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CIVIL PROCEDURE

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I INTRODUCTION

ADJUDICATION OF civil disputes and enforcement of the rights of the parties to the dispute in terms of the adjudication are matters provided for under the Civil Procedure Code, 1908 (hereinafter 'CPC') - procedure established by law.[1] It embodies the principles of natural justice. Thus, adherence to the procedure established by CPC makes the adjudicative process fair, both in appearance as well as in substance, by brining it in conformity with the principles of natural justice. CPC is a comprehensive legislation containing, more or less, detailed procedure to be followed from the stage of initiation of judicial proceedings till the final disposal of the case and enforcement of the rights of the parties in terms of the decision. However, as no set of rules can provide predetermined answers to every possible question that may crop up in the adjudicative process, CPC too has its inadequacies. Undoubtedly, as in every statute, even in CPC too, there are - to use the words of Benjamin N. Cardozo[2] - gaps to be filled, doubts and ambiguities to be cleared and hardships and wrongs to be mitigated if not avoided. Unless the legislature addresses them by bringing in necessary amendments, the courts will have to do that in the process of interpretation and construction. The courts, generally, by constructing the letters of the law in the light of the spirit underlying the provisions, explain and elucidate in clear terms what do they mean. The present survey briefly encapsulates such exercises done by the judiciary in the survey year.

II JURISDICTION

Ouster of civil court's jurisdiction

The law relating to the ouster of civil courts jurisdiction is well settled. Unless the jurisdiction is ousted either expressly or by necessary implications, civil courts have unlimited jurisdiction to adjudicate civil disputes. While reiterating the position, the apex court, in *Margret Almeida* v. *Bombay Catholic Coop. Housing Society Ltd.*,[3] held that neither section 91 nor section 163 of the Maharashtra Cooperative

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1 *Nitin Gunwant Shah* v. *Indian Bank* (2012) 8 SCC 305.

2 Benjamin N. Cardozo, *The Nature of Judicial Process* 14 (2004).

3 (2012) 5 SCC 642.

Societies Act, 1960 oust the jurisdiction of the civil court to adjudicate the dispute arising out of a decision of the society to alienate its property.

In *Achyutanand Choudhary* v. *Luxman Mahto*,[4] the apex court examined an issue arising out of a suit filed by the plaintiffs claiming that the suit scheduled property is owned by them and their ancestors and they have been in an uninterrupted possession of the same for the period of about 100 years. The allegation was made in the plaint that the defendants (the petitioners before the Supreme Court) threatened to dispossess them on the ground that the suit scheduled property has been recorded in the name of the defendant in the consolidation survey done under the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956. The defendants raised a preliminary issue regarding the maintainability of the suit in the light of sections 15 and 37 of the said Act.

Section 15 of the Act stipulates that the certificate granted by the consolidation officer shall be conclusive proof of the title and section 37 bars the jurisdiction of the civil courts to entertain any suit or application:

(i) To vary any decision or set aside any order given or passed under the Act, and
(ii) With respect to any matter for which a proceeding could or ought to have been taken under the Act.

While refuting the contention based on section 15, the apex court observed:

> [T]he statutory declaration that a particular document is conclusive proof of a particular fact or legal right by itself, does not oust the jurisdiction of the civil courts. The effect of such a statutory declaration is that in any enquiry regarding the existence of such fact or a legal right, courts/tribunals are forbidden from entertaining any further evidence on such an issue the moment the document which is declared to be conclusive proof of such fact/legal rights is produced before the court or tribunal conducting such an enquiry. The ouster of the jurisdiction is altogether a different matter.

With regard to contention based on section 37 of the Act, since it was not clear, from the material placed on record before the apex court, as to what exactly is the nature of the objection raised by the defendants to the maintainability of the suit, the apex court, also taking note of the fact that the trail of suit is in progress, refused to exercise its extraordinary jurisdiction under article 136 of the Constitution to interdict the suit. The court, however, felt that it is open to the defendants to seek the framing of an appropriate issue regarding the maintainability of the suit upon proper pleadings and invite a decision thereon.

Conferring or exclusion of jurisdiction of civil courts by agreement

It has been the consistent stand of the apex court that the parties by agreement cannot confer jurisdiction on a court, which has no territorial or pecuniary jurisdiction to entertain a case nor can they oust the jurisdiction of all courts having jurisdiction

4 (2012) 2 SCC 76.

consequent upon part of the cause of action arising in different jurisdictions. However, in such cases, where two or more courts have the jurisdiction to entertain a suit, the parties by agreement can limit the jurisdiction to one such court and exclude the jurisdiction of others. Such an agreement does not offend the provisions of section 23 of the Contract Act, 1872. This principle has been reiterated by the apex court in *A.V.M. Sales Corporation* v. *Anuradha Chemicals Private Limited*.[5] The court held that the mutual agreement to exclude the jurisdiction of one of the courts to entertain the suit was not opposed to public policy.

III RES JUDICATA

Order 2 rule 2, CPC: Scope and application

In *Virgo Industries (Eng.) (P) Ltd.* v. *Venturetech Solutions (P) Ltd.,*[6] the apex court explained the true purport and import of order 2 rule 2. The court stated thus:[7]

> Order 2 Rule 2 contemplates a situation where a plaintiff omits to sue or intentionally relinquishes any portion of the claim which he is entitled to make. If the plaintiff so acts, Order 2 Rule 2 CPC makes it clear that he shall not, afterwards, sue for the part or portion of the claim that has been omitted or relinquished. It must be noticed that Order 2 Rule 2(2) does not contemplate omission or relinquishment of any portion of the plaintiff's claim with the leave of the court so as to entitle him to come back later to seek what has been omitted or relinquished. Such leave of the court is contemplated by Order 2 Rule 2(3) in situations where a plaintiff being entitled to more than one relief on a particular cause of action, omits to sue for all such reliefs. In such a situation, the plaintiff is precluded from bringing a subsequent suit to claim the relief earlier omitted except in a situation where leave of the court had been obtained. It is, therefore, clear from a conjoint reading of the provisions of Order 2 Rules 2(2) and (3) CPC that the aforesaid two sub-rules of Order 2 Rule 2 contemplate two different situations, namely, where a plaintiff omits or relinquishes a part of a claim which he is entitled to make and, secondly, where the plaintiff omits or relinquishes one out of the several reliefs that he could have claimed in the suit. It is only in the latter situations where the plaintiff can file a subsequent suit seeking the relief omitted in the earlier suit provided that at the time of omission to claim the particular relief he had obtained leave of the court in the first suit.

