4

CIVIL PROCEDURE

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I INTRODUCTION

IT IS generally understood that the procedural law is only a means to an end, which the administration of justice seeks to attain. It does not, however, mean that the procedural law has no significance at all. It is pertinent to note, as Robert S. Summers said, that "[I]n legal ordering man doesn't live by results alone, for procedural systems also seek to serve values that stand apart from achieving 'result efficacy'." Rules of *res judicata*, *res sub judice*, provisions dealing with appeal, review, revisions, transfer of cases, formal hearing of parties, *etc*. serve values that are apparently distinct and important in legal ordering.

Procedural law determines the extent to which the principles of natural justice are to be observed in the judicial proceedings. The object, broadly, is to ensure that an adjudication is conducted by a court of law with appropriate opportunities at the appropriate stages to all those concerned with the dispute to be adjudicated.[1] Since the provisions of procedural law are invoked at various stages from the initiation of judicial proceedings till the final disposal of the case, they have been subjected to interpretations leading towards crystallization of rules and principles envisaged in the procedural law. It is also subject to constant change and improvement either through legislative amendments or the judicial pronouncements. The present survey expounds development of law through decisions in the area of civil procedure reported in the year 2010 with some insights, at appropriate places.

II JURISDICTION

Under the Code of Civil Procedure, 1908 (CPC), civil courts have inherent jurisdiction, subject to their territorial and pecuniary limits, to try all suits of civil nature unless they are excluded either expressly or by necessary implication. Resolving the issues relating to jurisdiction is very important for the legal sanctity of the decision on merits of the case depends on the competence of the court to try issues involved. In some of the cases decided

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1 *Alka Gupta* v. *Narender Kumar Gupta* (2010) 10 SCC 141.

during the year under survey, courts have dealt with issues relating to jurisdiction of civil courts.

Territorial jurisdiction

Generally, there has to be a live link between the cause of action and the territorial jurisdiction of the court for the purpose of entertaining any suit or appeal. In *Godrej Sara Lee Ltd.* v. *Reckitt Benckiser Australia Pty. Ltd.,*[2] the apex court dealt with the question as to whether the Delhi High Court had the jurisdiction to entertain appeal against the order passed by the controller of patents and designs, Kolkatta under section 19(1) of the Designs Act, 2000. In the instant case, the respondent filed three appeals before the Delhi High Court challenging three different orders passed by controller of designs, Kolkatta cancelling three registered designs held by the respondent. One of the issues before the High Court was whether it had territorial jurisdiction to entertain appeals against the orders of controller of designs, Kolkatta. The Delhi High Court, relying on *Girdharilal Gupta*,[3] had answered the question in the affirmative.

While hearing the appeal, the Supreme Court noticed that the *Girdharilal Gupta*[4] was decided with reference to a previous provision on *pari materia*, *i.e.* section 51-A of the Patents and Designs Act, 1911, whereas the present case involved application of section 19 of the Designs Act, 2000. The court also noticed that unlike the 1911 Act, the intention of legislature behind the 2000 Act was that an application for cancellation of a design should lie to the controller exclusively without High Court exercising a parallel jurisdiction to entertain such matters. Under the scheme envisaged in the 2000 Act, the High Court would be entitled to assume jurisdiction only at the appellate stage. Further, having considered that the cause of action for the instant proceedings was the cancellation of the registered design, which happened in the State of West Bengal, the apex court held that the Delhi High Court erred in holding that the cause of action had arisen within its local jurisdiction on the basis of impact of such cancellation in its jurisdiction.

Jurisdiction in respect of suits relating to trusts

Section 92 of CPC deals, *inter alia*, with suits alleging breach of any express or constructive trust created for public purposes of a charitable or religious nature. It provides that such suits may be instituted "in the principal Civil Court of original jurisdiction or any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate …". In *Sri Jayaram Educational Trust* v. *A.G. Syed Mohideen*,[5] the apex court dealt with the

2 (2010) 2 SCC 535.
3 *Girdharilal Gupta* v. *K. Gian Chand Jain & Co.* (1978) 14 DLT 132.
4 *Ibid.*
5 (2010) 2 SCC 513.

question as to whether a district court, as the principal civil court of original jurisdiction in a district, does continue to have jurisdiction, even after the Governor had invested all courts of the subordinate judges in the state with jurisdiction under the CPC in respect of suits relating to trusts created for public purposes of a charitable and religious nature, to try a suit under section 92 of the CPC.

It was contended, on behalf of the appellant, that the word "or" occurring between the words "may institute a suit in the principal civil court of original jurisdiction" and "in any other court empowered in that behalf by the State Government" in section 92 of the CPC, should be read as substitutive and not as disjunctive or alternative. While rejecting the contention, the apex court held that it was clear from the normal reading of the provision that the suit under section 92 should be filed in the district court or subordinate court. When the language was clear and unambiguous and when there was no need to apply the tools of interpretation, there was no need to interpret the word "or", nor was there any need to read it as a substitutive word, instead of its plain and simple meaning denoting an "alternative". Accordingly, the above question was answered affirmatively. The court further observed that in view of the express provisions of section 92, neither the provisions of sections 15 to 20 of CPC nor the provisions of section 12 of the Tamil Nadu Civil Courts Act, 1873, which dealt with pecuniary jurisdictions of district courts and other subordinate courts, would apply to suits relating to trusts. Section 92 was a self-contained provision, and conferment of jurisdiction in regard to suits under that section did not depend upon the value of the subject matter of the suit. Therefore, in so far as suits under section 92 were concerned, the district courts and subordinate courts authorized for the purpose will have concurrent jurisdiction without reference to any pecuniary limits.

Exclusion of jurisdiction

Civil courts have jurisdiction to try all suits of civil nature unless excluded either expressly or impliedly.[6] Ouster of jurisdiction of civil courts is not readily inferred as there is a fundamental presumption in statutory interpretation that ordinarily civil courts have jurisdiction to decide all matters of civil nature.[7] The Supreme Court took a similar stand in *R. Ravindra Reddy* v. *H. Ramaiah Reddy*.[8] However, in the instant case, the court held that in view of the specific provisions made in sections 132 and 133 of the Karnataka Land Reforms Act, 1961, the civil courts jurisdiction to decide as to whether the land in question was agricultural land or not and whether the person claiming to be in possession was or was not a tenant of the said land stood ousted.

The crucial question that shall have to be answered in every case where

6 CPC, s. 9.

7 See *United India Insurance Co. Ltd.* v. *Ajay Sinha* (2008) 7 SCC 454; *Tata Motors Ltd.* v. *Pharmaceutical Products of India Ltd.* (2008) 7 SCC 619.

8 (2010) 3 SCC 214.

a plea regarding exclusion of the jurisdiction of the civil court is raised is whether the tribunal, specially constituted for certain purposes under any Act or rules, is required to deal with the matter sought to be brought before a civil court. If it is not, the jurisdiction of the civil court is not excluded. But if the tribunal is required to decide the matter, the jurisdiction of the civil court would stand excluded.[9]

In *Rajasthan SRTC* v. *Deen Dayal Sharma*,[10] while dealing with a question relating to jurisdiction of the civil court *vis-à-vis* industrial disputes, it was held that the nature of right sought to be enforced was decisive in determining whether the jurisdiction of civil court was excluded or not. In this regard, the court quoted with approval propositions laid down in *Bal Mukund Bairwa (2)*.[11] In the instant case, however, on perusal of the case set up by the respondent in the plaint, the court said that the civil court had no jurisdiction to enforce the rights claimed by the respondent. It is important to note that in the plaint the respondent had even alleged violation of principles of natural justice. It may also be noted that there have been instances where the apex court upheld the jurisdiction of civil courts to try cases relating to industrial disputes where violation of principles of natural justice was alleged.[12] It seems, the court, in the instant case, deviated from the previous decisions.

III RES JUDICATA

The doctrine of *res judicata* is applied to give finality to *lis* in original or appellate proceedings. This doctrine in essence means that an issue or a point decided and attaining finality should not be allowed to be reopened and re-agitated again between the same parties or their privies. Section 11 of the CPC engrafts this provision. As per the provision made in the said section, unless an issue directly and substantially raised in the former case was heard and decided by the competent court, the principle of *res judicata* will not be attracted.[13] Further, the finding of the court that it had no jurisdiction regarding certain issues, while deciding the other issues raised in a case, does not act as *res judicata* when the said issues are raised before the proper forum.[14]

9 *Ramesh Gobindram* v. *Sugra Humayun Mirza Wakf* (2010) 8 SCC 726. In this case, the apex court held that in the absence of provision in the Wakf Act, 1995 for any proceedings before tribunal for determination of disputes concerning eviction of tenants in occupation of wakf property, eviction suit against such tenant is maintainable only before civil court and not before the tribunal constituted under the Act.

10 (2010) 6 SCC 697.

11 *Rajasthan SRTC* v. *Bal Mukund Bairwa* (2), (2009) 4 SCC 299.

12 See, for *e.g. Rajasthan SRTC* v. *Mohar Singh* (2008) 5 SCC 542.

13 *N. Suresh Nathan* v. *Union of India* (2010) 5 SCC 692.

14 *Chittoor Chegaiah* v. *Pedda Jeeyangar Mutt* (2010) 3 SCC 776.

Constructive *res judicata*

The principle of constructive *res judicata* has been envisaged in explanation IV to section 11 of CPC. The constructive *res judicata* brings finality not only to the matter determined but also to every other matter which the parties might and ought to have litigated and had decided as incidental to, or essentially connected with, the subject matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence.[15] The Supreme Court in *S. Nagaraj* v. *B.R. Vasudeva Murthy*[16] reiterated this view. The court also opined that even where a fresh cause of action arises, issues between the parties, which have been decided, cannot be reopened before the court for fresh adjudication between the same parties.[17] The court also clarified that the principle of *per incuriam* has relevance to the doctrine of precedent but no application to doctrine of *res judicata*.

