata Wadhwa (supra),*** that the appellants shall also be entitled to future prospects at the rate of 40% in addition to the loss of consortium and future expenses already granted. The Apex Court therefore assesses the total compensation payable to the appellants in the first appeal at Rs.11, 96,000/-.

The Apex Court in the case of second deceased called for the grant of non-pecuniary damages for the wrong done by awarding compensation for loss of expectation in life. Further added that the income of the minor girl child is incapable of precise fixation and thus, finds no reason to interfere with the assessed notional income of the second deceased. In order to grant the future prospects for the deceased the Apex Court referred to ***R.K. Malik v. Kiran Pal***[41]wherein it was held that it is well settled legal principle that in addition to awarding compensation for pecuniary losses, compensation must also be granted with regard to the future prospects of the children. The Apex Court does not enhanced the compensation to the appellant any further from Rs.2, 95,000/- by granting it under the separate head of "future prospects".

[39](2001) 8 SCC 197
[40] (2010) 9 SCC 218
[41](2009) 14 SCC 1

16. *Telangana State Southern Power Distribution Company Limited &Anr v. M/S. Srigdhaa Beverages Civil Appeal No.1815 OF 2020*

Decided on: -01.06.2020

Bench: - 1. Hon'ble Mr.Justice Sanjay Kishan Kaul
2. Hon'ble Mr. Justice K.M. Joseph

(That electricity dues, where they are statutory in character under the Electricity Act and as per the terms & conditions of supply, cannot be waived in view of the provisions of the Act itself more specifically Section 56 of the Electricity Act, 2003 (in parimateria with Section 24 of the Electricity Act, 1910), and cannot partake the character of dues of purely contractual nature. Where, as in cases of the E-auction notice , the existence of electricity dues, whether quantified or not, has been specifically mentioned as a liability of the purchaser and the sale is on "AS IS WHERE IS, WHATEVER THERE IS AND WITHOUT RECOURSE BASIS", there can be no doubt that the liability to pay electricity dues exists on the purchaser)

Facts

The respondent is an auction-purchaser of a unit which is a mineral water bottling plant owned by M/s. SB Beverages Private Limited, which failed to pay its dues, resulting in the auction by Syndicate Bank (Secured Creditor) through an E-auction sale notice dated 25.5.2017 .

The problem for the respondent arose when he applied to appellant No.1 seeking sanction of a 500 KVA connection required for running the bottling plant. This request was denied on the ground that there were previous electricity dues to the tune of Rs.50, 47,715, as on 26.10.2017. Appellant No.1 asserted its right to recover this amount even from the new purchaser (i.e. respondent), based on a reading of Clauses 5.9.6 and 8.4 of the General Terms and Conditions of Supply of Distribution & Retail Supply Licensees in AP (for short 'General Terms & Conditions of Supply').It was in this backdrop that a writ petition was filed by the respondent before the High Court seeking quashing of these demands predicated on a reasoning that as a subsequent purchaser, the respondent was not responsible for the dues of the earlier owner, and in that behalf while placing reliance upon the judgments of the Apex Court in *Isha Marbles v. Bihar State Electricity Board &Anr.*[42] and *Southern Power Distribution Company of Telangana Limited (through its CMD) &Ors. v. Gopal Agarwal &Ors*.[43] , the learned single Judge issued directions quashing the demand of appellant No.1. The appeal before the Division Bench against this order was also dismissed on 30.4.2018.Hence the present appeal .

[42] (1995) 2 SCC 648
[43] (2018) 12 SCC 644

Issue

Whether the liability towards previous electricity dues of the last owner could be mulled on to the respondent?

Decision and observations

In order to appreciate the controversy, the Apex Court, while reproducing some of the relevant clauses of theauction notice and on holistic reading of them observed that the aforesaid auction notice shows that the unit was being sold on "***as is where is, what is there is and without any recourse basis***", as per Rules 8 & 9 of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as the 'saidRules') and while making reference to Clause 24 ,observed that the same is "***in all respects and subjectto statutory dues***" and aforesaid dues partake the character of statutory dues under the Electricity Act, 2003 read with the General Terms & Conditions of Supply, as also, the indemnity clause as provided in sale deed dated 29.9.2017 executed in pursuance of the auction was confined to aspects mentioned in the respective clause and was relatable to defects in title, and not to other liabilities like electricity dues.

While advertingto the case of***Isha Marbles***,[44]the Apex Court observed that the dictum of the case is inapplicable to the present case for there is marked difference in the factual matrix of that case and case at hand as there was no clause specifically dealing with the issue of electricity dues or such other in the nature of Clause 26 of the present E-auction sale notice absolving the Authorized Officer of various dues including "electricity dues".

The Apex Court subsequently dealt with other judicial pronouncements dealing with this aspect of electricity dues such as ***Hyderabad Vanaspathi Ltd. v. A.P. State Electricity Board &Ors***.[45] wherein it was held that the dues under the terms and conditions of supply partake the character of statutory dues.

The Apex Court also drew strength from the case of***Dakshin Haryana Bijli Vitran Nigam Ltd. v. Paramount Polymers (P) Ltd.***,[4647] wherein it was held that if a transferee desires to enjoy the service connection, he shall pay the outstanding dues, if any, to the supplier of electricity and a reconnection or a new connection shall not be given to any premises where there are arrears on account of dues to the supplier unless they are so declared in advance.

At para 11 of the judgment, the Court held as follows:-

> **"**We may also notice that as an auction purchaser bidding in an "as is where is, whatever there is and without recourse basis", the respondent would have inspected the premises and made inquiries about the dues in all respects. The facts of the present case, as in the judgment aforesaid, are more explicit in character as there is a specific mention of the quantification of dues of various accounts including electricity dues. The respondent was, thus, clearly put to notice in this behalf."

[44]*(*wherein the Apex Court has whileelucidating the position in the context of Section 24 of the Electricity Act, 1910, and emphasizing upon the definition of "Consumer" under Section 2(c) of the Electricity Act has held that no liability to pay electricity could be fastened upon the purchaser as he was not consumer at relevant time and in the absence of consumption of electricity, the subsequent purchaser was merely seeking reconnection without there being any statutory dues towards consumption charges.)

[45] (1998) 4 SCC 470

[46] (2006) 13 SCC 101 (2 Judges Bench)

[47]The facts therein were similar with the facts the present case as it contained a specific clause dealing with electricity dues.

The same view in case of a similar clause has been taken in ***PaschimanchalVidyut Vitran Nigam Limited &Ors. v. DVS Steels and Alloys Private Limited &Ors.***[48] It has been further observed that if any statutory rules govern the conditions relating to sanction of a connection or supply of electricity, the distributor can insist upon fulfillment of the requirements of such rules and regulations so long as such rules and regulations or the terms and conditions are not arbitrary and unreasonable. A condition for clearance of dues cannot per se be termed as unreasonable or arbitrary.

The Apex Court, at para 13, also made reference to other judgments which held a slightly contrary view in order to bring more clarity to the subject matter at hand such as ***Haryana State Electricity Board v. Hanuman Rice Mills, Dhanauri&Ors.***,[49] wherein it was held that in a given scenario where the pendency of electricity dues was not mentioned in the terms & conditions of sale, and it was held in those facts that the dues could not be mulled on to the subsequent transferee.

At para14, the Apex Court noticed that in ***Special Officer, Commerce, North Eastern Electricity Supply Company of Orissa (NESCO) v. Raghunath PaperMills Private Limited &Anr***.[50],a distinction was made between a connection sought to be obtained for the first time and a reconnection. In that case, no application had been made for transfer of a service connection from the previous owner to the auction-purchaser, but in fact, a fresh connection was requested. In light of the regulations therein, previous dues had to be cleared only in the case of a reconnection. Hence, the respondents were held to be free from electricity liability. TheCourtin***Southern Power Distribution Company of Telangana Limited (through its CMD) &Ors.***[51] found that the facts were similar to the ***NESCO*** case, and thus followed the same line.

Finally at para 15, the Apex Court decided the case as:-

> "There have been some differences in facts but, in our view, there is a clear judicial thinking which emerges, which needs to be emphasized:
>
> A. That electricity dues, where they are statutory in character under the Electricity Act and as per the terms & conditions of supply, cannot be waived in view of the provisions of the Act itself more specifically Section 56 of the Electricity Act, 2003 (in parimateria with Section 24 of the Electricity Act, 1910), and cannot partake the character of dues of purely contractual nature.
>
> B. Where, as in cases of the E-auction notice in question, the existence of electricity dues, whether quantified or not, has been specifically mentioned as a liability of the purchaser and the sale is on "**AS IS WHERE IS, WHATEVER THERE IS AND WITHOUT RECOURSE BASIS**", there can be no doubt that the liability to pay electricity dues exists on the respondent (purchaser).
>
> C. The debate over connection or reconnection would not exist in cases like the present one where both aspects are covered as per clause 8.4 of the General Terms & Conditions of Supply.

Thus in view of the aforesaid legal position, which has emerged, the appeal was allowed and the impugned orders were accordingly set aside while opining that appellant No.1 would be well within its right to demand the arrears due of the last owner, from the respondent-purchaser.

[48] (2009) 1 SCC 210 (2 Judge Bench)
[49] (2010) 9 SCC 145 (2 Judge Bench)
[50] (2012) 13 SCC 479 (2 Judge Bench)
[51] (2018) 12 SCC 644

17. ***D. Devaraja v. OwaisSabeerHussaincriminal- Appeal NO. 458 OF 2020 [Arising out of SLP (CRL.) NO.1882 OF 2018])***

Decided on: -18.06. 2020

Bench: - 1. Hon'ble Ms.JusticeR. Banumathi
2. Hon'ble Ms.JusticeIndira Banerjee

(Not every offence committed by police officer would attract section 197 of the Cr.P.C read with Section 170 of the Karnataka Police Act as the protection is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and official duty is not merely a cloak for the objectionable act. However if an act is connected to the discharge of official duty of investigation of a recorded criminal case, the act is certainly under color of duty, no matter how illegal the act may be).