The object behind the enactment of said provision, in the opinion of the court, is not far to seek. The provision engrafts a laudable principle that discourages/ prohibits vexing the defendant again and again by multiple suits except in a situation where one of the several reliefs, though available to a plaintiff, may not have been claimed for a good reason. A later suit for such relief is contemplated only with the

5 (2012) 2 SCC 315.
6 (2013) 1 SCC 625.
7 *Id*., para 9.

leave of the court which leave, naturally, will be granted upon due satisfaction and for good and sufficient reasons.

In *Raju Jhurani* v. *Germinda (P) Ltd.*,[8] the apex court was asked to consider the question as to whether order 2 rule 2 of CPC would have any impact on a proceedings under sections 433, 434 and 439 of the Companies Act, 1956? While answering the question in the negative, the court observed that "[o]rder 2 CPC deals with the frame of suits and the various rules contained therein also refer to suits for obtaining the reliefs of a civil nature. On the other hand, a proceeding under Sections 433, 434 and 439 of the Companies Act, 1956, is not a suit, but a petition which does not attract the provisions of Order 2 Rule 2 CPC, which deals with suits."[9]

IV PLEADINGS

Pleadings are the foundation of litigation. A decision of a case cannot be based on grounds outside the pleadings of the parties. No evidence is permissible to be taken on record in the absence of the pleadings in that respect. No party can be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. Where the evidence was not in the line of the pleadings, the said evidence cannot be looked into or relied upon.[10] However, in pleadings, only the necessary and relevant material must be included and unnecessary and irrelevant material must be excluded. The plaint, in particular, must contain materials indicating existence of cause of action. The 'cause of action' is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact that enables the plaintiff to prove his case should be set out in clear terms.[11]

Details to be provided in the pleadings for claiming possession

The apex court in *Maria Margarida Sequeira Fernandes* v. *Erasmo Jack de Sequeira,*[12] has enumerated the details that a plaint should contain for claiming possession of the property. They are as follows:[13]

(i) Who is or are the owner or owners of the property;
(ii) Title of the property;
(iii) Who is in possession of the title documents;
(iv) Identity of the claimant or claimants to possession;
(v) The date of entry into possession;
(vi) How he came into possession—whether he purchased the property or inherited or got the same in gift or by any other method;

8 (2012) 8 SCC 563.
9 *Id*., para12.
10 *Union of India* v. *Ibrahim Uddin* (2012) 8 SCC 148.
11 *Church of Christ Charitable Trust & Educational Charitable Society* v. *Ponniamman Educational Trust* (2012) 8 SCC 706.
12 (2012) 5 SCC 370. Also see *A. Shanmugam* v. *Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam, infra* note 89.
13 *Id*., para 70.

(vii) In case he purchased the property, what is the consideration; if he has taken it on rent, how much is the rent, licence fee or lease amount;
(viii) If taken on rent, licence fee or lease—then insist on rent deed, licence deed or lease deed;
(ix) Who are the persons in possession/occupation or otherwise living with him, in what capacity; as family members, friends or servants, *etc*.;
(x) Subsequent conduct, *i.e*., any event which might have extinguished his entitlement to possession or caused shift therein; and
(xi) Basis of his claim that not to deliver possession but continue in possession.

It was, however, stated that the above list is only illustrative and not exhaustive. In addition, the court also laid down following guidelines:

(i) Apart from the pleadings, the court must insist on documentary proof in support of the pleadings. All those documents would be relevant which come into existence after the transfer of title or possession or the encumbrance as is claimed. While dealing with the civil suits, at the threshold, the court must carefully and critically examine the pleadings and documents.[14]
(ii) The court will have to examine the pleadings for specificity as also the supporting material for sufficiency and then pass appropriate orders.[15] In the opinion of the court, discovery and production of documents and answers to interrogatories, together with an approach of considering what in the ordinary course of human affairs is more likely to have been the probability, will prevent many a false claims or defences from sailing beyond the stage for issues.[16]
(iii) If the pleadings do not give sufficient details, they will not raise an issue, and the court can reject the claim or pass a decree on admission. On vague pleadings, no issue arises. Only when he so establishes, does the question of framing an issue arise. Framing of issues is an extremely important stage in a civil trial. Judges are expected to carefully examine the pleadings and documents before framing of issues in a given case.[17]
(iv) In pleadings, whenever a person claims right to continue in possession of another property, it becomes necessary for him to plead with specificity about who was the owner, on what date did he enter into possession, in what capacity and in what manner did he conduct his relationship with the owner over the years till the date of suit. He must also give details on what basis he is claiming a right to continue in possession. Until the pleadings raise a sufficient case, they will not constitute sufficient claim of defence.[18]
(v) The court must ensure that pleadings of a case must contain sufficient particulars. Insistence on details reduces the ability to put forward a non-

14 *Id.,* para 71.
15 *Id.,* para 72.
16 *Id.* para 73.
17 *Id.* para 74.
18 *Id.* para 75.

> existent or false claim or defence. In dealing with a civil case, pleadings, title documents and relevant records play a vital role and that would ordinarily decide the fate of the case.[19]

Statement of material facts in election petition

In the previous year, the apex court categorically stated that "[a]n election petition can be summarily dismissed if it does not furnish the material facts to give rise to a cause of action".[20] In *Jitu Patnaik* v. *Sanathan Mohakud*,[21] the court reiterated what it stated earlier[22] that "omission of even a single material fact leads to an incomplete cause of action and statement of claim becomes bad."[23] Referring to the absence of several material facts in the pleadings, the court observed:[24]

> There is no averment that the election petitioner or any of his polling agents had perused the register of voters maintained in Form 17-A. The basis of the knowledge that the register of voters maintained in Form 17-A records that 1091 voters came to vote is not disclosed at all. Moreover, there is no pleading that 1091 voters who came to vote at Booth No. 179 in fact voted. There is no merit in the contention ... that the facts stated in Para 7(D) with regard to Form 17-A shall be established at the trial after Form 17-A is summoned by the Court. We are afraid that such fanciful imagination of proof at the trial cannot be a substitute of the pleading of material facts about the total number of voters who came to vote and in fact voted at Booth No. 179.