IV PLEADINGS

The pleadings filed by the parties enable them to understand each other's case well and contest the same. It also enables the court to determine what is really at issue between the parties, and to prevent deviations from the course which litigation on particular causes of action must take. If the averments made in the pleadings by one party are not denied or controverted by the other party, normally it is taken as admission by that other party.[18] Generally, submissions, which are not based on any of the pleas raised in the pleading, are not accepted in the court during the proceedings.[19] If any factual or legal issue, despite having merit, has not been raised by the parties, the court should not decide the same as the opposite counsel does not have a fair opportunity to answer the line of reasoning adopted in that regard. Such a judgment may be violative of the principles of natural justice.[20] Thus, pleadings are important to provide fair hearing to the parties.

Granting relief in the absence of specific pleadings

In *Sree Swayam Prakash Ashramam* v. *G. Anandavally Amma,*[21] the apex court considered the question as to whether the courts below were justified in granting easementary right even when there was no specific case made out

15 *Direct Recruit Class II Engg. Officers' Association* v. *State of Maharashtra* (1990) 2 SCC 715.
16 (2010) 3 SCC 353.
17 *Id.*, para 68.
18 *State of Assam* v. *Union of India* (2010) 10 SCC 408.
19 *Sea Lark Fisheries* v. *United India Insurance Co.* (2008) 4 SCC 131. Similar stand was taken by the Supreme Court in *Samir Chandra Das* v. *Bibhas Chandra Das* (2010) 6 SCC 432.
20 *Poonam* v. *Sumit Tanwar* (2010) 4 SCC 460.
21 (2010) 2 SCC 689.

in that regard in the plaint. Answering the question affirmatively, the court held that the courts below were justified in holding that such pleadings were not necessary when it did not make a difference to the finding arrived at with respect to the easement by way of grant. In reaching the said conclusion, the court relied on the fact that both the parties had understood their case and for the purpose of proving and contesting implied grant had adduced evidence. Decision of the apex court in the instant case constitutes an exception to the general rule that in a civil suit parties are governed by rules of pleadings and there can be no adjudication of an issue in the absence of necessary pleadings.[22] Granting relief in the absence of specific pleadings may be justifiable only in cases where the parties have understood each other's case very well even in the absence of specific pleadings in that regard. Thus, the courts should not grant relief in the absence of specific pleadings unless it comes to the conclusion that there was no denial of right of fair hearing to the party against whom such relief had been granted.

Striking out pleadings

The parties to the dispute have freedom to make appropriate averments and raise arguable issues in the pleadings. The court can strike off the pleadings only in certain circumstances specified under order 6, rule 16 of CPC. The said rule empowers the court to strike out any matter in the pleadings at any stage of the proceedings only in three cases, *i.e*. where the pleadings are considered by the court unnecessary, scandalous, frivolous or vexatious; or where the court finds that the pleadings tend to prejudice, embarrass or delay the fair trial of the suit, or where it is otherwise considered an abuse of the process of the court. Since the striking off the pleadings has serious adverse impact on the rights of the parties concerned, the power to do so has to be exercised with great care and circumspection.[23] This position was reiterated by the apex court in *Abdul Razak* v. *Mangesh Rajaram Wagle*.[24]The High Court, in the instant case, had ordered striking out of certain pleadings contained in the additional written statements on the ground that the plea raised by the appellants in the additional written statement was inconsistent with the defence set-up by their predecessors-in-interest. While considering the correctness of the impugned order, the apex court observed that "[T]he learned single judge of the High Court did not even bother to notice Order 6 Rule 16 what to say of considering its applicability to the pleadings contained in the additional written statement."[25] The apex court, accordingly, set aside

22 *SBI* v. *S.N. Goyal* (2008) 8 SCC 92.
23 See *Roop Lal Sathi* v. *Nachhattar Singh Gill* (1982) 3 SCC 487; *K.K. Modi* v. *K.N. Modi* (1998) 3 SCC 573; *United Bank of India* v. *Naresh Kumar* (1996) 6 SCC 660.
24 (2010) 2 SCC 432.
25 *Id.*, para 20.

the order of the High Court and held that the pleadings, within statutory bounds, cannot be interfered with.

Amendment of pleadings

It is a well-settled rule that parties are expected to raise specific pleadings before the first forum for adjudication of the dispute. Those pleadings are the basis of the case of the respective parties even before the appellate or higher courts. The parties would be bound by such pleadings, of course, subject to the right of amendment allowed in accordance with law.[26] Order 6, rule 17 of CPC provides for amendment of pleadings. It confers discretionary power on courts to allow either party to alter or amend his pleadings at any stage of the proceedings. The power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any narrow or technical limitations. Generally, courts allow the amendments proposed by any of the parties if it can be made without injustice to the other side. In *State of Maharashtra* v. *Hindustan Construction Co. Ltd.*,[27] the Supreme Court considered two important questions relating to amendment of pleadings. They are: (i) Do the principles relating to amendment of pleadings in original proceedings apply to the amendment in the ground of appeal? (ii) Whether the principles that govern the amendment of pleadings are applicable to amendment of an application for setting aside the award or for that matter, amendment in an appeal under section 37 of the Arbitration and Conciliation Act, 1996? Relying on *Harcharan* v. *State of Haryana*,[28] the court answered the first question affirmatively. The court considered the second question in the light of specific provision contained in section 34 of the 1996 Act according to which the application for setting aside an arbitral award has to be made within the time prescribed under sub-section (3), *i.e.* within three months and a further period of thirty days on sufficient cause being shown and not thereafter. Having regard to it, the court opined that the incorporation of additional grounds by way of amendment in the application under section 34 does not tantamount to filing a fresh application in all situations and circumstances. If that were to be considered as equivalent to filing of a fresh application, it would follow that no amendment in the application for setting aside the award howsoever material or relevant it may be for consideration by the court can be added nor existing ground amended after the prescribe period of limitation has expired although the application for setting aside the arbitral award has been made in time. The court felt that "[T]his is not and could not have been the intention of the legislature while enacting section 34."[29] Thus,

26 *Union of India* v. *Jagdish Pandey* (2010) 7 SCC 689.
27 (2010) 4 SCC 518.
28 (1982) 3 SCC 408.
29 *Supra* note 27, para. 29.

it was held that where the application under section 34 has been made within prescribe time, the court has the power to grant leave to amend such application if the very peculiar circumstances of the case so warrant and it is so required in the interest of justice. However, having regard to the facts and circumstances of the instant case, the apex court upheld the impugned order of the High Court, which rejected the appellant's application for addition of new grounds in the memorandum of arbitration appeal.

V ISSUE AND SERVICE OF SUMMONS

Service of summons or notices is a pre-requisite to ensure substantial compliance with the principles of natural justice. The main emphasis has always been on the purpose of service of summons and not on the mode of service.[30] However, it is important to ensure the speedy service of summons and notices in order to ensure speedy dispensation of justice. The statistical data indicates that, on account of delay in process serving, arrears keep on mounting. Taking note of this fact, the apex court in *Central Electricity Regulatory Commission* v. *National Hydroelectric Power Corp. Ltd.*,[31] felt the necessity to avoid the delay in process serving and suggested that the service of notice/s may be effected by e-mail. Accordingly, following directions were issued to expedite the process of serving summons and notices issued in matters before it:[32]

(i) In addition to normal mode of service, service of notice(s) may be effected by e-mail for which the Advocate(s)-on-Record will, at the time of filing of petition/appeal, furnish to the filing counter a soft copy of the entire petition/appeal in PDF format;
(ii) The Advocate(s)-on-Record shall also simultaneously submit e-mail addresses of the respondent(s) companies/corporation(s) to the filing counter of the Registry. This will be in addition to the hard copy of the petition/appeal;
(iii) If the court issues notice, then, in that event alone, the Registry will send such an additional notice at the e-mail addresses of the respondent(s) companies/corporation(s) via e-mail;
(iv) The Registry will also send notice at the e-mail address of the advocate(s) for respondent(s) companies/corporation(s), who have filed caveat. The Advocate(s)-on-Record filing caveat shall provide his/her e-mail address for effecting service; and
(v) Within two weeks from today, the Cabinet Secretariat shall also provide centralised e-mail addresses of various Ministries/ Departments/ Regulatory Authorities along with the names of the Nodal Officers, if already appointed, for the purposes of service.

30 See P. Puneeth, "Civil Procedure", XLIV *ASIL* 61 (2008).
31 (2010) 10 SCC 280.
32 *Id*., para 2.

It was clarified by the court that service of summons by e-mail is in addition to the existing modes of service mentioned in the Supreme Court Rules. It was further stated that this facility, for the time being, is extended to commercial litigation and to those cases where the Advocate-on-Record seeks urgent *interim* relief. The apex court directed for sending the copy of its order to all the High Courts as well for necessary action.

Owing to the advancement in the field of science and technology, the cyber space is increasingly becoming accessible to the common man in the country. In this scenario, the apex court's direction for effecting the service of summons or notices by e-mail deserves high appreciation. The apex court, thoughtfully, restricted this facility, for the time being, to certain cases only and that too in addition to the existing modes of service of summons. Though, the internet facilities are increasingly becoming affordable to the common man, there still exists digital divide in the country. Thus, continuing existing modes of service of summons is also equally important. At the same time, it is desirable to bring about necessary amendment in CPC in order to enable the subordinate courts also to serve summons or notices by e-mails in appropriate cases.