Issue

Whether the learned Magistrate could, at all, have taken cognizance against the appellant, in the private complaint being P.C.R No.17214 of 2013, in the absence of sanction under Section 197 of the Code of Criminal Procedure read with Section 170 of the Karnataka Police Act, 1963, as amended by the Karnataka Police (Amendment) Act, 2013, and if not, whether the High Court should have quashed the impugned order of the Magistrate concerned, instead of remitting the complaint to the Magistrate concerned and requiring the accused appellant to appear before him and file an application for discharge?

Facts

The accused appellant is a police officer of the rank of Superintendent of Police. When he was posted as Deputy Commissioner of Police (Crime), received the case records of Crime No.12/2012registered at the Ulsoor Police Station, Bangalore,which was transferred to the Central Crime Branch, Bangalore and he thereafter he handed it to the Inspector of Police who being the 3rd accused took up investigation under the guidance of the Assistant Commissioner of Police being the 2nd accused, with the assistance of the Sub-Inspector of Police being the accused No.4.After the investigation was carried out, the Respondent was arrayed as accused in the aforesaid case (Crime No. 12/2012). Later on, after production before the Additional Chief Metropolitan Magistrate I at Bengaluru on 28-2-2013 the respondent was remandedto police custody with an observation that the Respondent had not complained of any ill-treatment by the Police. On or about 2-3-2013, K. M. Hussain, father of the Respondent, filed a Habeas Corpus Petition being WP (HC) No. 57 of 2013 in the High Court , seeking an order for production of the Respondent from alleged illegal detention and thereafter, medical examination was conduced on account of allegations made by the Respondent and/or his father, of ill-treatment of the Respondent, by the Police with respect to which the learned 1st Additional Chief Metropolitan Magistrate, Bengaluru passed an order dated 4-3-2013, observing that there were no abnormalities and injuries found on the Respondent. On 6-3-2013 the accused Appellant, as Deputy Commissioner of Police (CCB), Bangalore filed an affidavit in WP(HC) No.57 of 2013 in the Karnataka High Court at Bengaluru and submitted an enquiry report and after perusal of which the High Court dismissed the Habeas Corpus filed by the Respondent's father, observing inter alia that eight criminal cases were pending against the Respondent and that he had been produced before the jurisdictional Magistrate in accordance with law

BEFORE TRIAL COURT

After the respondent was released from judicial custody, he filed the private complaint being P.C.R. No.17214 of 2013 against the accused appellant and other police officials,for offences punishable under Sections 120-B, 220, 323, 330 348, 506B read with Section 34 of the Indian Penal Code in the Court of the learned IIIrd Additional Chief Metropolitan Magistrate at Bengaluru alleging illtreatment and police excesses while the respondent was in police custody from 27-2-2013 to 4-3-2013 and the cognizance was taken against the appellant in P.C.R. No. 17214 of 2013, even though no previous sanction had been obtained from the Government.

BEFORE HIGH COURT

The accused appellant filed Criminal Petition No.319 of 2017 under Section 482 of the Code of Criminal Procedure inter alia for quashing the order dated 27-12- 2016 in P.C.R. No.17214 of 2013. The High Court proceeded to observe that the Magistrate had tentatively opined that sanction was not necessary to proceed against the accused appellant and thus remanded the complaint back to the Trial Court, with a direction on the accused appellant to appear before the Trial Court and file an application under Section 245 of the Code of Criminal Procedure for discharge.Thus aggrieved by the order of remand, the present appeal was filed.

Decision and observations

Elucidation on the scope and object of section 197 vis-à-vis Section 170 of the Karnataka Police Act

The Apex Court referred to the decision of the Constitution Bench of Apex Court in ***MatajogDobey v. H.C. Bhari***[52] wherein it was held:

> "...Public servants have to be protected from harassment in the discharge of official duties while ordinary citizens not so engaged do not require this safeguard……. There is no question of any discrimination between one person and another in the matter of taking proceedings against a public servant for an act done or purporting to be done by the public servant in the discharge of his official duties. No one can take such proceedings without such sanction...

In ***Amrik Singh v. State of Pepsu***[53] the Apex Court referred to the judgments of the Federal Court in ***Dr. Hori Ram Singh v. Emperor***[54] ; ***H.H.B. Gill v. Emperor***[55] and the judgment of the Privy Council in ***H.H.B. Gill v. R***[56] and held:

> "...The result of the authorities may thus be summed up: It is not every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Code of Criminal Procedure; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of

[52] AIR 1956 SC 44
[53] AIR 1955 SC 309
[54] AIR 1939 FC 43
[55] AIR 1947 FC 9
[56] AIR 1948 PC 128

> is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary; and that would be so, irrespective of whether it was, in fact, a proper discharge of his duties, because that would really be a matter of defence on the merits, which would have to be investigated at the trial, and could not arise at the stage of the grant of sanction, which must precede the institution of the prosecution..."

The scope of Section 197 of the old Code of Criminal Procedure, was also considered in ***P. Arulswami vs. State of Madras***[57] . In ***VirupaxappaVeerappaKadampur v. State of Mysore***[58] theApex Court referred to the meaning of the words "***colour of office***" in Wharton's Law Lexicon, 14th Ed. which is as follows:

> "Colour of office" "When an act is unjustly done by the countenance of an office, being grounded upon corruption, to which the office is as a shadow and colour."

After referring to the Law Lexicons referred to above, the Court held:

> "It appears to us that the words under colour of duty have been used in s.161(1) to include acts done under the cloak of duty, even though not by virtue of the duty. When he (the police officer) prepares a false Panchnama or a false report he is clearly using the existence of his legal duty as a cloak for his corrupt action or to use the words in stroud's Dictionary as a veil to his falsehood. The acts thus done in dereliction of his duty must be held to have been done "under colour of the duty."

The Apex Court at para 46 ,also referred to the case of ***Sankaran Moitra v. Sadhna Das and Another***[59] wherein the majority referred to various other judicial pronouncements and held as under :-

> "25. The High Court has stated that killing of a person by use of excessive force could never be performance of duty. It may be correct so far as it goes. But the question is whether that act was done in the performance of duty or in purported performance of duty. If it was done in performance of duty or purported performance of duty, Section 197(1) of the Code cannot be bypassed by reasoning that killing a man could never be done in an official capacity and consequently Section 197(1) of the Code could not be attracted."

The Apex Court referred to various other judgments cited by the learned counsel for the accused Appellant such as the case of ***State of Haryana and Others v. Bhajan Lal and Others***[60] , through which he argued that where a criminal proceeding is manifestly prompted by malafides and instituted with the ulterior motive of vengeance due to private or personal grudge, power under Section 482 of the Criminal Procedure Code ought to be exercised to prevent abuse of the process of Court and/or to secure the ends of justice. Other judgments which were cited by the learned counsel for the respondent in order to support his argument included ***State of Orissa vs. Ganesh Chandra Jew***[61]wherein it was held that where there is no complain of ill treatment recorded by the Magistrate , the continuance of the proceeding would amount to the abuse of the process ,as also in the case of ***D.T. Virupakshappa v. C. Subash***[62] the High

[57] AIR 1967 SC 776
[58] (2015) 12 SCC 231
[59] (2006) 4 SCC 584
[60] 1992 Suppl. (1) SC 335
[61] (2004) 8 SCC 40
[62] (2015) 12 SCC 231

Court had held that the whole allegation of police excess in connection with the investigation of the criminal case, was reasonably connected with the performance of the official duty of the appellant.

The Apex Court also referred to and at the same time distinguished various judgments cited by the learned counsel for the Respondent on differentgrounds and the cases included such as ***Devinder Singh &Ors. v. State of Punjab through CBI***[63]. ***Satyavir Singh Rathi, Assistant Commissioner of Police &Ors. v. State Thr. CBI***[64] .

The Apex Court also considered the question of the stage at which the Trial Court has to examine whether sanction has been obtained and if not whether the criminal proceedings should be nipped in the bud and for that purpose referred to diverse decisions at this point such as , ***D.T. Virupakshappa*** (supra) wherein it was held that the High Court had erred in not setting aside an order of the Trial Court taking cognizance of a complaint, in exercise of the power under Section 482 of Criminal Procedure Code and ***MatajogDobey*** (supra) it was held that the question whether sanction is necessary or not may have to be determined at any stage of the proceedings.

At para 77, the Apex Court held as under:-

> "77. It is well settled that an application under Section 482 of the Criminal Procedure Code is maintainable to quash proceedings which are ex facie bad for want of sanction, frivolous or in abuse of process of court. If, on the face of the complaint, the act alleged appears to have a reasonable relationship with official duty, where the criminal proceeding is apparently prompted by mala fides and instituted with ulterior motive, power under Section 482 of the Criminal Procedure Code would have to be exercised to quash the proceedings, to prevent abuse of process of court."

At para 78, the Apex Court held as under:-

> "78. There is also no reason to suppose that sanction will be withheld in case of prosecution, where there is substance in a complaint and in any case if, in such a case, sanction is refused, the aggrieved complainant can take recourse to law. At the cost of repetition it is reiterated that the records of the instant case clearly reveal that the complainant alleged of police excesses while the respondent was in custody, in the course of investigation in connection with Crime No.12/2012. Patently the complaint pertains to an act under colour of duty."