The court, thus, dismissed the election petition in its entirety.

In *P. A. Mohammed Riyas* v. *M. K. Raghavan,*[25] the apex court held that the election petition on the ground of corrupt practices must be supported by the affidavit in the prescribed form in order to disclose the source of allegation. It is a mandatory requirement in terms of proviso to section 83 (1) (c) of the Representation of People Act, 1951. In the absence of such an affidavit verifying the statements, the election petition is incomplete for want of complete cause of action.

Amendment of pleadings

Order 6, rule 17 of CPC confers discretionary powers on the court to allow amendments in pleadings at any stage of the proceedings. The proviso to the said provision, however, restricts the scope of discretionary power by stipulating that the amendments shall not be allowed after the commencement of the trial unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.[26] In *J. Samuel* v. *Gattu*

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19 *Id.,* para 77.
20 *Nandiesha Reddy* v. *Kavitha Mahesh* (2011) 7 SCC 721.
21 (2012) 4 SCC 194.
22 See *Samanth N. Balakrishna* v. *George Fernandez* (1969) 3 SCC 238.
23 *Supra* note 21, para 54.
24 *Id*., para 50.
25 (2012) 5 SCC 511.
26 *Abdul Rehman* v. *Mohd. Ruldu* (2012) 11 SCC 341.

Mahesh,[27] the apex court dealt with a question as to whether the high court is right in allowing the application filed under order 6 rule 17 of the Code for amendment of the plaint which was filed after conclusion of trial and reserving the matter for orders. In this case, based on the agreement to sale a piece of land, the respondent – plaintiff filed the suit for specific performance. After the filing of written statement by the contesting defendants, the trial of the suit commenced and both the parties adduced the evidence on their behalf and arguments on behalf of both the sides were heard and completed on 22.9.2010. On that day, the court reserved the matter for orders. Subsequently, on 24.9.2010, the respondents – plaintiffs filed a petition seeking amendment of the plaint to incorporate an averment, which is mandatory, under section 16 (c) of the Specific Performance Act, for seeking specific performance. The permission to amend was sought on the ground that the said averment was missed due to typographical error in spite of due diligence. The trial court did not accept the claim for amendment but the high court, in appeal, allowed the amendment. While allowing the appeal against the order of the high court, the apex court observed:[28]

> The primary aim of the court is to try the case on its merits and ensure that the rule of justice prevails. For this the need is for the true facts of the case to be placed before the court so that the court has access to all the relevant information in coming to its decision. Therefore, at times it is required to permit parties to amend their plaints. The court's discretion to grant permission for a party to amend his pleading lies on two conditions, firstly, no injustice must be done to the other side and secondly, the amendment must be necessary for the purpose of determining the real question in controversy between the parties. However, to balance the interests of the parties in pursuit of doing justice, the proviso has been added which clearly states that:
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> "… no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of *due diligence*, the party could not have raised the matter before the commencement of trial."
>
> (emphasis supplied)
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> With regard to due diligence, it was observed:[29]
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> Due diligence is the idea that reasonable investigation is necessary before certain kinds of relief are requested. Duly diligent efforts are a requirement for a party seeking to use the adjudicatory mechanism to attain an anticipated relief. An advocate representing someone must engage in due diligence to determine that the representations made are factually accurate and sufficient. The term "due diligence" is specifically used in the Code so as to provide

27 (2012) 2 SCC 300.
28 *Id.,* para 18.
29 *Id.*, para 19.

> a test for determining whether to exercise the discretion in situations of requested amendment after the commencement of trial.
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> A party requesting a relief stemming out of a claim is required to exercise due diligence and it is a requirement which cannot be dispensed with. The term "due diligence" determines the scope of a party's constructive knowledge, claim and is very critical to the outcome of the suit.

Having regard to the facts of the instant case, the apex court opined that there is a clear lack of 'due diligence' and the mistake committed certainly cannot be considered as typographical error. Taking note of the definition of the term 'typographical error,' which refers to mistake made in the printed/typed material during a printing/typing process, the court opined that "the term includes errors due to mechanical failure or slips of the hand or finger, but usually excludes errors of ignorance. Therefore, the act of neglecting to perform an action which one has an obligation to do cannot be called as a typographical error. As a consequence the plea of typographical error cannot be entertained in this regard since the situation is of lack of due diligence wherein such amendment is impliedly barred under the Code".

In *K. Thippanna* v. *Varalakshmi,*[30] it was held that an amendment of application for drawing up final decree in order to seek an additional relief in the final decree which goes beyond the relief claimed in the preliminary decree cannot be allowed. In *Ramesh Kumar Agarwal* v. *Rajmala Exports (P) Ltd.,*[31] the court cited with approval the important factors, specified in an earlier case,[32] to be taken into consideration while dealing with applications for amendments. They are as follows:[33]

(i) Whether the amendment sought is imperative for proper and effective adjudication of the case;
(ii) Whether the application for amendment is *bona fide* or *mala fide*;
(iii) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
(iv) Refusing amendment would in fact lead to injustice or lead to multiple litigation;
(v) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and
(vi) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

The court, however, stated that the above factors, which are important to be kept in mind while dealing with application filed under order 6 rule 17 of the Code, are only illustrative and not exhaustive. Further, the court observed:[34]

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30 (2012) 3 SCC 576.
31 (2012) 5 SCC 337.
32 *Revajeetu Builders & Developers* v. *Narayanaswamy & Sons* (2009) 10 SCC 84.
33 *Supra* note 31, para 20.
34 *Id*., para 21.

> [W]hile deciding the application for amendment ordinarily the court must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide and dishonest amendments. The purpose and object of Order 6 Rule 17 of the Code is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Amendment cannot be claimed as a matter of right and under all circumstances, but the courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule, particularly in cases where the other side can be compensated with costs. Normally, amendments are allowed in the pleadings to avoid multiplicity of litigations.