VI PARTIES

The general rule is that all persons interested in a suit ought to be joined as parties to it so that the matters involved therein may be finally adjudicated upon after hearing all the interested parties. It is intended to avoid multiplicity of proceedings, waste of time and needless expenses to the parties. The law relating to joinder, misjoinder and non-joinder of parties is contained in order 1 of CPC whereas order 9 deals with the appearance of parties to the suit and the consequences of their non-appearance.

Necessary and proper parties

The question of joinder of parties, either necessary party or proper party, may arise either as regards the plaintiffs or as regards the defendants. The general rule is that a suit cannot be dismissed only on the ground of non-joinder or misjoinder parties. However, the said general rule has no application to the cases of non-joinder of necessary party. A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a necessary party is not impleaded, the suit is liable to be dismissed. A "proper party", on the other hand, is a person whose presence would enable the court completely, effectively and adequately to adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made.[33]

33 *Mumbai International Airport (P) Ltd.* v. *Regency Convention Centre and Hotels (P) Ltd.* (2010) 7 SCC 417; see also *Competition Commission of India* v. *SAIL* (2010) 10 SCC 744; *State of Assam* v. *Union of India* (2010) 10 SCC 408.

In *Sadashiv Shyama Sawant* v. *Anita Anant Sawant*,[34] the apex court was called upon to decide the question as to whether a tenant was a necessary party in a suit for immediate possession by the landlord against the person who forcibly dispossessed the said tenant from his exclusive possession. While answering the question negatively, the court observed:[35]

> A landlord by letting out the property to a tenant does not loose possession as he continues to retain the legal possession although actual possession, user and control of that property is with the tenant. By retaining legal possession or in any case constructive possession, the landlord also retains all his legal remedies. As a matter of law, the dispossession of tenant by a third party is dispossession of the landlord. The word "dispossessed" in Section 6(1) must be read in this context and not in light of the actual possession alone. If a tenant is thrown out forcibly from the tenanted premises by a trespasser, the landlord has implied right of entry in order to recover possession (for himself and his tenant). Similarly, the expression "any person claiming through him" would bring within its fold the landlord as he continues in legal possession over the tenanted property through his tenant.

Accordingly, the court ruled that impleadment of tenant may be desirable but non-impleadment is not fatal to the suit. In *Girjesh Shrivastava* v. *State of Madya Pradesh*,[36] the apex court held that in a proceeding questioning the validity of appointment, appointees were necessary parties. Non-impleadment of necessary parties goes to the root of the matter as it violates principles of *audi alteram partem*.

In *District Collector, Srikakulam* v. *Bagathi Krishna Rao,*[37] the State of Andra Pradesh was not made a party in the second appeal though it was one of the defendants (defendant no. 1) before the trial court as well as before the first appellate court. In a suit before the trial court, seeking declaration of title and possession of the suit land, it was contended, in the written statement, that the suit land, being forestland, was vested in the State of Andhra Pradesh. The trial court allowed the suit. The first appeal and the second appeal filed by the respondent-defendants were dismissed confirming the order of the trial court. The judgment and order passed by the High Court in second appeal came to be challenged before the Supreme Court in the instant case. The Supreme Court opined that the High Court entertained the second appeal, which was not maintainable for the reason, *inter alia*, that the State of Andhra

34 (2010) 3 SCC 385.
35 *Id.*, para. 21.
36 (2010) 10 SCC 707.
37 (2010) 6 SCC 427.

Pradesh was not made a party though the relief sought by the respondent-plaintiffs was a declaration of title in respect of the suit land which, according to the appellants, belonged to the State of Andhra Pradesh and in physical possession of the forest department. Accordingly, the case was remanded back to the High Court for fresh hearing and permission was granted to the appellants to file an application for impleadment of the State of Andhra Pradesh as appellant.

Addition, deletion or transposition of parties

The general rule regarding impleadment of parties is that the plaintiff in a suit, being *dominus litis*, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of order 1, rule 10(2) of CPC, which confers discretionary power on the court to add or delete parties. In *Mumbai International Airport (P) Ltd.,* v. *Regency Convention Centre and Hotels (P) Ltd.,*[38] the apex court dealt with the scope and ambit of the said discretionary power of the court. The court observed:[39]

> The said sub-rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either *suo motu* or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice.

The court further clarified that if a person was not found to be a proper or necessary party, the court had no jurisdiction to implead him against the wishes of the plaintiff. It was said specifically, in the context of the case, that the fact that a person was likely to secure a right or interest in a suit property, after the suit was decided against the plaintiff, will not make such person a necessary or a proper party to the suit for specific performance.

38 *Supra* note 33.
39 *Id.*, para. 22.

VII APPEAL

Appeal implies, in its natural and ordinary sense, the removal of a case from any inferior court or tribunal to a superior one for the purpose of testing the soundness of decision and proceedings of the inferior court or tribunal. A right of appeal, it is well settled, is a creature of the statute. It is never an inherent right, like that of filing a suit. A right of filing a suit, unless barred by statute, is an inherent right. But a right of appeal is always conferred by a statute. While conferring such right, a statute may impose restrictions or it may limit the area of appeal to questions of law or sometime to substantial questions of law. Whenever such limitations are imposed, they are to be strictly followed. But in a case where there is no limitation on the nature of order or decision to be appealed against, the court on the basis of an interpretative exercise cannot further curtail the right of appeal.[40]

Powers of appellate court

The courts exercising appellate jurisdiction have power to reverse, confirm, annul, modify or to remand the decree or order of the forum appealed against. The first appellate court, in particular, is both a court of law as well as facts. In exercise of its power, the first appellate court can come to a finding different from that arrived at by the trial court.[41] The appellate jurisdiction, however, can be exercised in a variety of forms. It is not necessary that the exercise of appellate jurisdiction will always involve re-agitation of entire matrix of facts and law.[42] The appellate court, as provided in order 41, rule 33, has the power to do complete justice between parties, except where there is a legal interdict.[43] In *Pralhad* v. *State of Maharashtra*,[44] the appellate court's power under order 41, rule 33 has been expounded in the following words:[45]

> The provision of Order 41 Rule 33 CPC is clearly an enabling provision, whereby the appellate court is empowered to pass any decree or make any order which ought to have been passed or made, and to pass or make such further or other decree or order as the case may require. Therefore, the power is very wide and in this enabling provision, the crucial words are that the appellate court is empowered to pass any order which ought to have been made as the case may require. The expression "order ought to have been made" would

40 *Raj Kumar Shivhare* v. *Directorate of Enforcement* (2010) 4 SCC 772.
41 *Ibid*.
42 *Snehadeep Structures (P) Ltd.* v. *Maharashtra Small-scale Industries Development Corp. Ltd.,* (2010) 3 SCC 34.
43 *Ravi Kumar* v. *Julmidevi* (2010) 4 SCC 476.
44 (2010) 10 SCC 458.
45 *Id*., para. 18.

obviously mean an order which justice of the case requires to be made. This is made clear from the expression used in the said Rule by saying "the court may pass such further or other order as the case may require". This expression "case" would mean the justice of the case. Of course, this power cannot be exercised ignoring a legal interdict or a prohibition clamped by law.

In *James Joseph* v. *State of Kerala*,[46] the apex court, while dealing with the question as to whether a second appeal would lie under section 12-A of the Kerala Forest Act, 1961 without a substantial question of law as required under section 100 of CPC, discussed the law relating to appeal in detail and formulated the following principles with reference to appeals:[47]

(i) An appeal is a proceeding where a higher forum reconsiders the decision of a lower forum, on questions of fact and questions of law, with jurisdiction to confirm, reverse, modify the decision or remand the matter to the lower forum for fresh decision in terms of its directions.

(ii) The appellate jurisdiction can be limited or regulated by the legislature and its extent has to be decided with reference to the language employed by the statute conferring the appellate jurisdiction.

(iii) The width of jurisdiction or the limitations on jurisdiction with reference to an appeal, does not depend on whether the appeal is a first appeal or a second appeal, but depends upon the limitations, if any, placed by the statute conferring the right of appeal.

(iv) If the legislature's intention is to limit the jurisdiction in an appeal, it may indicate such limits in the provision providing for appeal. Alternatively, it may expressly or impliedly incorporate the provisions of Section 100 of the Code, into the provision for appeals.

(v) Generally statutory provisions for appeals against original orders or decrees (that is, first appeals) will not have any limitations and therefore rehearing on both law and fact is contemplated; and statutory provisions for appeals against appellate orders (that is, second appeals) will be restricted to questions of law. But such restriction is not on account of any legal principle that all second appeals should always be with reference to questions of law, but would depend upon the wording of the statute placing the restrictions upon the scope of second appeal.

46 (2010) 9 SCC 642.
47 *Id*., para. 19.

(vi) Where the statute does not place any limitations or restrictions in regard to the scope and width of the appeal, it shall be construed that the appeal provides a right of rehearing on law as well as facts. If the legislature enacts a self-contained provision for second appeals, without any limitation upon the scope of the second appeal and excludes the possibility of reading the provision of Section 100 of the Code, into such provision, then, it will not be permissible to read the limitations of Section 100 of the Code into the special provision.

Accordingly, in the instant case, having regard to the provisions of section 12-A of the Kerala Forest Act, 1961, which the court considered as self-contained provision insofar as appeal under the Act to the High Court was concerned, it was held that the appeal under the said provision was available both in respect of question of fact as well as question of law.