Finally at para 80 , the Apex Court decided the appeal in favor of the Appellant accused and held as :-

> "80. In our considered opinion, the High Court clearly erred in law in refusing to exercise its jurisdiction under Section 482 of the Criminal Procedure Code to set aside the order of the Magistrate impugned taking cognizance of the complaint, after having held that it was a recognized principle of law that sanction was a legal requirement which empowers the Court to take Cognizance. The Court ought to have exercised its power to quash the complaint instead of remitting the appellant to an application under Section 245 of the Criminal Procedure Code to seek discharge. The appeal is allowed. The judgment and order under appeal is set aside and the complaint is quashed for want ofsanction

[63] (2016) 12 SCC 87
[64] (2011) 6 SCC 1

18. *Surendra Kumar Bhilawe v. The New India Assurance Company Limited*

Decided on : -18.06. 2020

Bench:- 1. Hon'ble Ms.JusticeR. Banumathi
2. Hon'ble Ms.Justice Indira Banerjee

(Owing tothe registration of the truck being in the name of the Appellant, even as on the date of the accident, over three years after the alleged transfer, payment by the Appellant of the premium for the Insurance Policy, issuance of Insurance Policy in the name of the Appellant, permit in the name of the Appellant even after three years and seven months, absence of 'No Objection' from the financier bank etc. and the definition of owner in Section 2(30) of the Motor Vehicles Act, as also other relevant provisions of the Motor Vehicles Act and the Rules framed thereunder, including in particular the transferability of a policy of insurance under Section, the registered owner continues to remain owner and when the vehicle is insured in the name of the registered owner, the Insurer would remain liable notwithstanding any transfer, would apply equally in the case of claims made by the insured himself in case of an accident and where the registered owner purports to transfer the vehicle, but continues to be reflected in the records of the Registering Authority as the owner of the vehicle, he would not stand absolved of his liability as owner)

Issue

Whether in view of the definition of 'owner' in Section 2(30) of the Motor Vehicles Act, the Appellant remained the owner of the truck on the date of the accident and the Insurer could not have avoided its liability for the losses suffered by the owner on the ground of transfer of ownership to Mohammad Iliyas Ansari.?

Facts

The Appellant was the owner of Ashok Leyland which was covered by a Policy of Insurance issued by the Insurer, effective for the period from 2.6.2011 to 1.6.2012. On 13.11.2011, the said lorry, which was loaded with Ammonia Nitrate, at about 1.45 p.m., while the said truck was on its journey from Raipur to Dhanbad, met with an accident near Bhakuwa Toil Police Station, Gumla in Jharkhand and the said accident was reported to the Gumla Police Station, on 16.11.2011 . On 25.11.2011, the Appellant lodged a claim with the Insurer, through one Mohammad Iliyas Ansari, upon which the Insurer appointed an independent Surveyor and Loss Assessor to conduct a spot survey who submitted his report on 29.11.2011. Later on, another final survey was conducted and the report dated 25.1.2012 was submitted ,assessing the loss recoverable from the insurer at Rs.4,93,500/- after deduction of salvage value. However, instead of reimbursing the loss, the Insurer issued a show cause Letter dated 22.3.2012 to the Appellant requiring the Appellant to show cause why the claim of the Appellant should not be

repudiated, on the allegation that, he had already sold the said truck to the said Mohammad Iliyas Ansari on 11.4.2008. It is, however, not in dispute that the Appellant continued to be the registered owner of the said truck, on the date of the accident.Appellant himself submitted a motor claim again on 22.8.2012, but the Insurer refused to accept the same. Thus the aggrieved submitted his compliant before District Forum.

Before District Forum-

The District Forum allowed the complaint, by its order dated 9.1.2014 and allowed the claim, holding in effect, that the Appellant continued to be the owner of the vehicle for the reasons thatthe said truck was registered in the name of the Appellant and the permit for operating the said truck for carriage of goods also stood in his name. Even though the sale agreement with Mohammad Iliyas Ansari was dated 11.4.2008, theAppellant continued to pay instalments towards repayment of the loan obtained from ICICI Bank, for purchase of the said truck, long thereafter. Also the Appellant had produced documents to show that he had paid the premium for the insurance policy after 11.4.2008, and even as late as on 31.05.2011.Moreover, Mohammad Iliyas Ansari had not objected to release of compensation to the Appellant for damage caused to the vehicle, by reason of the accident and the Insurer had not established that Driver, Rajendra Singh was an employee of Mohammad Iliyas Ansari.

Before State Commission

After perusing the record of the District Forum, the Commission held in favour of the Appellant by holding that he was recorded as registered owner in Certificate of Registration of the vehicle and it is only his name which appears in license of Good Vehicle as well as the Insurance Policy.Moreover, it was observed that had the vehicle in question was transferred by the Respondent (complainant) to Mohammad Iliyas Ansari, the Respondent (Complainant) could have intimated the R.T.O. regarding transferring the vehicle in favour of Mohammad Iliyas Ansari and Mohammad Iliyas Ansari

himself could have deposited the amount of loan with the ICICI Bank. While conceding to other observations made by the District Forum , it was held that the finding recorded by the District Forum, is just and proper and does not suffer from any jurisdictional erroneously, irregularity or illegality, hence does not call for any interference by this Commission

Before National Consumers Disputes Redressal Commission, New Delhi,(hereinafter referred to as 'National Commission')

The National Commission set aside the orders of the District Forum and the State Commission, thereby rejecting the concurrent factual finding of both the fora, and dismissed the complaint on the ground that the Appellant had sold his vehicle to Mohammad Iliyas Ansari.The National Commission observed that when an owner of a vehicle sells his vehicle and executes a sale letterwithout in any manner postponing passing of the title to the property in the vehicle, the ownership in the vehicle passes to the purchaser on execution of the sale letter. Thus holding that the factum of the complainant(Appellant) receiving the sale consideration agreed with Shri Ansari , also delivery of the possession of the vehicle to him on 11.4.2008 having been duly proved, the delivery of the vehicle, to the purchaser, reinforces the title which the purchaser gets to the vehicle, on execution of the sale letter in his favour. The National Commission also drew adverse inference against the Appellant regarding the delay in lodging of FIR.

Decision and Observations

It was observed by the Apex Court that, National Commission completely ignored the concurrent factual findings of the District Forum and State Commission leading the Commission to unerringly conclude that ownership of the said truck stood transferred to Mohammad Iliyas Ansari.

At para 30, the Apex Court observed that the National Commission did not address some very relevant questions such as if the ownership of the said truck stood transferred on 11.4.2008, why would the Appellant continue to pay the instalments to ICICI Bank towards repayment of the loan for 18 purchase of the said truck; if the ownership of the said truck were transferred, why would the Appellant have taken out an Insurance Policy covering the said truck in his own name even on 31.5.2011, after over three years ; why would Mohammad Iliyas Ansari run the said truck with a permit in the name of the Appellant, if he was its owner, thereby exposing himself to penal consequences under the Motor Vehicle Act and the Rules framed thereunder, amongst others. The gorunds on which the Honb'le Court ruled in favor of Appellant are as follows-

- **That sections 19 and 20 of the Sale of Goods Act, 1930 is of no assistance to the Insurer.**

At para 31, the Apex Court held that in their considered opinion, Sections 19 and 20[65] of the Sale of Goods Act, 1930, which deal with the stage at which the property in movable goods passes to the buyer, is of no assistance to the Insurer as there is impedimentto the transfer, as in the instant case, where 'No Objection' of the financier bank was imperative for transfer of the said truck, there could be no question of transfer of title until the impediment were removed, for otherwise the contract for transfer would be injurious to the financier bank, immoral, unlawful and void under Section 10 read with Sections 23 and 24 of the Contract Act, 1872. 33. It was thus, an implicit condition of the agreement for transfer of the said truck, that the transfer would be complete only upon issuance of 'No Objection" by the financier bank and upon compliance with the statutory requirements for transfer of a motor vehicle.

Thu at para 34, the Apex Court held as follows-

> "34. The contract in this case, could not possibly have been an unconditional contract of transfer of movable property in deliverable state, but a contract to transfer, contingent upon 'No Objection" from ICICI Bank, and compliance with the 21 statutory provisions of the Motor Vehicles Act, 1988 and the Rules framed thereunder. Sections 19 and 20 of the Sale of Goods Act are not attracted."

- **That the National Commission overlooked the definition of 'owner' in Section 2(30) of the Motor Vehicle Act, 1988 as well as failed to appreciate Section 157 of the Motor Vehicles Act.**

At para 35, the Apex Court held that the National Commission overlooked the definition of 'owner' in Section 2(30)[66] of the Motor Vehicle Act, 1988. It was observed that even the assumption of possession

[65]According to the said provisions, the property in a specific movable property is transferred to the buyer at such time as parties to the contract intend it to be transferred, provided such movable property is free to be transferred, and/or in other words capable of being transferred.

[66]In Section 2(30) 'owner' has been defined to mean "a person in whose name a motor vehicle stands registered and, where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire purchase

of said truck at the time of the accident by Mohammad Iliyas Ansari was of no avail to the Respondent as such possession was not under any agreement of lease, hire purchase or hypothecation with ICIC Bank. Moreover, the Court observed that National Commission also overlooked other applicable provisions of the Motor Vehicle Act 1988, particularly Sections 39 to 41, 50, 51, 66, 69, 82, 84(g), 86(c), 146, 157, 177 and 192A.

At para 40, the Apex Court held that the finding of the National Commission regarding the fact of registration of the said truck in the name of the Appellant as inconsequential is also not sustainable in law owing to the definition of 'owner' as provided in section 2(30) of the Motor Vehicle Act, 1988. The Honb'le Court observed that had ownership of the said truck intended to be transferred forthwith, the registration would have been transferred in the name of the transferee, as also the permit to operate the said truck for carriage of goods. At para 41, the Honble Court observed that it is difficult to accept that a person who has transferred the ownership of a goods carriage vehicle on receipt of consideration, would not report the transfer or apply for transfer of registration, and thereby continue to incur the risks and liabilities of ownership of the vehicle under the provisions of law including in particular, under the Motor Vehicles Act, 1988 and other criminal/penal laws. .

At para, 43, the Apex Court observed that The National Commission also failed to appreciate the applicability of Section 157[67] of the Motor Vehicles Act. After citing this section, the Apex Court expressed utter surprise that there could be no reason for a transferee of an insured motor vehicle, to refrain from applying for endorsement of the transfer in the Insurance Policy Certificate when insurance covering third party risk is mandatory for using a vehicle.

By adverting to the explanation to Section 157 clarifies which envisages the concept of deemed transfer of rights and liabilities , the Honb'le Court observed that it is incredible that the transferee, Mohammad Iliyas Ansari would take the risk of operating a vehicle, owned by him, without taking out a policy of Insurance in his own name, inter alia, covering third party risks, notwithstanding the mandate of Section 146 of the Motor Vehicles Act, 1988 prohibiting the use of a motor vehicle without third party insurance.