Misdescription of suit property in the plaint

In *Ramdas Bansal* v. *Kharag Singh Baid,*[35] the apex court has considered an issue as to when does misdescription of suit property is not fatal to the suit. In this case, a suit was filed seeking decree for vacant possession of immovable property after expiry of lease period. However, description of suit property in the plaint was not tallying with the description in lease deed. While in the lease deed, the property was described as premises no. 91, Mahatma Gandhi Road, Kolkata, in the plaint, the suit property was described as being the property situated at premises no. 91-A, Mahatma Gandhi Road and portion of premises no. 6-A, Sambhu Chatterjee Street, Kolkata. It was contended before the trial court that the respondents were not entitled to relief, inasmuch as, they were seeking relief in a property which was different from the property mentioned in the lease deed. However, both the trial court, as well as the high court have rejected the contention by holding that "in this case there was no difficulty at all in identifying the property, inasmuch as, what was leased out by the respondents to the appellant was Grace Cinema Hall and what was to be recovered by the respondents in the suit was also the said cinema hall and nothing else."[36] The apex court, having noted that there was no difficulty in identifying the suit property and the fact that a separate prayer had been made in the plaint for rectification of the schedule in the lease deed, if necessary, held that it was possible for the decree to be executed even without such rectification. It is evident from the consistent stands taken by all the courts – from trial court right up to Supreme Court - that mere misdescription of suit property in such cases is not fatal to the suit.

Procedure to be followed on failure to file written statement

Order 8, rule 10 of CPC lays down the procedure to be followed when party fails to present written statement called for by court. It says that if the party fails to present written statement within the time permitted or fixed by the court, "the court shall pronounce judgment against him, or make such orders in relation to the suit as it thinks fit and on the pronouncement of such judgement a decree shall be drawn up". In the opinion of the apex court, this provision is aimed at expediting the

35 (2012) 2 SCC 548.

36 *Id.,* para 28.

disposal of the suit and it is not penal in nature wherein the defendant has to be penalised for non-filing of the written statement by trying the suit in a mechanical manner.[37] In view of this, the court has laid down certain guidelines to be followed while exercising the power under order 8, rule 10. They are as follows:

(i) In a case where written statement has not been filed, the court should be a little more cautious in proceeding under Order 8 Rule 10 CPC and before passing a judgment, it must ensure that even if the facts set out in the plaint are treated to have been admitted, a judgment and decree could not possibly be passed without requiring him to prove the facts pleaded in the plaint.[38]

(ii) It is only when the court for recorded reasons is fully satisfied that there is no fact which needs to be proved at the instance of the plaintiff in view of the deemed admission by the defendant, the court can conveniently pass a judgment and decree against the defendant who has not filed the written statement. But, if the plaint itself indicates that there are disputed questions of fact involved in the case arising from the plaint itself giving rise to two versions, it would not be safe for the court to record an *ex parte* judgment without directing the plaintiff to prove the facts so as to settle the factual controversy. In that event, the *ex parte* judgment although may appear to have decided the suit expeditiously, it ultimately gives rise to several layers of appeal after appeal which ultimately compounds the delay in finally disposing of the suit giving rise to multiplicity of proceedings which hardly promotes the cause of speedy trial.[39]

(iii) However, if the court is clearly of the view that the plaintiff's case even without any evidence is prima facie unimpeachable and the defendant's approach is clearly a dilatory tactic to delay the passing of a decree, it would be justified in appropriate cases to pass even an uncontested decree. What would be the nature of such a case ultimately will have to be left to the wisdom and just exercise of discretion by the trial court who is seized of the trial of the suit.[40]

Rejection of plaint

Rule 11 of order 7, CPC specifies the cases in which the court shall reject the plaint. It makes it clear that where the plaint does not disclose a cause of action; the relief claimed is undervalued and not corrected within the time allowed by the court; the plaint is insufficiently stamped and not rectified within the time fixed by the court; the suit is barred by any law, the plaintiff failed to enclose the required copies and where he fails to comply with the provisions of rule 9, the court has no other option except to reject the same. A reading of the said provision also makes it clear that power under order 7 rule 11 of CPC can be exercised at any stage of the suit either before registering the plaint or after the issuance of summons to the

37 *C.N. Ramappa Gowda* v. *C.C. Chandregowda* (2012) 5 SCC 265.
38 *Id*., para 25.
39 *Id*., para 26.
40 *Id*., para 27.

defendants or at any time before the conclusion of the trial. While exercising the power under the said provision, *i. e.,* under rule 11 of order 7, the court has to look into the averments in the plaint and not in the written statement. In other words, the pleas taken by the defendant in the written statement are wholly irrelevant and the decision to reject the plaint has to be taken only by scrutinizing the averments made in the plaint.[41]

V PARTIES

A person having only a remote interest in the *lis* cannot be permitted to become a party in the *lis*. The person, who wants to become a party in a case, has to establish that he has a legal right which has been or is threatened to be violated, for the reason that a legal injury creates a remedial right in the injured person. A 'legal right' is an averment of entitlement arising out of law. In fact, it is a benefit conferred upon a person by the law. Thus, a person who suffers from legal injury can only challenge the act or omission. There may be some harm or loss that may not be wrongful in the eye of the law because it may not result in injury to a legal right or legally protected interest of the complainant but juridically such harm is called *damnum sine injuria*. For the purpose of becoming a party in the *lis*, one has to establish that he has been deprived of or denied a legal right and he has sustained injury to any legally protected interest. In case he has no legal right to hang on, he cannot be heard as a party in a *lis*. A fanciful or sentimental grievance may not be sufficient to confer a *locus standi* to sue upon the individual. There must be *injuria* or a legal grievance which can be appreciated and not a *stat pro ratione voluntas reasons, i.e.,* a claim devoid of reasons. Thus, a person cannot be heard as a party unless he answers the description of aggrieved party.[42] On the other hand, if any person is likely to be aggrieved in case the relief sought by either of the parties before the court is granted, such person, who is likely to be aggrieved, has to be impleaded in order to comply with the doctrine of *audi alteram partem*.[43]

Joining Union of India as a party

Rule 5-A of order 27 of the Code requires that the government shall be joined as a party in a suit instituted against a public officer for damages or other relief in respect of any act alleged to have been done by *him* in his official capacity. Relying on the said provision, the apex court, in *Coal Mines Provident Fund Commissioner* v. *Ramesh Chandra Jha,*[44] held that it was necessary to join the Union of India as a party in the suit where the relief was claimed in respect of the act done by the coal mines provident fund commissioner, who was considered to be public officer within the meaning of clause 17 of section 2 of CPC.

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41 *Church of Christ Charitable Trust & Educational Charitable Society* v. *Ponniamman Educational Trust* (2012) 8 SCC 706. Also see, *Bhau Ram* v. *Janak Singh* (2012) 8 SCC 701.