Intra-court or letters patent appeal under High Court rules

Generally, under the High Court rules or letters patent, an intra-court appeal is allowed from the decision of a single judge of the High Court to the division/full bench. However, in the year 1976 for the purpose of minimising delay in the finality of adjudications, section 100-A was inserted in CPC providing that there should be no further appeal against the decision of a single judge in a second appeal. In *Geeta Devi* v. *Puran Ram Raigar,*[48] it was held that section 100-A had overriding effect over High Court rules and letters patent.

Scope of appellate jurisdiction of the Supreme Court

Section 109 of CPC deals with the appellate jurisdiction of Supreme Court and the said provision is subjected to provisions in chapter IV, part V of the Constitution of India. The provision for appeal under section 109 is substantially similar to article 133 of the Constitution. Further, section 112 of CPC saves the power of the Supreme Court conferred under article 136 of the Constitution. Article 136, dealing with the special leave to appeal before the Supreme Court, is very wide as compared to other provisions in the Constitution dealing with the appellate jurisdiction of the Supreme Court. Under article 136, the Supreme Court has discretion to grant special leave to appeal against any judgment, decree, determination or order passed or made by any court or tribunal in any cause or matter. However, it has been the stated policy of the apex court to exercise this jurisdiction very sparingly and in exceptional cases only and the court, in several cases, emphasised on the need to adopt more or less a uniform standard in granting special leave.[49]

48 (2010) 9 SCC 84.
49 See *Pritam Singh* v. *State*, AIR 1950 SC 169.

Unfortunately, so far no such uniform standard has been laid down. Taking special note of the present scenario where grant of special leave has become, as described by Setalvad in his autobiography,[50] a gamble, the two-judge bench of the Supreme Court, in *Mathai* v. *George*,[51] referred the matter to the larger bench to lay down certain broad guidelines in this connection. The court in its referral judgment referred to plethora of cases, wherein it was emphasised that article 136 of the Constitution was not intended to make the Supreme Court a regular court of appeal at all. Further, the court endorsed the views expressed by K.K. Venugopal,[52] wherein he suggested that the jurisdiction of the Supreme Court under article 136 of the Constitution should be confined to following category of cases only:[53]

(i) All matters involving substantial question of law relating to the interpretation of the Constitution of India;
(ii) All matters of national or public importance;
(iii) Validity of laws: central and state;
(iv) The judicial review of constitutional amendments made after *Kesavananda Bharati*;[54] and
(v) To settle differences of opinion on important issues of law between High Courts.

The court proposed to add two additional categories of cases to the list, namely:[55]

(i) Where the court is satisfied that there has been a grave miscarriage of justice, and
(ii) Where a fundamental right of a person has *prima facie* been violated.

However, with the above observations, the court referred the matter to the constitutional bench, stating that it was for the larger bench to decide what are the kinds of cases in which discretion under article 136 should be exercised. It is submitted that nowadays, as pointed out by the court, it has became a practice of filing special leave petitions against all kinds of orders of the High Courts or other authorities. For instance, if in a suit the trial court allows an amendment application, the matter is often contested right up to the

50 M.C. Setalvad, *My Life, Law and Other Things* (1970).
51 (2010) 4 SCC 358.
52 *R.K. Jain Memorial Lecture* delivered on January 30, 2010, available at http://www.hindu.com/nic/venugopal_lecture.pdf.
53 *Supra* note 51, para. 23.
54 *Kesavananda Bharati* v. *State of Kerala* (1973) 4 SCC 225.
55 *Supra* note 51, para. 24.

Supreme Court. Similar is the case even when the delay in filing an application or appeal is condoned by the trial court or appellate court. No doubt, the discretionary power vested in the Supreme Court to grant special leave to appeal has not been expressly subjected to any limitation but that does not mean that special leave petition can be entertained against all kinds of orders passed by all courts or tribunals. The need of the hour is to evolve uniform standards for entertaining special leave petitions in order to check accumulation of cases before it increases to a breaking point. Also, unless uniform standards are evolved and adopted, discretionary power under article 136 remains an unfettered power without definite bounds but subject only to "wisdom and sense of justice of judges"[56] which widely vary from judge to judge and bench to bench.

Supreme Court's interference with *ex parte interim* orders

Ordinarily, the Supreme Court would not interfere with an *ex parte interim* order as the party, against whom such order was passed, can appear and seek vacation, discontinuance or modification of such *ex parte* order. But, where there are special and exceptional features or circumstances resulting in or leading to abuse of the process of the court, the court may interfere with such *ex parte interim* orders as well.[57]

In *State Bank of Patiala*,[58] where the respondent employee, though retired in accordance with the rules of the bank, virtually tried, using the tag of "person with disability", to terrorise the bank and its senior officers by initiating series of proceedings and obtaining *ex parte interim* orders by misrepresenting facts, the apex court interfered considering the case as one falling under special and rare category. The apex court also cautioned that the courts should not grant *interim* orders in a mechanical manner on the assumption that the aggrieved party can always seek vacation. Grant of *ex parte interim* orders, that too mandatory orders, routinely or merely for the asking, on the ground of sympathy or otherwise, will interfere with justice, leading to administrative chaos, rather than serving the interest of justice.

Abatement of appeal

In *Budh Ram* v. *Bansi*,[59] the apex court considered an important question as to whether non-substitution of legal representatives (LRs) of one of the

56 In *Karam Kapahi* v. *Lal Chand Public Charitable Trust* (2010) 4 SCC 753, the court observed: "[T]he jurisdiction of this court under Article 136 of the Constitution is basically one of conscience. The jurisdiction is plenary and residuary in nature. It is unfettered and not confined within definite bounds. Discretion to be exercised here is subject to only one limitation and that is the *wisdom and sense of justice of the judges*. (Emphasis supplied) [para. 65].

57 *State Bank of Patiala* v. *Vinesh Kumar Bhasin* (2010) 4 SCC 368.

58 *Ibid*.

59 (2010) 11 SCC 476.

respondents, who had expired, would abet the appeal in toto or only *qua* the deceased respondent.

On a detailed examination of law on the point, the court said that law on the question had been crystallized to the effect that it depends upon the facts and circumstances of each case. Where each one of the parties had an independent and distinct right of his own, not interdependent upon one or the other, nor the parties had conflicting interests *inter se*, the appeal may abet only *qua* the deceased respondent. However, in case, where there was a possibility that the court may pass a decree contradictory to the decree in favour of the deceased party, the appeal would abet in toto for the simple reason that the appeal was a continuation of suit and the law did not permit two contradictory decrees on the same subject matter in the same suit. Thus, whether the judgment/decree passed in the proceedings *vis-à-vis* remaining parties would suffer the vice of being a contradictory or inconsistent was the relevant test in deciding such questions.

Second appeal

Under section 100, CPC, the second appeal is allowed only when substantial question of law is involved in the case. Sub-section (5) of section 100 makes it mandatory that the second appeal shall be heard on the substantial question formulated by the court. However, the substantial question/s of law so formulated by the court are not final. It is open to the party to demonstrate during hearing that no substantial question of law arose for consideration in the case and that the second appeal should be dismissed.[60] Generally, courts do not interfere with the findings of fact in the second appeal unless such findings are perverse being based on no evidence or are based on irrelevant material. In such cases, it is permissible for the High Court to entertain the appeal and re-appreciate the evidence.[61]

Normally, courts do not entertain new plea in the second appeal. However, the rulings of the Supreme Court in *Mohd. Laiquiddin* v. *Kamala Devi Misra*,[62] indicate that in certain circumstances new plea can be entertained. The court in the present case observed that "when a question of law is raised on the basis of the pleadings and evidence on record which might not have been raised before the courts below, it is difficult to hold that such question of law cannot be permitted for the first time before the High Court."[63]

60 *S.B. Minerals* v. *MSPL Limited* (2010) 12 SCC 24. In the instant case, the apex court also held that an order admitting a second appeal was neither a final order nor an interlocutory/interim order. It did not amount to a judgment, decree, determination, sentence or even "order" in the traditional sense. It did not decide any issue but merely entertains an appeal for hearing.

61 *Dinesh Kumar* v. *Yusuf Ali* (2010) 12 SCC 740; see also *Bharath Matha* v. *R. Vijay Ranganathan* (2010) 11 SCC 483.

62 (2010) 2 SCC 407.

63 *Id*., para. 18.

VIII REVISION

Effect of amending s. 115, CPC on the jurisdiction of High Courts under art. 227 of the Constitution

The revisional jurisdiction under section 115 of CPC and the supervisory jurisdiction of the High Courts under article 227 of the Constitution overlap to some extent. However, the power of superintendence of the High Court being constitutional, it cannot be taken away or curtailed by ordinary legislation. Thus, the statutory amendment of section 115 of CPC does not, and cannot, cut down the ambit of High Court's power under article 227. Similarly, it must also be remembered that such statutory amendment does not correspondingly expand the High Courts jurisdiction of superintendence under article 227.[64]

Reappreciation of evidence in revision

The question as to whether the revisional court is justified in re-appreciating the evidence and substituting its own findings on the ground that the appellate court did not consider the evidence properly came-up for consideration in *Bhanwarlal Dugar* v. *Bridhichand Pannalal*.[65] The apex court held that it was a settled law that the High Court cannot re-appreciate the evidence and set aside concurrent findings of facts by taking a different view of the evidence. It is always open to the High Court to remit the matter if in its opinion the courts below did not consider the material evidence on record.

IX JUDGMENT, DECREE AND ORDERS

Reasoned judgment/orders

In *CCT* v. *Shukla,*[66] the apex court dealt with a case, in which the High Court had dismissed the revision petition without recording any reasons. The impugned order of the High Court read as follows:[67]

> After having carefully gone through the material on record, since after due consideration proper discretion has already been used by the Deputy Commissioner (Appeals) as also the Rajasthan Tax Board, in the facts and circumstances, no further interference is called for by this Court.
> The revision petition is dismissed accordingly as having no merits.