In order to substantiate the above finding, the Honb'le Court adverted to some judicial pronouncements such as***Dr. T.V. Jose vs. Chacko P.P. @ Thankachan and Ors***.[68]and***Complete Insulations Private Limited vs. New Indian Assurance Company Limited***[69]**,** which wasrendered in the context of Motor Vehicle Act, 1939 ,which has been repealed and replaced by the Motor Vehicles Act, 1988. As observed in the said judgment itself, under Section 103-A of the old Act, the Insurer had the right to refuse to transfer the certificate of insurance and/or the Insurance policy. However, Section 157 of the Motor Vehicles Act, 1988 introduces a deeming provision which has taken away the Insurer's right of refusal to transfer the

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agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement".

[67] It provides that where a person, in whose favour the certificate of insurance has been issued in accordance with the provisions of Chapter XI of the Motor Vehicles Act, transfers to another person the ownership of the motor vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, the certificate of insurance and the policy described in the certificate are to be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred, with effect from the date of its transfer

The explanation to Section 157 clarifies, for the removal of all doubts that such deemed transfer would include transfer of rights and liabilities of the said certificate of insurance and policy of insurance.

[68] (2001) 8 SCC 748

[69] (1996) 1 SCC 221

Policy Certificate of Insurance.The Apex Court applied the dictum rendered in the case of ***Pushpa @ Leela And Others vs. Shakuntala and Others***[70]and ***Naveen Kumar vs. Vijay Kumar and Others***[71] to the extent that the registered owner continues to remain owner and when the vehicle is insured in the name of the registered owner, the Insurer would remain liable notwithstanding any transfer, would apply equally in the case of claims made by the insured himself in case of an accident and where the registered owner purports to transfer the vehicle, but continues to be reflected in the records of the Registering Authority as the owner of the vehicle, he would not stand absolved of his liability as owner. Thus in lines of these judgments, the Apex Court held that the policy of insurance in this case was apparently a comprehensive policy of Insurancewhich covered third party risk as well. The Insurer could not have repudiated only one part of the contract of insurance to reimburse the owner for losses, when it could not have evaded its liability to third parties under the same contract of Insurance in case of death, injury, loss or damage by reason of an accident.

With regard to the observation made by the State Commission regarding delay in lodging of FIR, by referring to the case of ***Om Prakash vs. Reliance General Insurance and Another***[72]**,** held that in the case of a major accident of the kind as in this case, where the said truck had turned turtle and fallen into a river, slight delay if any, on the part of the traumatized driver to lodge an FIR, cannot defeat the legitimate claim of the Insured.

Finally, after making above observations and referring to judicial pronouncements , the Honb'le Court held as under :-

> "53. In our considered opinion, the National Commission erred in law in reversing the concurrent factual findings of the District Forum and the National Commission ignoring vital admitted facts as stated above, including registration of the said truck being in the name of the Appellant, even as on the date of the accident, over three years after the alleged transfer, payment by the Appellant of the premium for the Insurance Policy, issuance of Insurance Policy in the name of the Appellant, permit in the name of the Appellant even after three years and seven months, absence of 'No Objection' from the financier bank etc. and also overlooking the definition of owner in Section 2(30) of the Motor Vehicles Act, as also other relevant provisions of the Motor Vehicles Act and the Rules framed thereunder, including in particular the transferability of a policy of insurance under Section 157.
>
> 54. In view of the definition of 'owner' in Section 2(30) of the Motor Vehicles Act, the Appellant remained the owner of 36 the said truck on the date of the accident and the Insurer
>
> could not have avoided its liability for the losses suffered by the owner on the ground of transfer of ownership to Mohammad Iliyas Ansari."

The impugned order of the National Commission under appeal was set aside and the order of the District Forum restored.

[70] (2011) 2 SCC 240
[71] (2018) 3 SCC 1
[72] (2017) 1 SCC 724

19. Ficus Pax Private Limited vs. Union of India (Writ Petition No. 10983/2020)

Decided on : -12.06.2020

Bench:- 1. Hon'ble Mr. Justice Ashok Bhushan
2. Hon'ble Mr.Sanjay Kishan Kaul
3. Hon'ble Mr. Justice M.R.Shah

(No obligation on the employer to make payment of wages of their workers for the period their establishments are under closure during the lockdown)

Facts

All these writ petitions except one(i.e. W.P.(civil) Diary No.10981/2020) have been filed by different employers, employers' associations questioning the orders issued under Disaster Management Act, 2005 and other consequential orders issued by different States where directions have been issued that all the employers be it in the industries or in the shops, commercial establishment, shall make payment of wages of their workers, at their work place, on the due date, without any deduction, for the period their establishments are under closure during the lockdown.

In the writ petitions apart from challenging the D.O. dated 20.03.2020 issued by the Secretary, Government of India, Ministry of Labour and Employment, order dated 29.03.2020 issued by Government of India, Ministry of Home affairs, in exercise of powers under Section 10(2)(l) of Disaster Management Act, 2005, the vires of Section 10(2)(l) of Disaster Management Act, 2005, has also been questioned, in event, Section 10(2)(l) is interpreting as conferring power to Central Government to direct the private employers to make full payment of wages to the employees during the period of lockdown. In few of the writ petitions, directions have also been sought to subsidise 70 to 80 percent of the wages for the lockdown period by utilising funds collected by Employee State Insurance Corporation or the PM Cares Fund or through any other Government funds/schemes.

In W.P.(Civil) D.No.10983/2020, Ficus Pax Limited Private Limited and others versus Union of India and others, the Union of India had filed a common counter affidavit and prayed that the counter affidavit be adopted in other writ petitions referred to in paragraph 4 of the counter affidavit. W.P.(Civil) Diary No.10983/2020 is being treated as leading writ petition. Various interventions applications have also been filed in the leading writ petition. The intervention applications filed in the leading writ petition are allowed.

The petitioner in W.P.(C)Diary No.10983 of 2020 is a company incorporated under the Companies Act and is engaged in the business of packaging with eleven factories spread across seven states. The

petitioner is registered as Medium Industry (manufacturing) under Micro, Small, Medium Enterprises Development Act, 2006. The petitioner company before the lockdown employed 176 permanent workers and 939 contract workers across all its factories, warehouses and offices. The petitioner's case is that after the lockdown period although petitioner being in a supply chain of several essential items such as pharmaceuticals, food products has been permitted to operate but its business has been reduced to the level of near 5-6 percent. The petitioner challenges the order dated 29.03.2020 and the D.O. dated 20.03.2020 as being violative of Article 14, Article 19(1)(g) of the Constitution of India. The petitioner's case is that notifications are arbitrary, illegal, irrational and unreasonable and contrary to the provisions of law including Article 14, Article 19(1)(g). Notifications are unreasonable and arbitrary interference with the rights of petitioner Employers under Article 19(1)(g).The Home Secretary, Ministry of Home Affairs, Government of India, cannot invoke Section 10(2)(l) or any other provisions of Disaster Management Act, 2005, to impose financial obligations on the private sector such as payment of wages. The Central Government has the power to allocate funds for emergency response, relief, rehabilitation, mitigation of disasters under Disaster Management Act. The ultimate onus for any compensation towards workers shall ultimately be of Government and the said liability cannot be shifted upon the employers in the Private establishment. The impugned notifications have the effect of completely negating the statutory provisions under the Industrial Disputes Act, 1947. The respondent should not compel the employers to pay the wages for lockdown period but instead should utilise the funds collected by Employees State Insurance Corporation (ESIC) to make periodical payment to workers.

Decision

The Apex Court gave it decision at ***Para 29, Para 33, Para34, Para37*** *of this Judgment which are as follows :*

> 29."We are of the view that all issues raised by the petitioners and the respondents have to be decided together and the piecemeal consideration is not warranted. We thus are of the view that Union of India may file a detail counter affidavit for which the leave they have already prayed for in the common counter affidavit, within a period of four weeks. Rejoinder to which to be filed within a period of one week and all the matter to be listed again in last week of July, 2020."
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> 33."It cannot be disputed that the lockdown measures enforced by the Government of India under the Disaster Management Act, 2005, had equally adverse effect on the employers as well as on employees. Various Industries, establishments were not allowed to function during the said period and those allowed to function also could not function to their capacity. There can be no denial that lockdown measures which were

enforced by the Government of India had serious consequences both on employers and employees. The period of Unlock having begun from 01.06.2020 and even prior to that some of the industries were permitted to function by the Government of India by different guidelines, most of the industries and establishments have re-opened or are re-opening, require the full workforce."

34. "As noted above, all industries/establishments are of different nature and of different capacity, including financial capacity. Some of the industries and establishments may bear the financial burden of payment of wages or substantial wages during the lockdown period to its workers and employees. Some of them may not be able to bear the entire burden. A balance has to be struck between these two competitive claims. The workers and employees although were ready to work but due to closure of industries could not work and suffered. For smooth running of industries with the participation of the workforce, it is essential that a via media be found out. The obligatory orders having been issued on 29.03.2020 which has been withdrawn w.e.f. 18.05.2020, in between there has been only 50 days during which period, the statutory obligation was imposed. Thus, the wages of workers and employees which were required to be paid as per the order dated 29.03.2020 and other consequential notification was during these 50 days."

37. "We thus direct following interim measures which can be availed by all the private establishment, industries, factories and workers Trade Unions/ Employees Associations etc. which may be facilitated by the State Authorities: -

i) The private establishment, industries, employers who are willing to enter into negotiation and settlement with the workers/employees regarding payment of wages for 50 days or for any other period as applicable in any particular State during which their industrial establishment was closed down due to lockdown, may initiate a process of negotiation with their employees organization and enter into a settlement with them and if they are unable to settle by themselves submit a request to concerned labour authorities who are entrusted with the obligation under the different statute to conciliate the dispute between the parties who on receiving such request, may call the concerned Employees Trade Union/workers Association/ workers to appear on a date for negotiation, conciliation and settlement. In event a settlement is arrived at, that may be acted upon by the employers and workers irrespective of the order dated 29.03.2020 issued by the Government of India, Ministry of Home Affairs.

ii) Those employers' establishments, industries, factories which were working during the lockdown period although not to their capacity can also take steps as indicated in direction No.(i).

iii) The private establishments, industries, factories shall permit the workers/employees to work in their establishment who are willing to work which may

be without prejudice to rights of the workers/employees regarding unpaid wages of above 50 days. The private establishments, factories who proceed to take steps as per directions (i) and (ii) shall publicise and communicate about their such steps to workers and employees for their response/participation. The settlement, if any, as indicated above shall be without prejudice to the rights of employers and employees which is pending adjudication in these writ petitions.

iv) The Central Government, all the States/UTs through their Ministry of Labour shall circulate and publicise this order for the benefit of all private establishment, employers, factories and workers/employees."