42 *Ravi Yashwant Bhoir* v. *Collector* (2012) 4 SCC 407.

43 *Vijay Kumar Kaul* v. *Union of India* (2012) 7 SCC 610.

44 (2012) 2 SCC 67.

Granting relief to a person, who has not filed appeal or cross-appeal

In *Y. Nagaraj* v. *Jalajakshi,*[45] the apex court has dealt with an issue as to whether a relief can be granted by the high court to the respondent, who has not filed an appeal or cross-objection to question the findings recorded by the trial court on various issues? To argue the affirmative, rule 33 of order 41 has been relied upon. Rejecting the argument, the apex court, after taking note of the fact that the respondent had failed to prove the case set up in the plaint, held that "[t]hough, it is possible to take the view that even in the absence of an appeal having been preferred by Respondent 1, the learned Single Judge could have exercised power under Order 41 Rule 33 CPC, as interpreted by this Court in *Nirmala Bala Ghose* v. *Balai Chand Ghose*,[46] *Giani Ram* v. *Ramjilal*[47] and *Banarsi* v. *Ram Phal*,[48] after having carefully examined the entire record, we are convinced that the impugned judgment cannot be sustained by relying upon Order 41 Rule 33".[49]

Right of the *pendente lite* purchaser of suit property to be impleaded

Transfer *pendente lite* of the suit property is not prohibited under the law. Section 82 of the Transfer of Property Act, 1882 does not declare such transfers void. It only renders such transfers subservient to the rights of parties to the suit to be eventually determined by the court. Thus, transfer *pendente lite* remains valid subject to the result of the suit. It follows that the *pendente lite* purchaser would be entitled to or suffer from same legal rights and obligation of his vendor as may be eventually determined by the court. Therefore, any impleadment application moved by such purchaser should normally be allowed or considered liberally.[50] However, such liberal approach need not be adopted in cases where transfer *pendente lite* is barred by an order of injunction issued by the court.[51]

In *Vidur Impex & Traders (P.) Ltd.* v. *Tosh Apartments (P.) Ltd.,*[52] the apex court, relying on several cases, has culled out broad principles which should govern an application for impleadment. They are:[53]

(i) The court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the court is necessary for effective and complete adjudication of the issues involved in the suit.
(ii) A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the court.
(iii) A proper party is a person whose presence would enable the court to completely, effectively and properly adjudicate upon all matters and issues,

45 (2012) 2 SCC 161.
46 AIR 1965 SC 1874.
47 (1969) 1 SCC 813.
48 (2003) 9 SCC 606.
49 *Supra* note 45, para 27.
50 *A. Nawab John* v. *V. N. Subramaniyam* (2012) 7 SCC 738.
51 *Vidur Impex & Traders (P.) Ltd.* v. *Tosh Apartments (P.) Ltd.* (2012) 8 SCC 384.
52 *Ibid*.
53 *Id*., para 41.

though he may not be a person in favour of or against whom a decree is to be made.

(iv) If a person is not found to be a proper or necessary party, the court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.

(v) In a suit for specific performance, the court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

(vi) However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the court or the application is unduly delayed then the court will be fully justified in declining the prayer for impleadment.

VI APPEAL

Scope of the power of high court under section 100, CPC

The apex court has consistently stated in several cases[54] that formulation of substantial question of law is a *sine qua non* for exercise of jurisdiction under section 100 of CPC. The provision is very clear, unambiguous and it does not permit any departure. Despite of the clarity in legal position and the consistency in the approach of the Supreme Court, several high courts overlook the legal constraints on their jurisdiction under the said provision. In the previous year, in *Umerkhan*,[55] the apex court even voiced its concerns over such approach adopted by the high courts. In the year under survey as well, it had encountered a similar issue in *Hardeep Kaur* v. *Malkiat Kaur*,[56] where the high court had allowed the second appeal and set aside the judgment and decree of the first appellate court without formulating any substantial question of law. The apex court, while remitting the matter back to the high court, has clearly and categorically stated that such an approach is impermissible and that renders the judgment of the high court unsustainable. The decision reversing the judgment and decree of the first appellate court without framing the substantial question of law, which is a mandatory requirement for allowing the second appeal, cannot be sustained.

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54 See *Panchugopal Barua* v. *Umesh Chandra Goswami* (1997) 4 SCC 713; *Sheel Chand* v. *Prakash Chand* (1998) 6 SCC 683; *Kanai Lal Garari* v. *Murari Ganguly* (1999) 6 SCC 35; *Ishwar Dass Jain* v. *Sohan Lal* (2000) 1 SCC 434; *Roop Singh* v. *Ram Singh* (2000) 3 SCC 708; *Santosh Hazari* v. *Purushottam Tiwari* (2001) 3 SCC 179; *Chadat Singh* v. *Bahadur Ram* (2004) 6 SCC 359; *Sasikumar* v. *Kunnath Chellappan Nair* (2005) 12 SCC 588; *C.A. Sulaiman* v. *State Bank of Travancore* (2006) 6 SCC 392; *Bokka Subba Rao* v. *Kukkala Balakrishna* (2008) 3 SCC 99; *Narayanan Rajendran* v. *Lekshmy Sarojini* (2009) 5 SCC 264; *Municipal Committee, Hoshiarpur* v. *Punjab SEB* (2010) 13 SCC 216; *Umerkhan* v. *Bismillabi* (2011) 9 SCC 684 and *Shiv Cotex* v. *Tirgun Auto Plast (P) Ltd.* (2011) 9 SCC 678.

55 *Ibid*.

56 (2012) 4 SCC 344.