64 *Shalini Shyam Shetty* v. *Rajendra Shankar Patil* (2010) 8 SCC 329.
65 (2010) 12 SCC 164.
66 (2010) 4 SCC 785.
67 *Id.*, para. 2.

The apex court, during the course of hearing, was informed about questions of law raised in the revision petition and the arguments advanced relying on the relevant judgment of the Supreme Court. None of these had been addressed by the High Court in passing the impugned order. There was no semblance of reasoning, much less judicial reasoning, found in the impugned order of the High Court. While setting aside the impugned order and remanding the case back to the High Court to hear it *de novo*, the apex court observed:[68]

> [T]his Court has consistently taken the view that recording of reasons is an essential feature of dispensation of justice. A litigant who approaches the court with any grievance in accordance with law is entitled to know the reasons for grant or rejection of his prayer. Reasons are the soul of orders. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. These principles are not only applicable to administrative or executive actions, but they apply with equal force and, in fact, with a greater degree of precision to judicial pronouncements. A judgment without reasons causes prejudice to the person against whom it is pronounced, as that litigant is unable to know the ground which weighed with the court in rejecting his claim and also causes impediments in his taking adequate and appropriate grounds before the higher court in the event of challenge to that judgment.

Further, elaborating on the purpose of the judgment, the apex court quoted, with approval, the observation made by the High Court of Bombay in *Pipe Arts India (P) Ltd.* v. *Gangadhar Nathuji Golamare,*[69] wherein it was stated that "there are four purposes for any judgment that is written: (1) to clarify your own thoughts; (2) to explain your decision to the parties; (3) to communicate the reasons for the decision to the public; and (4) to provide reasons for an appeal court to consider."

In *CTO* v. *Rijhumal Jeevandas*[70] again the Supreme Court dealt with a similar case and, relying on the *ratio* laid down in *CCT* v. *Shukla,*[71] remanded back the case to the High Court. But, in *CIT* v. *Saheli Leasing and Industries Ltd*,[72] where another cryptic order of the similar nature was challenged, the apex court opted to consider the matter on merits without remanding it back

68 *Id.*, Para. 13.
69 (2008) 6 Mah LJ 280.
70 (2010) 6 SCC 748.
71 *Supra* note 66.
72 (2010) 6 SCC 384.

to the concerned High Court. However, in the instant case, the court took strong exception to the practice of passing orders in a casual and cryptic manner and observed: "[N]o doubt, it is true that brevity is an art but brevity without clarity is likely to enter into the realm of absurdity, which is impermissible."[73] While noting that the guidelines issued earlier were not being adhered to in writing judgments and orders, the apex court reiterated some of them insisting that they be followed for writing orders and judgments. They are:[74]

(a) It should always be kept in mind that nothing should be written in the judgment/order, which may not be germane to the facts of the case; it should have a co-relation with the applicable law and facts. The ratio decidendi should be clearly spelt out from the judgment/order.

(b) After preparing the draft, it is necessary to go through the same to find out, if anything, essential to be mentioned, has escaped discussion.

(c) The ultimate finished judgment/order should have sustained chronology, regard being had to the concept that it has readable, continued interest and one does not feel like parting or leaving it in the midway. To elaborate, it should have flow and perfect sequence of events, which would continue to generate interest in the reader.

(d) Appropriate care should be taken not to load it with all legal knowledge on the subject as citation of too many judgments creates more confusion rather than clarity. The foremost requirement is that leading judgments should be mentioned and the evolution that has taken place ever since the same were pronounced and thereafter, latest judgment, in which all previous judgments have been considered, should be mentioned. While writing a judgment, psychology of the reader has also to be borne in mind, for the perception on that score is imperative.

(e) Language should not be rhetoric and should not reflect a contrived effort on the part of the author.

(f) After arguments are concluded, an endeavour should be made to pronounce the judgment at the earliest and in any case not beyond a period of three months. Keeping it pending for a long time sends a wrong signal to the litigants and the society.

(g) It should be avoided to give instances, which are likely to cause public agitation or to a particular society. Nothing should be reflected in the same, which may hurt the feelings or emotions of any individual or society.

73 *Id*., para. 4.
74 *Id*., para. 5.

These guidelines are only illustrative in nature. The court said that they can be further elaborated looking to the need and requirement of a given case.

In *Maya Devi* v. *Raj Kumar Batra*,[75] while emphasising on the need for recording reasons in cases where the order was subject to further appeal, the apex court stated in unequivocal terms that "in a system governed by rule of law, there is nothing like absolute or unbridled power exercisable at the whims and fancies of the repository of such power. There is nothing like a power without any limits or constraints. That is so even when a court or other authority may be vested with wide discretionary power, for even discretion has to be exercised only along well-recognized and sound juristic principles with a view to promoting fairness, inducing transparency and aiding equity."[76]

Giving reasons in support of decision is of essence in judicial proceedings. Every litigant who approaches the court is entitled to know the reasons for acceptance or rejection of his claim/s. Not assigning reasons in support of the decision would amount to denial of natural justice. In this context, one cannot lose sight of *Khanapuram Gandaiah* v. *Administrative Officer*,[77] in which an application was filed by one of the litigants under the Right to Information Act, 2005 seeking information from the administrative officer of a court, as to why a judicial officer had ignored his written arguments while deciding a case. The apex court, while categorically holding that such information cannot be sought under the Right to Information Act, observed that a judge speaks through his judgment or order passed by him. He is not expected to give reasons other than those that have been enumerated in the judgment or order. If any party feels aggrieved by any judgment or order passed by a judge, the remedy available to such a party is either to challenge the same by way of appeal or by revision or any other legally permissible mode. Seeking information as to why and for what reasons the judge had come to a particular conclusion is *per se* illegal and unwarranted.

It is submitted with due respect that assigning of reasons for acceptance or rejection of a claim is the essence of the judicial process. It is the reasons the courts assign in support of the decision that make the public repose confidence in the judicial system. Thus, it is desirable that the courts should take note of all the important arguments advanced by the parties in formulating reasons in support of the decision so that litigants do not resort to unwarranted practice of seeking information under different provisions. Adherence to the guidelines issued by the Supreme Court in this regard would help in addressing to such problems.

Effects of withdrawal of case on *interim* orders

The legal maxim *sublato fundamento, cedit opus* implies that when, in a case, a foundation is removed, the superstructure falls. In other words, if the

75 (2010) 9 SCC 486.
76 *Id*., para. 28.
77 (2010) 2 SCC 1.

case is dismissed, the *interim* order stands nullified automatically. It is not permissible for the party to file a case and withdraw the same, after obtaining *interim* relief during its pendency, without getting proper adjudication of the issues involved and then to insist that the benefit of the *interim* orders would continue. The benefit of *interim* relief, in such cases, has to be withdrawn otherwise the party would continue to get benefit of the *interim* order even after losing the case in the court.[78] The apex court in another case cautioned the High Courts about passing of *interim* orders, which are likely to have the effect of defeating the very object of the legislation under which the dispute arises.[79]

X EXECUTION

Applicability of order 20, rule 16, CPC

Order 20, rule 16 provides that where the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the court which passed it and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder. In *Speedline Agencies* v. *T. Stanes & Co. Ltd.*,[80] the apex court relied upon the said provision while dealing with an issue relating to rights and status of transferee company under the scheme of amalgamation in accordance with sections 391 to 394 read with section 79 of the Companies Act, 1956. In the instant case, the landlord company obtained eviction decree against the appellant tenant on the ground of *bonafide* requirement. During the pendency of the revision petition in the High Court, the landlord company transferred its entire business to the respondent company under the scheme of amalgamation. The apex court held that the rights arising out of the eviction decree and *bonafide* requirement of landlord continues to exist for the transferee company also since the entire business of the transferor company stood transferred to the transferee company including the requirement of the leasehold premises for the acquired business. Thus, the respondent was entitled to eviction.

XI MISCELLANEOUS

During the year under survey, the Supreme Court dealt with a number of other issues involving rules of practice and procedures. Judicial pronouncements in these areas have been encapsulated below.

Temporary Injunction

Order 39, rule 1, CPC authorizes the court to grant temporary injunctions. It is a settled principle that granting or refusing temporary injunction rests on

78 *Kalabharathi Advertising* v. *Hemanth Vimalnath Narichania* (2010) 9 SCC 437.
79 *United Bank of India* v. *Satyawati Tandon* (2010) 8 SCC 110.
80 (2010) 6 SCC 257.

the sound exercise of discretion by the courts, and the appellate court cannot lightly interfere with such exercise of discretion unless it was shown that such exercise of discretion was unreasonable or capricious.[81] Reiterating the legal position, the apex court in *Skyline Education Institutes (India) (P) Ltd.* v. *S.L. Vaswani*,[82] has held that "once the court of first instance exercises its discretion to grant or refuse to grant relief of temporary injunction and the said exercise of discretion is based upon objective consideration of the material placed before the court and is supported by cogent reasons, the appellate court will be loath to interfere simply because on a de novo consideration of the matter it is possible for the appellate court to form a different opinion on the issues of prima facie case, balance of convenience, irreparable injury and equity."

Procedural constraints on the exercise of original jurisdiction by the Supreme Court

In *State of Orissa* v. *State of A.P.*[83] the Supreme Court considered the question as to whether the procedural provisions, which regulate the admissibility of civil suits before the ordinary civil courts, apply to the exercise of its original jurisdiction under article 131 of the Constitution or not. Relying on the decision in *State of Karnataka* v. *Union of India*,[84] the court held that the procedural provisions, which regulate the admissibility of civil suits before ordinary civil courts, do not apply in the strict sense when the Supreme Court exercises its original jurisdiction to decide suits between the states.