Observation

Acknowledging that Union of India had not replied to the grounds assailing the MHA Circular, the Court granted four weeks' time to Union of India to file a detailed counter affidavit, to reply to the various grounds assailing the MHA Circular. While the legality of the MHA Circular and underlying provisions will be next heard in the last week of July, the interim relief (preventing coercive action against the employers) was continued in all matters. [73].

The Court also acknowledged that the lockdown measures had equally adverse effects and serious consequences on employers and employees, and that all industries are of different nature and capacity (including financial capacity) and that not all employers would be able to bear the burden of wages without going bankrupt. On the other hand, employees were ready and willing to work, but unable to do so due to the lockdown measures, and should not be unduly punished. It was therefore deemed necessary to strike a balance between these competing claims, and find a medium for settling the disputes in respect of the Lis Period.[74]

Having considered the submissions, the Apex Court clarified that the dispute relates only to the intervening period between the MHA Circular and Lockdown 4.0 Guidelines – a period of 50 days ("Lis Period"). Along with the need to decide whether any obligation was created during the Lis Period, the petitioners' contention that any alleged power to impose financial obligations should be declared ultra vires to Articles 14 and 19(1)(g) made it necessary to adjudicate on the legality of the MHA Circular and the underlying provisions.[75]

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[73]Para 29:We are of the view that all issues raised by the petitioners and the respondents have to be decided together and the piecemeal consideration is not warranted. We thus are of the view that Union of India may file a detail counter affidavit for which the leave they have already prayed for in the common counter affidavit, within a period of four weeks. Rejoinder to which to be filed within a period of one week and all the matter to be listed again in last week of July,2020.

[74]Para 33:It cannot be disputed that the lockdown measures enforced by the Government of India under the Disaster Management Act, 2005, had equally adverse effect on the employers as well as on employees. Various Industries, establishments were not allowed to function during the said period and those allowed to function also could not function to their capacity. There can be no denial that lockdown measures which were enforced by the Government of India had serious consequences both on employers and employees. The period of Unlock having begun from 01.06.2020 and even prior to that some of the industries were permitted to function by the Government of India by different guidelines, most of the industries and establishments have re-opened or are re-opening, require the full workforce.

[75]Para34:As noted above, all industries/establishments are of different nature and of different capacity, including financial capacity. Some of the industries and establishments may bear the financial burden of payment of wages or substantial wages during the lockdown period to its workers and employees. Some of them may not be able to bear the entire burden. A balance has to be struck between these two competitive claims. The workers and

The Apex Court directed interim measures for private establishments and employees' unions, to the effect that the employers and employees may negotiate and settle the wages accrued during Lis Period of 50 days, either in the case of businesses that were closed or operating at limited capacity during lockdown. It was further directed that any such settlements shall be without prejudice to the rights of employers and employees pending adjudication in the writ petitions before the Apex Court. The Court also directed that workers should be allowed to continue work without prejudice to the dispute over wages accrued during the Lis Period.[76]

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employees although were ready to work but due to closure of industries could not work and suffered. For smooth running of industries with the participation of the workforce, it is essential that a via media be found out. The obligatory orders having been issued on 29.03.2020 which has been withdrawn w.e.f. 18.05.2020, in between there has been only 50 days during which period, the statutory obligation was imposed. Thus, the wages of workers and employees which were required to be paid as per the order dated 29.03.2020 and other consequential notification was during these 50 days.

[76]Para 37:We thus direct following interim measures which can be availed by all the private establishment, industries, factories and workers Trade Unions/ Employees Associations etc. which may be facilitated by the State Authorities: -

i) The private establishment, industries, employers who are willing to enter into negotiation and settlement with the workers/employees regarding payment of wages for 50 days or for any other period as applicable in any particular State during which their industrial establishment was closed down due to lockdown, may initiate a process of negotiation with their employees organization and enter into a settlement with them and if they are unable to settle by themselves submit a request to concerned labour authorities who are entrusted with the obligation under the different statute to conciliate the dispute between the parties who on receiving such request, may call the concerned Employees Trade Union/workers Association/ workers to appear on a date for negotiation, conciliation and settlement. In event a settlement is arrived at, that may be acted upon by the employers and workers irrespective of the order dated 29.03.2020 issued by the Government of India, Ministry of Home Affairs.

ii) Those employers' establishments, industries, factories which were working during the lockdown period although not to their capacity can also take steps as indicated in direction No.(i).

iii) The private establishments, industries, factories shall permit the workers/employees to work in their establishment who are willing to work which may be without prejudice to rights of the workers/employees regarding unpaid wages of above 50 days. The private establishments, factories who proceed to take steps as per directions (i) and (ii) shall publicise and communicate about their such steps to workers and employees for their response/participation. The settlement, if any, as indicated above shall be without prejudice to the rights of employers and employees which is pending adjudication in these writ petitions.

iv) The Central Government, all the States/UTs through their Ministry of Labour shall circulate and publicise this order for the benefit of all private establishment, employers, factories and workers/employees.

20. ***State Smt. Sangita Arya &Ors. vs.Oriental Insurance Co. Ltd. &Ors. (Civil Appeal No.2612/2020)***

Decided on : -16.06.2020

Bench:- 1. Hon'ble Ms. Justice R. Banumathi
2. Hon'ble Ms. Justice Indu Malhotra
3. Hon'ble Mr. Justice Aniruddha Bose

(It is appropriate for the Court to enhance the compensation by exercising its jurisdiction under Article 142 of the Constitution of India in order to do complete justice between the parties.)

Facts

The present civil appeal has been filed by the Claimants/Dependents of one Harish Singh Arya, who died at the age of 35 years in a motor vehicle accident on 18.06.2007. On 18.06.2007, the deceased Harish Singh Arya had taken his uncle Govind Lal Arya, an Enforcement Officer for Passenger Tax, Champawat for inspection in his taxi. The taxi had stopped on the side of the road at Village Chandini near Tanakpur – Khatema Road, Uttarakhand. The deceased had gone to answer nature's call on the side of the road when at about 2:30 p.m., one Tata Sumo bearing No. UP- 02D-5208, being driven at a high speed from the wrong side of the road, hit the deceased, and seriously injured him. The Enforcement Team was able to stop the offending vehicle, however the driver of the vehicle fled from the spot. While Harish Singh Arya was being taken to Bareilly for hospitalization, he succumbed to his injuries. The F.I.R. of the accident was lodged by Mr. Govind Lal Arya, the uncle of the deceased, at P.S. Banbasa.

The Claimants filed a Claim Petition before the Motor Accident Claims Tribunal, Haldwani – Court of First Fast Track, Additional District Judge, Haldwani, District Nainital (MACT) being Compensation Claim No. 158 of 2007 for compensation on behalf of five dependents i.e. the widow, two minor daughters, and the parents of the deceased. The Claimants submitted that the deceased owned two taxis from which he earned approximately Rs. 1,00,000 p.a. after deduction of all expenses.

The road accident was proved by the oral testimony of the eye-witness Shri Govind Lal Arya (PW-2), who was accompanying the deceased, and had lodged the F.I.R With respect to payment of compensation, the Claimants submitted that the deceased owned two taxis, which

generated an income of Rs. 1,00,000 p.a. The R.T.O., Motor Vehicles Department, Haldwani produced certificates of both the vehicles bearing No. UP-02D-5111 and UP-04D-0111

before the MACT, which showed that the vehicles were purchased by the deceased Harish Singh Arya, and were registered in his name. The Claimants filed four Income Tax Returns

(ITRs) of the deceased for the years 2002-03, 2003-04, 2004-05, and 2006-07. The ITR for the year 2006-07 was Rs. 98,500 p.a. A photocopy of the ITR bearing the stamp of receipt from the

Income Tax Department, was placed on record.

The MACT vide Award dated 22.12.2009 held that on the date of the accident, the deceased was 35 years of age, and his income was Rs. 1,00,000 p.a. The deceased had left behind five dependents i.e. his wife, parents and two minor daughters. The MACT deducted 1/4th of his income towards personal expenses, and adopted the multiplier of 16. Accordingly, the loss of dependency was computed at Rs. 12,20,000. The MACT further awarded Rs. 20,000 to the widow towards loss of consortium, Rs. 10,000 to the minor daughters towards loss of love and affection, and Rs. 5,000 towards funeral expenses. The total compensation awarded to the Claimants worked out to Rs. 12,55,000 with Interest @6% p.a.

The Respondent No. 1 – Insurance Company was held liable for payment of compensation to the Claimants. Aggrieved by the aforesaid Award, the Insurance Company filed Appeal from Order No. 117 of 2010 before the High Court of Uttarakhand at Nainital.

The learned Single Judge of the High Court vide the impugned judgment dated 22.07.2016 erroneously assumed that the deceased was a Government servant, and observed that he was running a parallel business by plying taxis. The High Court further held that the ITRs for the years2002-03, 2003-04 and 2004-05 showed that the average income of the deceased for these three years was Rs. 52,635 p.a. The ITR for the year 2006-07 revealed an income of Rs. 98,500 p.a., which was almost double the income of the preceding three years. The High Court held that the ITR for the year 2006-07 could not be taken into consideration.