In second appeal, the court is required to frame the substantial question/s of law at the time of admission of the appeal and answer all the questions framed, in case if there are more than one, unless the appeal is finally decided on one or two of those questions or the court comes to the conclusion that the question/s framed could not be the substantial question/s of law. However, there is no prohibition in law to frame the additional substantial question of law if the need so arises at the time of the final hearing of the appeal. The court may do so in exceptional circumstances where it is compelled to interfere, notwithstanding the limitation imposed by the wording of section 100 of CPC.[57] "It may be necessary to do so", in the opinion of the apex court, "for the reason that after all the purpose of the establishment of courts of justice is to render justice between the parties, though the High Court is bound to act with circumspection while exercising such jurisdiction".[58]

Interference by the high court in second appeal with the concurrent findings of the trial court and first appellate court

In *Firojuddin* v. *Babu Singh*,[59] while dealing with a suit for eviction, the trial court found the landlord tenant relationship between the parties and the relief claimed in the suit was granted. In an appeal, the first appellate court upheld the findings of the trial court. But the high court in the second appeal held that "even if it be taken that the title of the plaintiffs is duly established, on the basis of the sale deed, but still unless and until the relationship of landlord and tenant between the parties is also established, the suit for possession, by way of ejectment, could not have been decreed". Accordingly, it set aside the order of the trial court and the first appellate court. The said order of the high court was in turn set aside by the apex court, which was of the opinion that the high court committed an error by setting aside the judgements and decrees of the courts below. It may be noted that under the scheme envisaged in the CPC, ordinarily the first appellate court is the final court on issues relating to facts. The second appellate jurisdiction of the high court under section 100 of the Code is not akin to the jurisdiction of the first appellate court under section 96. Second appellate jurisdiction is restricted to substantial question or questions of law that may arise from the judgement and decree appealed against.[60] Thus, the interference by the high court in second appeal with the concurrent findings of courts below on a question of fact is not justifiable.

Further, in *Vishwanath Agrawal* v. *Sarla Vishwanath Agrawal*[61] also, the apex court reiterated that it has been the settled law that the high court in a second appeal should not disturb the concurrent findings of fact unless it is shown that the findings recorded by the courts below are perverse being based on no evidence or that on the evidence on record no reasonable person could have come to that conclusion. Even if the high court comes to the conclusion that another view is possible on the

57 *Supra* note 10.

58 *Id*., para 70.

59 (2012) 3 SCC 319. Also see *Ghisalal M. Agrawal* v. *Rameshwar* (2012) 5 SCC 758.

60 See *Umerkhan* v. *Bismillabi* (2011) 9 SCC 684 and *Shiv Cotex* v. *Tirgun Auto Plast (P.) Ltd.* (2011) 9 SCC 678.

61 (2012) 7 SCC 288.

basis of the evidence available, it is not justifiable for the high court, solely because of the said reason, to exercise its jurisdiction under section 100 of CPC.

Power of the appellate court to order remand

The CPC empowers the appellate courts to order remand in three situations. These situations are covered under rules 23, 23 – A and 25 of order 41. The apex court elucidated the scope of these provisions in *Jegannathan* v. *Raju Sigamani*,[62] where it observed:

(i) Order 41 Rule 23 is invocable by the appellate court where the appeal has arisen from the decree passed on a preliminary point. In other words, where the entire suit has been disposed of by the trial court on a preliminary point and such decree is reversed in appeal and the appellate court thinks proper to remand the case for fresh disposal. While doing so, the appellate court may issue further direction for trial of certain issues.[63]

(ii) Order 41 Rule 23-A has been inserted in the Code by Act 104 of 1976 w.e.f. 1-2-1977. According to Order 41 Rule 23-A of the Code, the appellate court may remand the suit to the trial court even though such suit has been disposed of on merits. It provides that where the trial court has disposed of the suit on merits and the decree is reversed in appeal and the appellate court considers that retrial is necessary, the appellate court may remand the suit to the trial court.[64]

(iii) Insofar as Order 41 Rule 25 of the Code is concerned, the appellate court continues to be in seisin of the matter; it calls upon the trial court to record the finding on some issue or issues and send that finding to the appellate court. The power under Order 41 Rule 25 is invoked by the appellate court where it holds that the trial court that passed the decree omitted to frame or try any issue or determine any question of fact essential to decide the matter finally. The appellate court while remitting some issue or issues, may direct the trial court to take additional evidence on such issue(s).[65]

In the instant case, the court also clarified that an order of remand passed under order 41 rule 23-A is amenable to appeal under order 43 rule 1(u) of CPC. The appeal under order 43 rule 1(u) can only be heard on the grounds a second appeal is heard under section 100. The constraints of section 100 continue to be attached to an appeal under order 43 rule 1(u). Thus, the high court was wrong in holding that civil miscellaneous appeal from the order of remand was not maintainable.

Appeal to the Supreme Court under section 125 of the Electricity Act, 2003

In *DSR Steel (P.) Ltd.* v. *State of Rajasthan*,[66] the court held that an appeal under section 125 of the Electricity Act, 2003 is maintainable before it only on the

62 (2012) 5 SCC 540.
63 *Id*., para 6.
64 *Id*., para 7.
65 *Id*., para 8.
66 (2012) 6 SCC 782.

grounds specified in section 100 of CPC, which permits filing of an appeal only if the case involves a substantial question of law. Findings of fact recorded by the courts below, which under the Electricity Act imply the regulatory commission as the court of first instance and the appellate tribunal as the court hearing the first appeal, cannot be reopened before the apex court in an appeal under section 125 of the Act. Just as the high court cannot interfere with the concurrent findings of fact recorded by the courts below in a second appeal under section 100, so also the apex court would be loath to entertain any challenge to the concurrent findings of fact recorded by the regulatory commission and the appellate tribunal.

Production of additional evidence in appellate court

Rule 27 of order 41, CPC bars, as a general principle, production of additional evidence in the appellate court. However, it confers discretion on the appellate court to take additional evidence in exceptional circumstances specified therein. The appellate court may permit additional evidence only and only if the conditions laid down in this rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. The judicial discretion conferred by the said rule is circumscribed by the limitation specified in the rule itself. It has to be exercised sparingly. In *Union of India* v. *Ibrahim Uddin*,[67] the apex court, relying on the catena of cases, has elucidated the scope, ambit and conditions for the exercise of the power under the said rule. The court has made following observations:

(i) The provision does not apply, when on the basis of the evidence on record, the appellate court can pronounce a satisfactory judgment.[68]

(ii) The appellate court should not ordinarily allow new evidence to be adduced in order to enable a party to raise a new point in appeal. Similarly, where a party on whom the onus of proving a certain point lies fails to discharge the onus, he is not entitled to a fresh opportunity to produce evidence, as the court can, in such a case, pronounce judgment against him and does not require any additional evidence to enable it to pronounce judgment.[69]

(iii) Under the provision, the appellate court has the power to allow a document to be produced and a witness to be examined. But the requirement of the said court must be limited to those cases where it found it necessary to obtain such evidence for enabling it to pronounce judgment. This provision does not entitle the appellate court to let in fresh evidence at the appellate stage where even without such evidence it can pronounce judgment in a case. It does not entitle the appellate court to let in fresh evidence only for the purpose of pronouncing judgment in a particular way. In other words, it is only for removing a lacuna in the evidence that the appellate court is empowered to admit additional evidence.[70]

67 *Supra* note 10.
68 *Id*., para 36.
69 *Id.,* para 37.
70 *Id*., para 38.