Transfer of cases

Section 25, CPC confers power on the Supreme Court to transfer suits, appeal or other proceedings from High Court or other civil court in one state to High Court or other civil court in any other state. The provision makes it clear that when any application is made for transfer, after notice to the parties, if the court is satisfied that an order is expedient for the ends of justice, direction may be issued for transfer of any legal proceedings. In *DAV Boys Senior Secondary School* v. *DAV College Managing Committee*,[85] the apex court, while noting that the power under this provision was to be exercised in order to maintain fair trial, stated that the mere convenience of the parties may not be enough for the exercise of power but it must also be shown that the trial in the chosen forum will result in denial of justice. The court further reiterated that the balance of convenience or inconvenience to the plaintiff or the defendant or witness and reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the case is pending

81 *Gopal Laxmandas Lakhani* v. *Krishnaben Girdharilal Lalvani*, AIR 2002 Guj. 398; *Wander Ltd.* v. *Antox India (P) Ltd.,* 1990 Supp SCC 727.
82 (2010) 2 SCC 142.
83 (2010) 5 SCC 674.
84 (1977) 4 SCC 608.
85 (2010) 8 SCC 401.

are also to be taken into account. It also stressed that the discretionary power under this provision is always exercised keeping in view the interest of justice and adherence to fair trial.

Decree obtained by fraud

In *Santosh* v. *Jagat Ram*,[86] the apex court considered the validity of a decree obtained by fraud. This was a case where an illiterate, issueless widow was defrauded by her own elder brother-in-law, who convinced her to accompany him to the court so that the mutation of the properties inherited by her from her husband could be made and the properties could be recorded in her own name. But, he fraudulently obtained a decree for partition where the widow was shown to have relinquished her right in his favour. While considering the case, the apex court noticed that in the suit filed for obtaining the decree by fraudulent means, the plaint and the written statement were filed on the same day; the summons were issued on the same day; the evidence of the plaintiff and the defendant was recorded on the very same day and the judgment was also made ready along with the decree on that very day. It was also noted that there was a common clerk between the plaintiff's and the defendant's counsel who were partners. On coming to the conclusion that the fraud played was apparent on the face of the records, the court held that "a fraud puts an end to everything. It is a settled position in law that such a decree is nothing but a nullity."[87]

In *Shanti Budhiya Vesta Patel* v. *Nirmala Jayaprakash Tiwari,*[88] the court held that when a compromise decree was challenged in an appeal on the ground that the same had been obtained by playing fraud or coercion, the burden to prove lies on the party who alleges it.

Adjustment of the decree

An agreement, which extinguishes the decree as such in whole or in part and results in the satisfaction of the decree in respect of the particular relief or reliefs granted by the decree, is an adjustment within the meaning of order 21, rule 2 of CPC. Generally, it is open to the parties to enter into a contract or compromise with reference to their rights under the decree. If such contract or compromise amounts to an 'adjustment' of the decree within the meaning of order 21, rule 2, it shall be recorded under the said rule, otherwise it cannot be recognized by the executing court. Adjustment is not the same as satisfaction of the decree but is some method of settling decree, which is not provided for in the decree itself. The right of the judgment-debtor to make an attempt to adjust the decree is independent and cannot be treated as contempt of court.[89]

86 (2010) 3 SCC 251.
87 See also *R. Ravindra Reddy* v. *H. Ramaiah Reddy* (2010) 3 SCC 214, para. 39.
88 (2010) 5 SCC 104.
89 *P.K. Singh* v. *S.S. Kanungo* (2010) 4 SCC 504.

Judgment on admissions

Order 12, rule 6 authorises the court to pass orders or judgment with reference to admissions of fact made by the parties either in the pleading or otherwise without waiting for the determination of any other question between them. For the purpose of acting under order 12, rule 6, admission of fact must be clear and unambiguous. Whether or not there is clear, unambiguous admission by one or the other party to the case is essentially a question of fact and the decision of the question depends on the facts of the case.[90] The Supreme Court in *Karam Kapahi* v. *Lal Chand Public Charitable Trust*,[91] while explaining the rationale behind the said provision, stated that the principles behind order 12, rule 6 were to give the plaintiff a right to speedy judgement. Under this rule, either party may get rid of so much of the rival claims about which there was no controversy. The amendment brought to the said provision, based on the recommendation made in the 54th Report of the Law Commission, empowers the court to give judgment on admission not only on the application of a party but on its own motion. In the opinion of the court, the thrust of the amendment is that in an appropriate case, a party, on the admission of the other party, can press for judgment, as a matter of legal right. However, the court always retains its discretion in the matter of pronouncing judgment. Further, with regard to the scope of order 12, rule 6, the court observed:[92]

> If the provision of Order 12 Rule 1 is compared with Order 12 Rule 6, it becomes clear that the provision of Order 12 Rule 6 is wider inasmuch as the provision of Order 12 Rule 1 is limited to admission by "pleading or otherwise in writing" but in Order 12 Rule 6 the expression "or otherwise" is much wider in view of the words used therein, namely: "admission of fact ... either in the pleading or otherwise, whether orally or in writing".

Closing of evidence

In *Amrit Lal Kapoor* v. *Kusum Lata Kapoor*,[93] the appellants called in question the order passed by the High Court affirming the trial court order closing the evidence without taking the deposition of the only attesting witness of a 'will'. In the instant case, the appellants failed to produce the only attesting witness of a 'will' before the trial court because of the fact that he was a government servant and his immediate officer had declined casual leave and leave to go out of station. It was also brought to the notice of the court that the leave was declined because of the direction of the higher

90 *Jeevan Diesels & Electricals Ltd.* v. *Jasbir Singh Chada* (2010) 6 SCC 601.
91 *Supra* note 56.
92 *Id.*, para. 40.
93 (2010) 6 SCC 583.

authorities to ensure that all the employees remain in station during the period when the H.P. Vidhan Sabha was in session. Taking note of the fact that the witness could not be produced not because of any deliberate neglect or inaction on the part of the appellants, the apex court held that the interest of justice would be substantially served if a final opportunity was given to the appellants to produce the witness.

Imposition of realistic cost to discourage vexatious or frivolous litigation

Law confers on every person an inherent right to bring a suit of civil nature of one's choice, at one's peril, howsoever frivolous the claim may be, unless it is barred by statute.[94] However, in case of vexatious, frivolous or malicious litigations, courts are empowered to impose costs. In *Vinod Seth* v. *Devinder Bajaj*,[95] a suit was filed in the Delhi High Court for specific performance of an oral agreement. The single judge of the High Court, after having noticed many infirmities in the case, *prima facia* remoteness of likelihood of success of the suit and the possible adverse effects of section 52 of the Transfer of Property Act, 1882 on the respondent, directed the plaintiff to file an affidavit to the court undertaking that in the event of not succeeding in the suit, the plaintiff would pay a sum of twenty-five lakhs rupees by way of damages to the defendants. The division bench upheld the said order on the additional ground that "the heavy docket does not permit early disposal of suits and thus parties may take advantage of keeping frivolous claims alive." These orders came to be challenged before the Supreme Court before which the question was whether the court had the power to require a plaintiff to file such an undertaking or not. Though the Supreme Court was of the opinion that the High Court was justified in taking the view that on the material presently on record, the likelihood of the appellant succeeding in the suit was very remote, it answered the question in the negative. The court made the following important observations in this regard:[96]

(i) Every person has a right to approach a court of law if he has a grievance for which the law provides a remedy. Certain safeguards are built into the Code to prevent and discourage frivolous, vexatious or speculative suits.[97]

(ii) But the Code nowhere authorises or empowers the court to issue a direction to a plaintiff to file an undertaking to pay damages to the defendant in the event of being unsuccessful in the suit. The Code also does not contain any provision to assess the damages payable by a plaintiff to the defendant, when the plaintiff's suit is still

94 *Abdul Gafur* v. *State of Uttarakhand* (2008) 10 SCC 97.
95 (2010) 8 SCC 1.
96 *Id.* at 14-17.
97 *Id*., para. 21.

pending, without any application by the defendant, and without a finding of any breach or wrongful act and without an inquiry into the quantum of damages. There is also no contract between the parties, which requires the appellant to furnish such undertaking. None of the provisions of either the TP Act or the Specific Relief Act or any other substantive law enables the court to issue such an interim direction to a plaintiff to furnish an undertaking to pay damages. In the absence of an enabling provision in the contract or in the Code or in any substantive laws a court trying a civil suit has no power or jurisdiction to direct the plaintiff, to file an affidavit undertaking to pay any specified sum to the defendant, by way of damages, if the plaintiff does not succeed in the suit.[98]

(iii) As there are specific provisions in the Code, relating to costs, security for costs and damages, the court cannot invoke section 151, which deals with inherent powers of court, on the ground that the same is necessary for the ends of justice. As the provisions of the Code are not exhaustive, section 151 is intended to apply where the Code does not cover any particular procedural aspect, and interests of justice require the exercise of power to cover a particular situation. Section 151 is not a provision of law conferring power to grant any kind of substantive relief. It is a procedural provision saving the inherent power of the court to make such orders as may be necessary for the ends of justice and to prevent abuse of the process of the court. It cannot be invoked with reference to a matter, which is covered by a specific provision in the CPC. It cannot be exercised in conflict with the general scheme and intent of the CPC. It cannot be used either to create or recognise rights, or to create liabilities and obligations not contemplated by any law.[99]

Further, in the instant case, the court examined in detail the provisions relating to imposition of costs and opined that they need realistic revision. It was of the view that the absence of an effective provision for imposition of costs had led to mushrooming of vexatious, frivolous and speculative civil litigation apart from rendering section 89 of CPC ineffective. It was of the opinion that any attempt to reduce the pendency or to encourage alternative dispute resolution processes or to streamline the civil justice system will fail in the absence of appropriate provisions relating to costs. Thus, the court felt that there was an urgent need for the legislature and the Law Commission of India to revisit the provisions relating to costs and compensatory costs contained in sections 30 and 35A of CPC.