The High Court took the average of the ITRs for years 2002-03, 2003-04 and 2004-05, for

determining the income of the deceased at Rs. 52,635 p.a. The Court deducted 1/3rd of the income towards personal expenses, and applied the multiplier of 16. The loss of dependency was assessed at Rs. 5,61,440. The consortium payable to the widow was reduced by the

High Court from Rs. 20,000 (as awarded by the MACT) to Rs. 10,000; the amount awarded towards loss of love and affection to the minor daughters was reduced from Rs. 10,000 to Rs. 5,000. However, the amount of Rs. 5,000 awarded by the MACT towards funeral expenses was

maintained. The total compensation awarded to the Claimants was reduced from Rs. 12,55,000 to Rs. 5,81,440. Aggrieved by the impugned judgment dated 22.07.2016 passed by the High Court, the Claimants have filed the present civil appeal.

Decision and Observations

Decision

The Apex Court gave it decision at ***Para 7,Para 8*** and ***Para 9***which are as :

7. "We have heard the learned counsel for the parties and perused the material on record. We find that the impugned order passed by the High Court bristles with serious factual inaccuracies :– first, the learned Single Judge wrongly assumed that the deceased Harish Singh Arya was a Government employee. This has nowhere been averred by the Claimants in any of their pleadings. The entire basis of the judgment is hence misconceived. On the basis of the aforesaid erroneous assumption, the High Court has erroneously observed that the deceased was running a parallel business by plying two taxis, and held that the income derived from the same could not be taken into consideration for assessing the compensation. These findings being based on a completely erroneous assumption, are liable to be set aside. Second, the High Court determined the income of the deceased by taking the average of the ITRs filed for the years 200203 at Rs. 54,000 p.a., 200304 at Rs. 52,405 p.a., and 200405 at Rs. 51,500 p.a. The learned Single Judge disregarded the ITR for the year 200607, wherein the income of the deceased was shown as Rs. 98,500 p.a. on the ground that it was allegedly filed almost one year after the death of the deceased. This finding also is factually incorrect. A photocopy of the original ITR for the year 200607 was filed before this Court, bearing the rubber stamp of the Income Tax Department. It shows that the date of filing the ITR was 20.04.2007, which is prior to the death of the deceased which occurred on 18.06.2007. Hence, the High Court was not justified in disregarding the ITR for the year 200607 while assessing the income of the deceased. The Appellants have also placed on record a copy of the ITR for the year 200506, which bears the rubber stamp of the Income Tax Department, and reveals the income of the deceased at Rs. 98,100 p.a. during the previous assessment year. As a consequence, the impugned judgment dated 22.07.2016 passed by the High Court is hereby set aside.

8. "On a perusal of the documentary evidence on record i.e. the ITRs for the assessment years 200506 and 200607, filed prior to the death of the deceased, which reflect the income of approximately Rs. 1,00,000 p.a. (as assessed by the MACT in its Award dated 22.12.2009), we make this the basis for computing the compensation payable to the Claimants. We find that the Courts below have not awarded any amount towards future prospects, as mandated by the judgment of the Constitution Bench in National Insurance Company Limited v. Pranay Sethi& Ors.1 Accordingly, we award future prospects @40% of the income of the deceased. Given the fact that the deceased left behind five dependents, the deduction towards his personal expenses would be 1/4th as per the judgment of this Court in Sarla Verma &Ors. v. Delhi Transport Corporation & Anr.2

> The multiplier adopted by the MACT and the High Court at 16 is appropriate."
>
> 9. "Even though the Claimants/Appellants herein did not file an Appeal against the Award dated 22.12.2009 passed by the MACT before the High Court, we deem it appropriate to enhance the compensation by exercising our jurisdiction under Article 142 of the Constitution of India in order to do complete justice between the parties"

Observation

The Apex Court found that the impugned order passed by the High Court bristles with serious factual inaccuracies :– First, the learned Single Judge wrongly assumed that the deceased Harish Singh Arya was a Government employee and on the basis of this erroneous assumption, the High Court has erroneously observed that the deceased was running a parallel business by plying two taxis, and held that the income derived from the same could not be taken into consideration for assessing the compensation. The Apex Court held that these findings being based on a completely erroneous assumption, are liable to be set aside. Second, the High Court determined the income of the deceased by taking the average of the ITRs filed for the years 2002-03 at Rs. 54,000 p.a., 2003-04 at Rs. 52,405 p.a., and 2004-05 at Rs. 51,500 p.a. The learned Single Judge disregarded the ITR for the year 2006-07, wherein the income of the deceased was shown as Rs. 98,500 p.a. on the ground that it was allegedly filed almost one year after the death of the deceased. This finding also is factually incorrect. A photocopy of the original ITR for the year 2006-07 was filed before this Court, bearing the rubber stamp of the Income Tax Department. It shows that the date of filing the ITR was 20.04.2007, which is prior to the death of the deceased which occurred on 18.06.2007. Hence, the High Court was not justified in disregarding the ITR for the year 2006-07 while assessing the income of the deceased. The Appellants have also placed on record a copy of the ITR for the year 2005-06, which bears the rubber stamp of the Income Tax Department, and reveals the income of the deceased at Rs. 98,100 p.a. during the previous assessment year.

As a consequence, the impugned judgment dated 22.07.2016 passed by the High Court is hereby set aside.On a perusal of the documentary evidence on record i.e. the ITRs for the assessment years 2005-06 and 2006-07, filed prior to the death of the deceased, which reflect the income of approximately Rs. 1,00,000 p.a. (as assessed by the MACT in its Award dated 22.12.2009), Apex Court made this the

basis for computing the compensation payable to the Claimants.

The Apex court referred to National Insurance Company Limited v. Pranay Sethi&Ors[77] for awarding the amount towards future prospects @40% of the income of the deceased.

[77](2017) 16 SCC 680.

The Apex court observed that given the fact that the deceased left behind fivedependents, the deduction towards his personal expenses would be 1/4th.On this point court mentioned SarlaVerma&Ors. v. Delhi Transport Corporation &Anr.[78]The multiplier adopted by the MACT and the High Court at 16 is appropriate.

With respect to payment of compensation under the conventional heads, the Apex Court directed that same be awarded in consonance with the judgment in Pranay Sethi (supra).

Even though the Claimants/Appellants herein did not file an Appeal against the Award dated 22.12.2009 passed by the MACT before the High Court, Apex Court deemed it appropriate to enhance the compensation by exercising its jurisdiction under Article 142 of the Constitution of India in order to do complete justice between the parties. The Respondent – Insurance Company is directed to pay the compensation awarded to the Appellants within a period of twelve weeks' from the date of this judgment, after adjusting any amount which may have been paid. The amount payable to the Appellants shall carry Interest @ 7.5% p.a. from the date of filing the claim petition till the date of realization. Hence the Apex Court allowed the civil appeal in the aforesaid terms.

[78]2009) 6 SCC 121.

21. *Rajasthan State Warehousing Corporation vs. Star Agriwarehousing and Collateral management Limited. (Civil Appeal Nos. 2651-2656/2020*

Decided on: 24.06.2020

Bench:-1. Hon'ble Mr. Justice Hemant Gupta
2.Hon'ble Mr. Justice Aniruddha Bose

(In exercise of jurisdiction under Article 136 Court can interfere with interim order if Division Bench has passed order of stay without recording any reason affecting revenue of State.)

Facts

The present appeals are directed against the interim order passed by the High Court of Judicature for Rajasthan on 29th May, 2020 and 10th June, 2020 whereby in an intra-court appeal, the High Court passed an order of status quo with a further direction that other formalities may proceed but the contract shall not be signed with the leave of the Court. The Rajasthan State Warehousing Corporation Ltd. is in appeal aggrieved against the said interim order.

Decision

The Apex Court gave its decision at ***Para 8, Para 10, Para 11, Para 12, Para13***

> 8."…….Though this Court does not generally interfere in an interim order passed in an appeal under Article 136 of the Constitution but when after the dismissal of the writ petition, the Division Bench has passed an order of stay without recording any reason affecting revenue of the State, this Court cannot not permit the public interest to suffer……."
>
> 10. "Since the matters are pending for final determination before the High Court, we refrain from making any comment upon the merits of the arguments raised by the parties. The fact remains that once the bidding process is complete, the appellant is entitled to take work from the successful bidders rather than taking work from the short-term tenderers who were granted contract in exigency of the situation. In the matters of contract, the grant of interim order to restrain the successful bidders from executing the contract is not in public interest, more so, when the tender is for storage of food articles in the warehouses of the State Government undertaking."
> 11. "Therefore, we find that the grant of interim order which impinges upon the grant of contract by the appellant is not in public interest

that too without recording any reasons when the Writ Petition was dismissed by the Learned Single Judge."

12. "Consequently, we set aside the orders dated 29th May, 2020 and 10th June, 2020 granting status quo while allowing the present appeals."

13. "However, the grant of contract shall be subject to the orders which may be passed by the High Court in the intra-court appeals pending before it."

Observation

The Apex Court held that although this Court does not generally interfere in an interim order passed in an appeal under Article 136 of the Constitution but when after the dismissal of the writ petition, the Division Bench has passed an order of stay without recording any reason affecting revenue of the State, this Court cannot not permit the public interest to suffer. The Apex Court ***mentioned para 7*** of ***Nitco Tiles Ltd. v. Gujarat Ceramic Floor Tiles Mfg. Assn.***[79]wherein the Apex Court held as under:-

"7. We are also aware of the well-established principle that this Court normally does not interfere either with a court's decision not to relegate a writ petitioner to an alternative remedy or with the grant of interim relief. It is unnecessary to cite any authority in support of this as the proposition cannot admit of any controversy. However, having regard to the singular lack of any acceptable reason in the impugned order we have no hesitation in interfering with this particular exercise of discretion by the High Court and set aside the same."

For the question of grant of interim stay in contractual matters Apex Court referred para 13,18 and 25 of ***Raunaq International Ltd. v. I.V.R. Construction Ltd. &Ors***[80]wherein the Apex Court had examined the question of grant of interim stay in contractual matters. The Apex Court in this case held as under:

"13. Hence before entertaining a writ petition and passing any interim orders in such petitions, the court must carefully weigh conflicting public interests. Only when it comes to a conclusion that there is an overwhelming public interest in entertaining the petition, the court should intervene."