(iv) It is not the business of the appellate court to supplement the evidence adduced by one party or the other in the lower court. Hence, in the absence of satisfactory reasons for the non-production of the evidence in the trial court, additional evidence should not be admitted in appeal as a party guilty of remissness in the lower court is not entitled to the indulgence of being allowed to give further evidence under this Rule. So a party who had ample opportunity to produce certain evidence in the lower court but failed to do so or elected not to do so, cannot have it admitted in appeal.[71]

(v) The inadvertence of the party or his inability to understand the legal issues involved or the wrong advice of a pleader or the negligence of a pleader or that the party did not realise the importance of a document does not constitute a "substantial cause" within the meaning of this Rule. The mere fact that certain evidence is important is not in itself a sufficient ground for admitting that evidence in appeal.[72] The words "for any other substantial cause" must be read with the word "requires" in the beginning of the sentence, so that it is only where, for any other substantial cause, the appellate court requires additional evidence, that this Rule will apply e.g. when evidence has been taken by the lower court so imperfectly that the appellate court cannot pass a satisfactory judgment.[73]

(vi) Whenever the appellate court admits additional evidence it should record its reasons for doing so (sub-rule (2)). It is a salutary provision which operates as a check against a too easy reception of evidence at a late stage of litigation and the statement of reasons may inspire confidence and disarm objection. Another reason of this requirement is that, where a further appeal lies from the decision, the record of reasons will be useful and necessary for the court of further appeal to see, if the discretion under this Rule has been properly exercised by the court below. The omission to record the reasons must, therefore, be treated as a serious defect. But this provision is only directory and not mandatory, if the reception of such evidence can be justified under the Rule.[74] However, the reasons need not be recorded in a separate order provided they are embodied in the judgment of the appellate court. A mere reference to the peculiar circumstances of the case, or mere statement that the evidence is necessary to pronounce judgment, or that the additional evidence is required to be admitted in the interests of justice, or that there is no reason to reject the prayer for the admission of the additional evidence, is not enough compliance with the requirement as to recording of reasons.[75]

(vii) Where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it

71 *Id*., para 39.
72 *Id*., para 40.
73 *Id*., para 41.
74 *Id*., para 42.
75 *Id*., para 43.

imperative that it may be allowed to be permitted on record, in such cases, application seeking production of evidence may be allowed.[76]

(viii) An application under the provision is to be considered at the time of hearing of appeal on merits so as to find out whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore, is whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. Such occasion would arise only if on examining the evidence as it stands the court comes to the conclusion that some inherent lacuna or defect becomes apparent to the court.[77] Thus, it is crystal clear that an application for taking additional evidence on record at an appellate stage, even if filed during the pendency of the appeal, is to be heard at the time of the final hearing of the appeal. In case, the application for taking additional evidence on record has been considered and allowed prior to the hearing of the appeal, the order being a product of total and complete non-application of mind, as to whether such evidence is required to be taken on record to pronounce the judgment or not, remains inconsequential and is liable to be ignored.[78]

Dismissal of appeal for appellant's default

Rule 17(1) of order 41, CPC deals with the dismissal of appeal for the appellant's default. The provision, even without explanation, which was added subsequently, if literally read, would clearly indicate that if the appellant does not appear when the appeal is called for hearing, the court has to dismiss the appeal. The provision does not postulate a situation where, the appeal has to be decided on merits even if nobody had appeared for the appellant. If the appellant has a good case on merits and there is a possibility of allowing of the appeal, even then the same cannot be disposed off on merits under this rule. The explanation added to sub-rule (1) of rule 17 by the Act No. 104 of 1976 makes the position abundantly clear.[79]

VII REVIEW

The power of review is not an inherent power. It is a creature of the statute and no court or *quasi*-judicial body or administrative authority can review its judgment or order or decision unless it is legally empowered to do so. Article 137 of the Constitution of India empowers the apex court to review its judgments subject to

76 *Id*., para 47.
77 *Id*., para 49.
78 *Id*., para 52.
79 *Ghanshyam Dass Gupta* v. *Makhan Lal* (2012) 8 SCC 745.

the provisions of any law made by Parliament or any rules made under article 145 of the Constitution. The Supreme Court Rules, 1966 framed under the said provision lay down that in civil cases, review lies on any of the grounds specified in order 47, rule 1 of the CPC. Thus, there are definitive limits to the exercise of power of review. In the guise of seeking review, the party cannot ask for *de novo* hearing of the appeal.[80] The scope of a review petition is very limited. Review of a judgment on account of some mistake or error apparent on the face of the record is, of course, permissible, but an error apparent on the face of the record has to be decided on the facts of each case as an erroneous decision by itself does not warrant a review of each decision.[81]

VIII JUDGMENT, DECREE AND ORDERS

Reasons in support of judicial orders

The Supreme Court has always taken strong exception to the practice of passing orders without proper reasoning in support thereof, particularly, when such orders are appealable. In *Union of India* v. *Ibrahim Uddin*[82] as well, the court emphasised on the importance of reasoning in support of judicial decisions. The court observed thus:[83]

> It is a settled legal proposition that not only administrative order, but also judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the court to record reasons while disposing of the case. The hallmark of order and exercise of judicial power by a judicial forum is for the forum to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration of the justice delivery system, to make it known that there had been proper and due application of mind to the issue before the court and also as an essential requisite of the principles of natural justice. The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with objectivity. The absence of reasons renders an order indefensible/unsustainable, particularly when the order is subject to further challenge before a higher forum. Recording of reasons is the principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision-making. The person who is adversely affected must know why his application has been rejected.

