

## BOOK REVIEWS

MULLA'S THE CODE OF CIVIL PROCEDURE (11th ed., abridged, 1982 by P.M. Bakshi). N.M. Tripathi Private Ltd., 164, Samaldas Gandhi Marg, Bombay-400 002. Pp. cx+960. Price Rs. 85.

AS AN author of precision and clarity D.F. Mulla ranks as one of the foremost among legal writers. The sections in his book on Hindu law used to be regarded authoritative like the sections of a statute long before the Hindu code was enacted in parts. On civil procedure, his chief merit lies in his clear grasp of the subject and the classification and analysis of the topics in the commentary on each section and rule. His commentary became classic for that reason and it is still unrivalled in that respect. But the most perfect structure, whether legislative or literary, has to withstand the forces of change. Law is growing constantly by legislation as also by judicial decisions. Revision of even a standard treatise becomes necessary to incorporate new problems and solutions to those problems.

Revisions of Mulla's the *Code of Civil Procedure* have been few and far between. Howsoever eminent the editor may be, he cannot regard the book as his own. He does not put himself into the work of revision with that zeal and sense of responsibility as the author of a new book would.

What is the nature of the book under review? The title calls it an "Abridged Edition" but in the preface the editor terms it as a "Student's Edition". He says that a book on civil procedure may be either a topical treatment or a commentary under the sections and the rules and states that this book is of the latter kind. The editor says that the comments are restricted to "the more obscure and controversial points in the texts." I do not think this is so. The commentary in this book is not selective in that manner. What has been done is simply selective exclusion and not selective writing. Nothing (or practically nothing) has been written for this edition as such. All that has been done is to take the regular edition of Mulla and omit from the commentary either the whole or parts of certain topics. Take, for instance, the commentary under section 11 (res judicata) which is most fundamental and important both from the points of view of theory as well as of practice. Mulla acutely classifies the conditions for the applicability of res judicata. Condition I is "Matter directly and substantially in issue". Then there is a sub-classification A—"Matters *actually* in issue". In the regular edition, there is a detailed consideration of "Suits for rent and other recurring liability" which are further sub-divided into topics A, B and

C. Now all this has been omitted from the abridged edition.

What is the true concept of abridgment or a student's requirement? I suppose the idea is to give the whole law but stated in simple and short terms. But to omit altogether some topics of law would not be a true abridgment. Just as the *Shorter Oxford Dictionary* gives everything (omitting mostly history) that the *Oxford English Dictionary* gives but in simpler and shorter terms, so also the abridgment should give the entire law but in a more simple manner. What can be left out are those decisions which do not advance the law and those which become needless if the point is covered by a Supreme Court decision. But this would mean a tremendous amount of work which only an author can do but the editor may not have been invited to do. This has the unfortunate result that the abridged edition does not deal with some topics at all, not even in an abridged manner. This would be an incomplete and not an abridged statement of the law. This should not happen particularly under the name of Mulla. If Mulla's very valuable heritage is to be kept abreast of the times, then the editor must be permitted to condense any statement of law by Mulla in an abridged edition without omitting any topic as such. Perhaps the editor regarded it as a student's edition and felt free to omit certain topics as students are not expected to read the entire law but only the more important parts of it. If that is so, the abridgment will have to be understood in that sense. Such omission of the whole or parts of certain topics has occurred throughout the commentary in addition to the shortening of the discussion on other topics by omitting illustrations and case law. Indeed, this has been the chief means of reducing the volume of the book. This is mechanical, not spiritual.

Even a more serious complaint is the almost total neglect of judicial decisions which have been given in the seventies and, of course, in the early part of the eighties even though the edition bears the year 1982. The vast majority of the decisions cited in the book are those which Mulla himself with his painstaking thoroughness had used in stating the law. In reading a book of the eighties, one expects to find the recent case law in it, for it is on the strength of such case law that a lawyer or even a student will be able to show his acquaintance with the law. Two examples of such omissions in important areas will suffice. The power of an executing court to go behind the decree on the ground that the lack of jurisdiction of the court passing the decree was apparent on the face of the record was an important point decided by the Supreme Court in *Vasudev v. Rajabhai*.<sup>1</sup> What is apparent on the face of the record and what would amount to going into the merits of the decree was pointed out in that case. And yet this case is not cited at all. Another important question is whether the decision of a court as to its own jurisdiction is *res judicata* even if it is wrong in law. The question was answered

---

1. A.I.R. 1970 S.C. 1475.

by the Supreme Court in the negative in *Jai Singh v. Maman Chand*.<sup>2</sup> This decision again is not referred to at all.

In my humble submission all the classic books by Mulla require such editing as would really update them by the incorporation of growing case law. I do not agree that in doing so, the editor is going beyond the scope of editing and is re-writing the book. It all depends on what is necessary and how much the editor can contribute. The editor of *Mayne on Damages* contributed so much to the law on damages that the book is now called *Mayne and McGregor on Damages* instead of *Mayne on Damages*. But Mulla's position is more like that of *Salmond on Jurisprudence*. In the ninth edition of *Salmond*, J.L. Parker contributed in the form of notes a great deal of enrichment even to the classic of *Salmond*. Subsequent editors have been less penetrating. However, throughout, the book remained *Salmond's*. That applies to Mulla also even though future editors may make his work thoroughly up to date.

V.S. Deshpande\*

---

2. A.I.R. 1980 S.C. 1201.

\*Ex-Chief Justice, Delhi High Court, Delhi; Honorary Executive Chairman, Indian Law Institute, New Delhi.