"18. The same considerations must weigh with the court when interim orders are passed in such petitions. The party at whose instance interim orders are obtained has to be made accountable for the consequences of the interim order. The interim order could delay the project, jettison finely worked financial arrangements and escalate costs. Hence the petitioner asking for interim orders in appropriate cases should be asked to provide security for any increase in cost as a result of such delay

[79] (2005) 12 SCC 454
[80] (1999) 1 SCC 492

or any damages suffered by the opposite party in consequence of an interim order. Otherwise public detriment may outweigh public benefit in granting such interim orders. Stay order or injunction order, if issued, must be moulded to provide for restitution."

"25. Therefore, when such a stay order is obtained at the instance of a private party or even at the instance of a body litigating in public interest, any interim order which stops the project from proceeding further must provide for the reimbursement of costs to the public in case ultimately the litigation started by such an individual or body fails. The public must be compensated both for the delay in implementation of the project and the cost escalation resulting from such delay. Unless an adequate provision is made for this in the interim order, the interim order may prove counterproductive."

Since the matters are pending for final determination before the High Court, Apex Court refrained from making any comment upon the merits of the arguments raised by the parties. The fact remains that oncethe bidding process is complete, the appellant is entitled to take work from the successful bidders rather than taking work from the short-term tenderers who were granted contract in exigency of the situation. In the matters of contract, the grant of interim order to restrain the successful bidders from executing the contract is not in public interest, more so, when the tender is for storage of food articles in the warehouses of the State Government undertaking. Therefore, Apex Court found that the grant of interim order which impinges upon the grant of contract by the appellant is not in public interest that too without recording any reasons when the Writ Petition was dismissed by the Learned Single Judge.

Consequently, Apex Court has set aside the orders dated 29th May, 2020 and 10th June, 2020 granting status quo while allowing the present appeals. However, the grant of contract shall be subject to the orders which may be passed by the High Court in the intra-court appeals pending before it.

22. *Shamita Singha &Anr. v. Rashmi Ahluwalia*

Decided On: 18.06.2020

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

(The case deals with the question as to when a partition suit can be transferred. A distinction between sec 25 and sec 10 of the Civil Procedure code was pointed out by the Apex Court while dealing with matter. The Apex Court also pointed out why sec 10 is applicable in the present case. Also facts pertaining to the similarity of the situation, the cause of action and set of evidences involved should be taken under consideration when dealing with the question. If orders in one suit effects the outcome of the other, the suites can be tried together hence can be transferred)

FACTS:

The petitioners, Shamita Singha And Masoom Singha are two daughters of Late Pawan Kumar Singha (deceased) from his first marriage, which was later on dissolved and seek to transfer a suit for partition and other related relief instituted in Delhi High Court to Bombay High Court and the respondents are the second wife and widow of late Pawan Kumar Singha, Rashmi Ahluwalia and Ms. Sanjana who is daughter of Rashmi Ahluwalia from her first marriage and it was pleaded that after her marriage with the deceased, Sanajna was accepted or adopted by the deceased as her own daughter.

Grant of letters of Administration was applied by the first petitioner i.e. Shamita Singha, for the estate of the deceased as per his will dated 15th January 2014. A petition to that effect was filed within the testamentary and intestate jurisdiction of the Bombay High Court on 22nd April 2016 and has been registered as "T. Petition No. 821 of 2016". Both the respondent have appeared in the testamentary petition and has questioned the legality of the will and claimed that the will is forged.

The respondent i.e. Rashmi Ahluwalia instituted a suit in Delhi High Court on 18th September 2014 and in CS (OS) No. 2888 of 2014 she claimed partition of the estate of the deceased.

Decision & Observation:

TheApex Code relied upon ***Chitivalasa Jute Mills v. Jaypee Rewa Cement***[81] where the apex Court has laid down guidelines[82] to be followed while dealing with the question of transfer of suit under sec 25

[81] (2004) 3 SCC 85

[82] The Code of Civil Procedure does not specifically speak of consolidation of suits but the same can be done under the inherent powers of the Court flowing from Section 151 of the CPC. Unless specifically prohibited, the Civil Court has inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. Consolidation of suits is ordered for meeting the ends of justice as it saves the parties from multiplicity of proceedings, delay and expenses. Complete or even substantial and sufficient similarity of the issues arising for decision in two suits enables the two suits being consolidated for trial and decision. The parties are relieved of the need of adducing

of the Civil Procedure Code, 1908[83]. In that case the parties involved in both the suit were same, the same set of evidences was needed in both the suites and the cause of action in one suit formed the ground of defence in the other suit therefore in the above case the Apex Court held that the two suits need not to be tried separately and was of the view that the probate proceeding will impact the partition suit as evidences in both the proceeding are similar.

The Apex Court observed that if the partition suit proceeds separately and the plaintiff in that case succeeds and the plaintiff in testamentary proceeding succeeds it would lead to inconsistency of view of both the High Court's therefore relying on ***Balbir Singh Wasu vs. Lakhbir Singh And Others***[84] , ***Nirmala Devi v. Arun Kumar Gupta***[85] where the Apex Court was of the view that where similar situation to this case arises both the proceeding should be clubbed together.

Moreover the Apex Court was of the opinion that the view taken by the Delhi High Court in the case of ***Praveer Chandra v. Aprajita& Others***[86] cannot be relied upon by the respondent because the views taken on the said case was based on sec 10 of the Civil Procedure code, 1908[87], whereby the Apex Court decided that the probate proceeding and partition suit can proceed simultaneously. Whereas the

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the same or similar documentary and oral evidence twice over in the two suits at two different trials. The evidence having been recorded, common arguments need be addressed followed by one common judgment. However, as the suits are two, the Court may, based on the common judgment, draw two different decrees or one common decree to be placed on the record of the two suits

[83] 25. Power of Supreme Court to transfer suits, etc :
(1) On the application of a party, and after notice to the parties, and after hearing such of them as desire to be heard, the Supreme Court may, at any stage, if satisfied that an order under this section is expedient for the ends of justice, direct that any suit, appeal or other proceeding be transferred from a High Court or other Civil Court in one State to a High Court or other Civil Court in any other State
(2) Every application under this section shall be made by a motion which shall be supported by an affidavit.
(3) The Court to which such suit, appeal or other proceeding is transferred shall, subject to any special directions in the order of transfer, either retry it or proceed from the stage at which it was transferred to it.
(4) In dismissing any application under this section, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum, not exceeding two thousand rupees, as it considers appropriate in the circumstances of the case.
(5) The law applicable to any suit, appeal or other proceeding transferred under this section shall be the law which the Court in which the suit, appeal or other proceeding was originally instituted ought to have applied to such suit, appeal or proceeding.

[84] (2005) 12 SCC 503

[85] (2005) 12 SCC 505

[86]2019 SCC Online Delhi 10820

[87]No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in [India] having jurisdiction to grant the relief claimed, or in any Court beyond the limits of [India] established or continued by [the Central Government] and having like jurisdiction, or before [the Supreme Court].

present petition is based on sec 25 of the Civil Procedure Code which is decided to serve the ends of justice and the principle of "the first to past the post" cannot be applied in cases of this kind.

Therefore reverting to the facts of the case the Apex Court, decided that the case has been made out to allow the transfer petition and accordingly directed that "the suit filed in the Delhi High Court by Rashmi Ahluwalia registered as C.S.(O.S.) No.2888 of 2014 be transferred from the said High Court to the Bombay High Court".

23. JinoferKawasjiBhujwala v. State of Gujarat

Decided on: 19.06.2020

Bench:-Hon'ble Mr. Justice Ashok Bhushan
Hon'ble Mr. Justice M.R Shah
Hon'ble Mr. Justice V. Ramasubramanian

(The accused bail got rejected several times hence this appeal. While deciding an appeal regarding bail the Apex Court looks into several aspects. Date of filing of charge sheet, commencement of trial, orders passed by other authorised body are some of the aspect dealt in this particular case.)

Facts

AatashNorcontrol Limited ("ANL") was offer the letter of intent on 26.02.2007 for the construction and development of Vessels Traffic and Port Management System ("VTPMS") in the Gulf of Khambhat, on Build Own Operate and Transfer (BOOT) basis after multiple proposal was received from interested parties pursuant to an invitation to offer float in the month of November 2006. And a Concession Agreement was entered into between ANL, Gujarat Maritime Board and the Gujarat Government on 30.09.2007.

According to the Concession Agreement, ANL are ought to install Key Radar Stations at 7 places in the Gulf of Cambay and repeater Radar Stations at 2 places, with the master control being set up at Dumas for monitoring the vessels entering the Gulf of Khambhat and ensuring Coastal and National Security.

A completion certificate was issued to VTPMS for the Gulf of Khambhat after which it became operational in August 2010. In the year 2018 a dispute aroused as to the cost incurred by ANL therefore an expert committee was appointed under Clause 18 of the Concession Agreement and the report was submitted indicating a particular amount to be the capital cost. But according to the Gujarat Maritime Board ANL made an extra income of Rs. 134.38 crores during the financial years 2015-16 and 2017-18 as per the preliminary inspection report of the Principal Accountant General and said that the amount should be paid by ANL.

ANL moved the commercial court at Ahmedabad under section 9[88] of the Arbitration and Conciliation Act, 1996. The disputes were also referred to arbitration. An Arbitral Tribunal was constituted on

[88]Interim measures, etc. by Court.—A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court—
(i) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or
(ii) for an interim measure of protection in respect of any of the following matters, namely:—
(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

1st March 2019 and both the parties i.e. ANL and Gujarat Maritime Board moved application under section 17[89] of the Arbitration and Conciliation Act and on 7.8.2019, the Arbitral Tribunal passed orders by which it:

"(1) granting a stay of the termination notice

(2) Directing ANL to deposit the entire amount generated out of the VTPMS project in an escrow account and to file a monthly report regarding the details of deposits so made

(3) Permitting ANL to withdraw 25% of the gross amount so deposited, to meet the overheads and to run the project

(4) Permitting the State Police Personnel deputed at the project site to continue without any interference with the day to day functioning of the project except overseeing safety aspects

(5) Permitting the Maritime Board to depute a competent person to supervise and monitor the functioning of the project

(6) Directing ANL not to encumber or dispose of the plant and machinery and other valuable items and

(7) Directing 7 ANL to pay Rs. 16, 43, 44,227/- to the Maritime Board payable for the month of July, 2019."