98 *Id*., para. 26.
99 *Id*., paras. 28 and 33.

It is submitted that the findings and observations made by the apex court with regard to imposition of cost are based on proper analysis of relevant provisions of law and sound reasoning. However, one of the incidental observations made by the court is likely to have adverse consequence on the pending suit. The observation that "[W]e are broadly in agreement with the High Court that on the material presently on record, the likelihood of the appellant succeeding in the suit or securing any interim relief against the defendants is remote", was not warranted as it was not a precondition to decide the question involved in the appeal. The court even stated reasons in support of the said observation in the judgment. Findings to this effect by the apex court are likely to influence the trial proceedings pending before the court below.

Application for setting aside abatement of suit

Order 22, rule 9(2) provides for filing of an application for an order to set aside the abatement or dismissal of suit. It further provides that in case where the party applying for an order of abetment proves that he was prevented by any sufficient cause from continuing the suit, the court shall set aside the abatement or dismissal upon such terms as it thinks fit. The provisions of section 5 of the Indian Limitation Act, 1877 had been expressly made applicable[100] as a result of which, principles enunciated for condonation of delay under the said section were applicable in dealing with the applications under order 22, rule 9(2) as well. In *Balwant Singh* v. *Jagdish Singh*,[101] it was held that the principles enunciated in *Perumon*[102]should control the exercise of judicial discretion vested in the court under these provisions. Delay was just one of the ingredients which had to be considered by the court. In addition to this, the court must also take into account the conduct of the parties, *bonafide* reasons for condonation of delay and whether the applicant acting with normal care and caution could easily avoid such delay.

Applicability of provisions of CPC to election petitions

Section 87 of the Representation of People Act, 1951 (RP Act) provides that the every election petition, subject to the provisions of the Act and rules made thereunder, shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the CPC to the trial of suits. However, there was a difference of opinion in the division bench of the apex court in *Mohd. Alauddin Khan* v. *Karam Thamarjit Singh*,[103] on the issue of applicability of provision dealing with counter-claim, *i.e.* order 8 rule 6A of CPC to election petition. M.K. Sharma J was of the opinion that in view of the

100 CPC, o. 22, r. 9 (3).
101 (2010) 8 SCC 685.
102 *Perumon Bhagvathy Devaswom* v. *Bhargavi Amma* (2008) 8 SCC 321.
103 (2010) 7 SCC 530.

specific provision in section 97 of the RP Act providing for considering recrimination petition or counterclaim under certain circumstances, provisions of order 8, rule 6A of CPC were not applicable. He substantiated that section 87 of the RP Act opens with the expression "subject to provisions of this Act and of any rules made thereunder." This definitely means that section 87 was subject to section 97 of the RP Act. Section 87 also specifically provides that the procedure under CPC would be applicable "as nearly as may be" meaning thereby that only those provisions for which there was no corresponding provision in the Act could be made applicable. V.S. Sirpurkar J, on the other hand, was of the opinion that in view of the insertion of rule 6A under order 8, introducing provision for filing counterclaim, counterclaim can be raised in the written statement in election petitions as well. Owing to this disagreement, the matter was referred to a larger bench.

Reference of disputes to ADR processes for settlement outside the court

Section 89 of CPC provides for reference of disputes to alternative dispute resolution (ADR) processes such as arbitration, mediation and conciliation, *etc*. for settlement. The scope and ambit of section 89 of CPC and the power of the court under this provision to refer the parties to a suit to arbitration without the consent of both parties arose for consideration before the Supreme Court in *Afcons Infrastructure Ltd.* v. *Cherian Varkey Construction Co. (P) Ltd*.[104] While considering these questions, the court dealt with various issues concerning section 89 of CPC, *viz*. ambiguity or anomaly in the text of section 89; manner in which the said provision was to be interpreted keeping in view its laudable object; whether the reference to ADR process was mandatory?; How to decide the appropriate ADR process? And the binding nature of the settlement in an ADR process. After elaborate discussion, the court came to the following conclusions:

(i) There are anomalies in the text of both sub-section (1) and (2) of section 89 of the Code. It is impracticable to literally follow sub-section (1) of section 89. It will not be possible for a court to formulate the terms of the settlement, unless the judge discusses the matter in detail with both parties. The court formulating the terms of settlement merely on the basis of pleadings is neither feasible nor possible. The requirement that the court should formulate the terms of settlement is therefore a great hindrance to courts in implementing section 89 of the Code. This anomaly was diluted in *Salem Bar (II)*[105] by equating the "terms of settlement" to a "summary of disputes" meaning thereby that the court is only required to

104 (2010) 8 SCC 24.
105 *Salem Advocate Bar Association (II)* v. *Union of India* (2005) 6 SCC 344.

formulate a "summary of disputes" and not "terms of settlement". Thus, it should be understood accordingly.[106]

(ii) The proper interpretation of section 89 of the Code requires two changes from a plain and literal reading of the section. Firstly, it is not necessary for the court, before referring the parties to an ADR process to formulate or reformulate the terms of a possible settlement. It is sufficient if the court merely describes the nature of dispute (in a sentence or two) and makes the reference. Secondly, the provisions dealing with "judicial settlement" and "mediation" in clauses (c) and (d), respectively, of section 89 (2) shall have to be interchanged to correct the draftsman's error. Clauses (c) and (d) of section 89 (2) of the CPC will read as under when the two terms are interchanged:

> Clause (c).- For "mediation", the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a *Lok Adalat* and all the provisions of the Legal Services Authorities Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a *Lok Adalat* under the provisions of that Act;
>
> Clause (d).- For "judicial settlement", the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

The court, however, clarified that the above changes made by interpretative process shall remain in force till the legislature corrects the mistakes so that section 89 was not rendered meaningless and infructuous.[107]

(iii) Having regard to the tenor of the provisions of rule 1-A of order 10 of the Code, the civil court should invariably refer cases to ADR process except where it appears to the court that there exist no elements of settlement. Where the case is unsuited for reference to any of the ADR process, the court will have to briefly record the reasons for not resorting to any of the settlement procedures prescribed under section 89 of the Code. Therefore, having hearing, after completion of pleadings, to consider recourse to ADR process under section 89 of the Code, is mandatory. But actual reference to an ADR process in all cases is not mandatory.[108]

(iv) Section 89 of CPC vests the choice of reference to the court whereas rule 1-A of order 10 requires the court to give the option to the

106 *Supra* note 104, para. 19.

107 *Id*., para. 25.

108 *Id*., para. 26. The court also listed certain categories of cases, which are normally considered to be not suitable for ADR process. They are: (i) Representative suits under order 1, rule 8, CPC, which involve public interest or interest of numerous

parties, to chose any of the ADR processes referred to in the section. There is no inconsistency between the two. Section 89 of the Code gives the jurisdiction to refer to ADR process and rule 1-A to 1-C of order 10 lay down manner in which the said jurisdiction is to be exercised. Thus, as per the scheme, the court explains the choices available regarding ADR process to the parties, permits them to opt for a process by consensus, if there is no consensus, proceeds to choose the process. The discretion in choosing the ADR process is to be used judiciously, keeping in view the nature of disputes, interests of parties and expedition in dispute resolution. Reference to arbitration or conciliation requires consent of all the parties.[109]

(v) Section 89 refers to five types of ADR processes of which arbitration is an adjudicatory process and other processes *viz*., conciliation, mediation, judicial settlement and *lok adalat* settlement are non-adjudicatory in nature. The award of arbitrator is binding on the parties and is enforceable as an order of the court. When a matter is settled through conciliation, the settlement agreement is enforceable as if it is a decree of the court. Same is the case with the settlement award made in *lok adalat* proceedings. Though the settlement agreement in a conciliation or a settlement award of a *lok adalat* may not require the seal of approval of the court for its enforcement when they are made in a direct reference by parties without the intervention of court, the position will be different if they are made on a reference by a court in a pending suit/proceedings. As the court continues to retain control and jurisdiction over the cases which it refers to conciliations, or *lok adalats*, the settlement

persons who are not parties before the court. (In fact, even a compromise in such a suit is a difficult process requiring notice to the persons interested in the suit, before its acceptance); (ii) Disputes relating to election to public offices (as contrasted from disputes between two groups trying to get control over the management of societies, clubs, association, *etc*.); (iii) Cases involving grant of authority by the court after enquiry, as for example, suits for grant of probate or letters of administration; (iv) Cases involving serious and specific allegations of fraud, fabrication of documents, forgery, impersonation, coercion, *etc*.; (v) Cases requiring protection of courts, as for example, claims against minors, deities and mentally challenged and suits for declaration of title against the government, and (vi) Cases involving prosecution for criminal offences [see *id*. para 27]. The court was of the opinion that all other categories of cases are normally suitable for ADR processes. The court also identified, in particular, certain category of cases, which are normally suitable for ADR processes, *viz*. (i) All cases relating to trade, commerce and contracts; (ii) All cases arising from strained or soured relationships; (iii) All cases where there is need for continuation of pre-existing relationship in spite of the disputes; (iv) All cases relating to tortious liability, and (v) All consumer disputes [see *id*., para. 28]. The court, however, made it clear that the enumeration of "suitable" and "unsuitable" categories of cases is not intended to be exhaustive.