On 01.05.2019, the Gujarat Maritime Board lodged a complaint with the CID Crime, Gandhi Nagar Zone, alleging that ANL was guilty of:

"(1) inflation of cost

(2) Non execution of certain works

(b) securing the amount in dispute in the arbitration;
(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;
(d) interim injunction or the appointment of a receiver;
(e) such other interim measure of protection as may appear to the court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

[89] Interim measures ordered by arbitral tribunal.—
(1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order a party to take any interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute.
(2) The arbitral tribunal may require a party to provide appropriate security in connection with a measure ordered under sub-section.

(3) Creation of shell companies and carrying out work through them

(4) Siphoning and round tripping of funds through those companies

(5) Not carrying out construction on the lands allotted for Master Control Room

(6) Raising of false bills and forged invoices

(7) Managing the issue of completion certificate through the then Superintending Engineer and Chief Nautical Officer of the board and

(8) Entering into a conspiracy with each other to exceed the expenditure of the project up to Rs. 100 crores and committing criminal breach of trust."

Therefore a FIR bearing no. II/5/2019 was registered on 26.6.2019 against eight named accused, for offences under sections 406, 409, 420, 465, 468, 471 and 120B of IPC and section 13(1)(d) of the Prevention of Corruption Act. The appellant, his son and daughter were cited as A-1, A-2 and A-3 respectively, as they are the Directors of the Company.

On 27th June 2019, the appellant and his son were arrested. After being in police custody under orders of court, the appellant was sent to judicial custody on 2nd July 2019. Ever since then, the appellant is in judicial custody. On 6th July 2019 the appellants bail application was rejected by the session's court and the appellant moved to High Court but on 6th August 2019 he withdrew the application with liberty to move a fresh application after the filing of the charge sheet. A charge sheet was filed against then appellant and others by the investigating officer on 21st September 2019 thereafter the appellant moved to session court with bail application which was rejected on 3rd October 2019. Thereafter the appellant moved High Court of Gujarat where the application was dismissed on 9th December 2019 which is the impugned order in this appeal. But the High Court gave liberty to the appellant to file a fresh application before the Trial Court if the trial could not commence within a period of six months. The period of six months has expired and the trial has not commenced yet.

Decision and Observation

The Apex Court pointed and quoted the impugned order dated 9th December 2019, which says:

> " In view of the aforesaid discussion, I am not inclined to exercise the discretion in favour of the present applicant. Application is, therefore, dismissed. However, liberty is reserved to the applicant to file fresh application before the concerned trial Court if the trial is not commenced within a period of six months".

And pointed out that the period of six month has expired and the appellant who is a 62 years old has already spent a close to a year in judicial custody. Period of nine month has passed from the date of filing of the charge sheet though the charges has not been framed and the trial has not started.

Moreover the Apex Court said that the contention of national security as raised by the respondent cannot be sustained, it based his view on two grounds, firstly the project has already become operational as of 1st August 2010 and the dispute started in 2018 and that too regarding financial matter and secondly the Arbitral Tribunal has granted interim measures for protection under sec 17 of the Arbitration and Conciliation Act, it has given a stay order on concession agreement and also it permitted the state police to be present at the project site and it also allowed Maritime Board to depute a competent person who is well versed with the project at the project site therefore protecting the economic interest and as well as security issues.

Therefore on the basis of the finding the Apex Court decided to allow the appeal and grant bail to the appellant.

24. *U.P. State Road Transport Corporation v. RajendriDevi &Ors [civil appeal no. 2526 of 2020*

Decided on: 8th June 2020

Bench:-1. Hon'ble Mr. Justice Rohinton Fali Nariman
2. Hon'ble Mr. Justice Navin Sinha
3. Hon'ble Mr. Justice B.R Gavai

(The "owner" is liable to pay the compensation to the family of the deceased in matter of rash and negligent driving. But the definition of "owner" in Motor Vehicle Act 1988 contrasts from that of the Motor Vehicle Act 1939. However the Motor Vehicle Act 1988 is aptly applied to the facts and circumstances of the present case because the case on which the decision of the High Court is given in the present case is an old one which revolve around the definition of the 1939 act which cannot be applied to the facts and circumstances of the present case.)

Facts

On 16.08.2001 a person who was in cycle was hit by a bus and died. The Motor Vehicle Claim Tribunal (MCAT) found this to be a case of rash and negligent driving by the driver who was hired by Uttar Pradesh State Road Transport Corporation under an agreement between the them and the owner of the bus. MCAT calculated the amount to be paid and awarded it but it was held that only the corporation had to pay the whole amount and not the insurance company. The decision was based on ***Rajasthan State Road Transport Corporation v. Kailash Nath Kothari***[90] case. In the High Court too ***kailash Nath Kothari***[91] case referred and followed and was held that the Corporation was vicariously liable and had to pay the whole amount which was calculated as a compensation to the victim family.

Decision and Observation

The Apex Court was of the view that the ***Kailash Nath Kothari***[92] case is different from the present case as for the judgements passed by High Court itself states that:

> "3. . . . The insurance company took the plea, in its reply to the claim petitions, that the bus at the time of the accident was under the control of the RSRTC, therefore, it was the liability of the RSRTC to pay compensation and the insurance company was not liable. It was further pleaded by the insurance company that the liability of the insurance company, in any event, was limited and its liability could not exceed Rs.75000/- in respect of all the claim petitions arising out of one accident. . . .

[90] (1997) 7 SCC 481

[91] Supra 10

[92] id

> 4. . . . Issue No. 2 was also decided in favour of the claim petitioners but it was held that in the light of the terms of the policy of insurance and relevant provisions of the Act, the liability of the insurance company was limited, in respect of the accident, to a total amount of Rs.75,000/- only."
>
> xxx xxxxxx
>
> "7. . . . Learned counsel appearing for the insurance company, did not question the finding on Issue No. 2 and submitted that the specified amount had since been paid by the insurance company. . . ."

And also the High Court relied upon the definition of "owner" as given in the Motor Vehicle Act 1939 held that:

> "17. The definition of owner under Section 2(19) of the Act is not exhaustive. It has, therefore, to be construed, in a wider sense, in the facts and circumstances of a given case. The expression owner must include, in a given case, the person who has the actual possession and control of the vehicle and under whose directions and commands the driver is obliged to operate the bus. To confine the meaning of "owner" to the registered owner only would in a case where the vehicle is in the actual possession and control of the hirer not be proper for the purpose of fastening of liability in case of an accident. The liability of the "owner" is vicarious for the tort committed by its employee during the course of his employment and it would be a question of fact in each case as to on whom can vicarious liability be fastened in the case of an accident. . . ."

Therefore, basing on the above finding the insurance company was liable to pay the compensation which was though limited to Rs. 75,000/- and nothing beyond the limited amount. The insurance company already paid this amount therefore placing the burden on the corporation

The Apex Court also relied on ***Uttar Pradesh State Corporation Transport Corporation v. Kulsum***[93] case where the Apex Court went on to contrast the definition between of "owner" under the Motor Vehicle Act 1939 and 1988 and also how ***Kailash***[94] case and ***Kulsum Case***[95]in different. The Apex court said that the ***Kailash case***[96] was based on the Motor Vehicle Act 1939 therefore reliance was

[93](2011) 8 SCC 142
[94] Supra 10
[95] Supra 12
[96] Supra 10

placed on sec 2(19)[97] which is drastically and distinctly different from the present definition of "owner" under sec 2(30)[98]. It stated that:

> "18. In our considered opinion, in the light of the drastic and distinct changes incorporated in the definition of "owner" in the old Act and the present Act, Kailash Nath's case [Rajasthan State Road Transport Corporation v. Kailash Nath Kothari (1997) 7 SCC 481] has no application to the facts of this case. We were unable to persuade ourselves with the specific question which arose in this and connected appeals as the question projected in these appeals was neither directly nor substantially in issue, in Kailash Nath's case [Rajasthan State Road Transport Corporation v. Kailash Nath Kothari (1997) 7 SCC 481]. Thus, reference to the same may not be of much help to us. Admittedly, in the said case, this Court was dealing with regard to earlier definition of "owner" as found in Section 2(19) of the old Act."

And the insurance company was held liable to pay the compensation stating that:

> "29. In the instant case, the driver was employed by Ajay Vishen, the owner of the bus but evidently through Clause 4.4 of the agreement, reproduced hereinabove, driver was supposed to drive the bus under the instructions of the conductor who was appointed by the Corporation. The said driver was also bound by all orders of the Corporation. Thus, it can safely be inferred that effective control and command of the bus was that of the appellant.
>
> 30. Thus, for all practical purposes, for the relevant period, the Corporation had become the owner of the vehicle for the specific period. If the Corporation had become the owner even for the specific period and the vehicle having been insured at the instance of original owner, it will be deemed that the vehicle was transferred along with the insurance policy in existence to the Corporation and thus the Insurance Company would not be able to escape its liability to pay the amount of compensation.
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> 31. The liability to pay compensation is based on a statutory provision. Compulsory insurance of the vehicle is meant for the benefit of the third parties. The liability of the owner to have compulsory insurance is only in regard to third party and not to the property. Once the vehicle is insured, the owner as well as any other person can use the vehicle with the consent of the owner. Section 146 of the Act does not provide that any person who uses the vehicle independently, a separate insurance policy should be taken. The purpose of compulsory insurance in the Act has been enacted with an object to advance social justice."

[97] 2(19) 'owner' means, where the person in possession of a motor vehicle is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase agreement, the person in possession of the vehicle under that agreement.

[98] 2(30) 'owner' means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement;

So, Apex Court found that Kulsum case can be applied to the facts of the present case therefore keeping the foresaid things in view the Apex Court allowed the appeal so the compensation should be paid by the insurance company only with interest in stated rates within three months.