109 *Id*., paras. 30, 34, 35 and 36.

> agreement in conciliation or the *lok adalat* award will have to be placed before the court for recording it and disposal in its terms.[110]

Rulings of the court, in the instant case, resolved several issues with regard to the scope and ambit of section 89 of CPC. Interpretation given by the court ironing out the creases in the provision makes it workable. However, it is desirable to amend the provision as indicated by the court in order to remove all ambiguities and anomalies. In addition, courts, while exercising jurisdiction under section 89 of CPC, should adopt the procedure indicated by the court[111] except where special circumstances exist, in particular cases, require some modification.

Oral examination: Scope and ambit of order 10, rule 2, CPC

In *Kapil Corepacks (P) Ltd*. v. *Harbans Lal*,[112] the apex court considered three important questions concerning oral examination under order 10 rule 2, CPC, *viz*. (i) What is the scope and ambit of order 10, rule 2? (ii) Whether the court could, in an examination under the said provision, confront a defendant with only the signature portion of a disputed unexhibited document filed by the plaintiff (by covering the remaining portions of the document) and require him to identify the seal/stamp and signature? And (iii) Whether on the basis of the answer given by a party, in response to a question under order 10, rule 2, CPC, the court could prosecute him under section 340 of the Code of Criminal Procedure read with section 195 of the Indian Penal Code? While considering the first question the apex court observed thus:[113]

> The object of oral examination under Rule 2 of Order 10 is to ascertain the matters in controversy in suit, and not to record evidence or to secure admissions. The statement made by a party in an examination under Rule 2 is not under oath, and is not intended to be a substitute for a regular examination under oath under Order 18 of the Code. It is intended to elucidate what is obscure and vague in the pleadings. In other words, while the purpose of an examination under Rule 1 is to clarify the stand of a party in regard to the allegations made against him in the pleadings of the other party, the purpose of the oral examination under Rule 2 is mainly to elucidate the allegations even in his own pleadings, or any documents filed with the pleadings. The power under Order 10 Rule 2 of the Code, cannot be converted into a process of selective cross-examination by the court, before the party has an opportunity to put forth his case at the trial.

110 *Id*., paras. 37 and 38.
111 See *id*., paras. 43 and 44.
112 (2010) 8 SCC 452.
113 *Id*., para. 15.

The court answered both question (ii) and (iii) negatively. It was of the opinion that the purported examination under order 10, rule 2, CPC, by confronting a party only with a signature on a disputed and un-exhibited document by adopting the process of covering the remaining portions thereof was impermissible, being beyond the scope of an examination under the said provision. As regards the third question, it was observed that "the power under section 340, Cr PC read with Section 195 IPC can be exercised only where someone fabricates false evidence or gives false evidence. By no stretch of imagination, a party giving an answer to a question put under order 10, rule 2, CPC when not under oath and when not being examined as a witness, can attract Section 195 IPC and consequently cannot attract Section 195(1)(b) and Section 340, Cr PC."

Leave to defend summary suit

Order 37 of CPC deals with summary procedure. It was included in the Code in order to allow a person, who had a clear and undisputed claim in respect of any monetary dues, to recover the dues quickly by a summary procedure instead of taking the long route of a regular suit. Leave to defend summary suit should be granted only where the affidavit filed by the defendant discloses a triable issue that is at least plausible. In cases where the defence raised appears to be moonshine and sham, unconditional leave to defend cannot be granted. What is required to be examined for grant of leave is whether the defence taken in the application under order 37, rule 3 of the Code makes out a case, which if established, would be a plausible defence in a regular suit. In matters relating to dishonour of cheques, the aforesaid principle becomes more relevant as the cheques are issued normally for liquidation of dues, which are admitted.[114]

Judicial discretion to extend time

Section 148 of CPC confers power on the court to extend the period from time to time, even after the expiry of the period originally fixed, for the doing of any act prescribed or allowed by CPC. The said provision was amended in 1999 providing that the total period shall not exceed thirty days. The question as to when it was impermissible for the court to grant extension beyond the period of thirty days for doing of any act under CPC came up for consideration before the Supreme Court in *Salem Advocate Bar Association (II)* v. *Union of India.*[115] While answering the question negatively, the court opined that "[W]e have no doubt that the upper limit fixed in Section 148 cannot take away the inherent power of the court to pass orders as may be necessary for the ends of justice or to prevent abuse of process of the court. The rigid operation of the section would lead to absurdity. Section 151 has, therefore, to be

114 *V.K. Enterprises* v. *Shiva Steels* (2010) 9 SCC 256.
115 *Supra* note 105.

allowed to operate fully. Extension beyond maximum of 30 days, thus, can be permitted if the act could not be performed within 30 days for reasons beyond the control of the party." The court reiterated its stand in *D.V. Paul* v. *Manisha Lalwani*[116] in which it was of the view that the power to fix the time for doing of an act carried within it the power to extend such period in appropriate cases. There was nothing in section 148 of CPC or in any other provision therein to suggest the contrary.

Production of additional evidence in appellate court

Order 41, rule 27, CPC allows production of additional evidence in appellate court only under three circumstances. *Firstly*, where the trial court had refused to admit evidence, which ought to have been admitted; *secondly*, where such additional evidence was not within his knowledge or reach during the trial of the suit, and *thirdly*, where the appellate court requires such evidence to be produced in order to enable it to pronounce judgment, or for any other substantial cause. In *Shalimar Chemical Works Ltd.* v. *Surendra Oil and Dal Mills,*[117] the trial court dismissed the suit against the trademark infringement on the ground that only photocopy and not the original trademark registration certificate was produced. The single judge of the High Court, in appeal, admitted the original certificate as additional evidence under order 41, rule 27(1)(b), CPC. The division bench set aside the said order. Allowing the appeal against the order of the division bench, the apex court held that allowing the appellant's plea for production of the original certificates of registration of trademark as additional evidence was simply in the interest of justice and there was sufficient statutory basis for that under clause (b) of order 41, rule 27.

Compromise in a representative suit

The apex court in *Hussainbhai Allarakhbhai Dariaya* v. *State of Gujarat*[118] stated the additional requirements envisaged under order 23, rule 3-B to be fulfilled for entering into any agreement or compromise in a representative suit. These were: (i) compromise cannot be entered without the leave of the court expressly recorded in the proceedings, and (ii) before granting such leave, the court shall give notice to such persons as may appear to it to be interested in the suit. Further the court, while dealing with the definition of "representative suit", stated that for the suit to be qualified as a representative suit under clause (d) of the explanation to rule 3-B of order 23, two conditions should be satisfied: (i) the decree passed in the suit should bind the person who is not named as a party to the suit; and (ii) the decree should so bind a person who is not named as a party to the suit, by virtue of the provisions of CPC or any other law for the time being in force.

116 (2010) 8 SCC 546.
117 (2010) 8 SCC 423.
118 (2010) 8 SCC 759.

Dismissal of suit without trial

In *Alka Gupta* v. *Narender Kumar Gupta*,[119] the court, after considering the circumstances enumerated in CPC under which a civil suit can be dismissed without trial, stated in unequivocal terms that a suit cannot be dismissed without trial merely because the court feels dissatisfied with the conduct of the plaintiff. The apex court was of the view that where the summons had been issued for settlement of issues and a suit was listed for consideration of a preliminary issue, the court cannot make a roving enquiry into the alleged conduct of the plaintiff, tenability of the claim, the strength and validity of contents in the documents, without trial and on that basis dismiss a suit. A suit cannot be short-circuited by deciding issues of fact, merely on pleadings and documents produced, without trial. To say the least, in the opinion of the court, such a procedure was opposed to all principles of natural justice embodied in the Code. In this context, the court expounded the underlying value of the Code of Civil Procedure in following words:[120]

> The Code of Civil Procedure is nothing but an exhaustive compilation-cum-enumeration of the principles of natural justice with reference to a proceeding in a court of law. The entire object of the Code is to ensure that an adjudication is conducted by a court of law with appropriate opportunities at appropriate stages. A civil proceeding governed by the Code will have to be proceeded with and decided in accordance with law and the provisions of the Code, and not on the whims of the court. There are no short-cuts in the trial of suits, unless they are provided by law. A civil suit has to be decided after framing issues and trial permitting the parties to lead evidence on the issues, except in cases where the Code or any other law makes an exception or provides any exemption.

XII CONCLUSION

The Supreme Court in the year under survey delivered many landmark judgments bringing greater clarity to the provisions governing civil proceedings in the court of law. The apex court's ingenious construction, rather redrafting, of section 89 of CPC prevents it from becoming infructuous. By correcting ambiguities in the text of the provision, the apex court made it workable. However, it is desirable to amend the provision, as suggested by the court, to make it more effective. Further, the court's direction for serving summons and notice/s by e-mail in certain cases is very thoughtful and helps in addressing the delay in process serving. Its proposal to evolve uniform standards for exercising jurisdiction under article 136 of the Constitution;

119 *Supra* note 1.
120 *Id*., para. 27.

detailed guidelines for writing orders and judgments, and proposal to amend provisions relating to imposition of cost enabling courts to impose realistic cost to discourage frivolous and vexatious litigations are some of the valuable contributions of the judiciary in the year under survey.

On the whole, in interpretation and application of the provisions relating to civil procedure, the court has not deviated from the established rules and principles. In many cases, stands taken earlier were reiterated and followed, which, indeed, further strengthened them. Such consistency in the judicial approach reinforces the rule of law and serves purposes intended to be achieved by procedural law.