Distinction between preliminary and final decree

In *Bimal Kumar* v. *Shakuntala Debi,*[84] the apex court, while considering a question as to whether the decree passed by the court of first instance on the basis

80 *Haryana State Industrial Development Corpn. Ltd.* v. *Mawasi* (2012) 7 SCC 200.
81 *Akhilesh Yadav* v. *Vishwanath Chaturvedi* (2013) 2 SCC 1.
82 *Supra* note 10.
83 *Id*., para 44.
84 (2012) 3 SCC 548.

of compromise had become enforceable or it had the status of a preliminary decree requiring completion of a final decree proceeding to make it executable, has elucidated the distinction between preliminary decree and final decree. Relying on *Renu Devi*,[85] the court reiterated that:[86]

> [A] preliminary decree declares the rights or shares of the parties to the partition. Once the shares have been declared and a further inquiry still remains to be done for actually partitioning the property and placing the parties in separate possession of the divided property, then such inquiry shall be held and pursuant to the result of further inquiry, a final decree shall be passed. A preliminary decree is one which declares the rights and liabilities of the parties leaving the actual result to be worked out in further proceedings. Then, as a result of the further inquiries conducted pursuant to the preliminary decree, the rights of the parties are finally determined and a decree is passed in accordance with such determination, which is the final decree. Thus, fundamentally, the distinction between preliminary and final decree is that: a preliminary decree merely declares the rights and shares of the parties and leaves room for some further inquiry to be held and conducted pursuant to the directions made in the preliminary decree which inquiry having been conducted and the rights of the parties finally determined a decree incorporating such determination needs to be drawn up which is the final decree.

Further, the court also opined that in a given case, a decree may be both preliminary and final and, in some cases, it may be partly preliminary and partly final as held in *Rachakonda Venkat Rao* v. *R. Satya Bai*.[87] What is executable is a final decree and not a preliminary decree unless and until the final decree is a part of the preliminary decree. A final decree proceeding may be initiated at any point of time.

However, with reference to the present case, the apex court, after considering catena of decisions and the factual matrix of the case, came to the conclusion that a decree came to be passed on the bedrock of a compromise in entirety from all angles leaving nothing to be done in the future. The curtains were really drawn and the court gave the stamp of approval to the same. Thus, the inescapable conclusion is that the compromise decree passed in the present case was a final decree.

IX UNCALLED FOR AND FRIVOLOUS LITIGATIONS

Frivolous, vexatious, uncalled for or speculative suits have become common problems faced by the courts today. They consume the courts scarce and valuable time. In several cases, the apex court had taken serious note of the problem and issued guidelines to prevent such litigations.[88] In the year under survey as well, the

85 *Renu Devi* v. *Mahendra Singh* (2003) 10 SCC 200.

86 *Supra* note 84, para 25. Also see *Paras Nath Rai* v. *State of Bihar* (2012) 12 SCC 642.

87 (2003) 7 SCC 452.

88 See P. Puneeth, "Civil Procedure" XLVII *ASIL* 89 – 129 (2011) and P. Puneeth, "Civil Procedure" XLVI *ASIL* 101 – 136 (2010).

apex court faced with the similar problem in *A. Shanmugam* v. *Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam*.[89] In this case, the court dealt, in particular, with the problem of false averments and irrelevant pleas. It observed thus:[90]

> False averments of facts and untenable contentions are serious problems faced by our courts. The other problem is that litigants deliberately create confusion by introducing irrelevant and minimally relevant facts and documents. The court cannot reject such claims, defences and pleas at the first look. It may take quite some time, at times years, before the court is able to see through, discern and reach to the truth. More often than not, they appear attractive at first blush and only on a deeper examination the irrelevance and hollowness of those pleadings and documents come to light.
>
> Our courts are usually short of time because of huge pendency of cases and at times the courts arrive at an erroneous conclusion because of false pleas, claims, defences and irrelevant facts. A litigant could deviate from the facts which are liable for all the conclusions. In the journey of discovering the truth, at times, this Court, at a later stage, but once discovered, it is the duty of the court to take appropriate remedial and preventive steps so that no one should derive benefits or advantages by abusing the process of law. The court must effectively discourage fraudulent and dishonest litigants.

Thus, in the opinion of the apex court, the courts must be cautious in granting relief to a party guilty of deliberately introducing irrelevant and untenable pleas and responsible for creating unnecessary confusion by introducing such documents and pleas. The apex court has stated certain factors to be taken into consideration while granting relief and/or imposing the costs in such cases. They are as follows:[91]

(i) It is the bounden duty of the court to uphold the truth and do justice.
(ii) Every litigant is expected to state truth before the law court whether it is pleadings, affidavits or evidence. Dishonest and unscrupulous litigants have no place in law courts.
(iii) The ultimate object of the judicial proceedings is to discern the truth and do justice. It is imperative that pleadings and all other presentations before the court should be truthful.
(iv) Once the court discovers falsehood, concealment, distortion, obstruction or confusion in pleadings and documents, the court should in addition to full restitution impose appropriate costs. The court must ensure that there is no incentive for wrongdoer in the temple of justice. Truth is the foundation of justice and it has to be the common endeavour of all to uphold the truth and no one should be permitted to pollute the stream of justice.

89 (2012) 6 SCC 430.
90 *Id*., paras 38 and 39.
91 *Id*., para 43.

(v) It is the bounden obligation of the court to neutralise any unjust and/or undeserved benefit or advantage obtained by abusing the judicial process.

Invoking section 30, CPC to ascertain the truth

In *Maria Margarida Sequeira Fernandes* v. *Erasmo Jack de Sequeira*,[92] the Supreme Court had elucidated the importance of truth in the judicial process and the role of a judge in ascertaining "where in fact the truth lies". It observed thus:[93]

> The truth should be the guiding star in the entire judicial process. Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth. That is their mandate, obligation and bounden duty. Justice system will acquire credibility only when people will be convinced that justice is based on the foundation of the truth.

In the adjudicative process, the presiding officer of a court is not supposed to simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who won and who lost. He has a legal duty to play an active role in finding the truth on his own, independent of the parties, and administer justice. It is a well settled principle that a court must discharge its statutory functions - whether discretionary or obligatory - according to law in dispensing justice because it is the duty of a court not only to do justice but also to ensure that justice is being done.[94]

Further, the court delineated on how section 30 of CPC can be invoked by the judges to ascertain the truth. Section 30 confers power on the court to pass such orders, either on its own motion or on the application of any party, as may be necessary in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence. The said provision also authorizes the courts to issue summons to persons whose attendance is required either to give evidence or to produce documents or such other objects. The courts can also order for filing of affidavit to prove any fact. Thus, it confers very wide powers so as to enable the court to discover the truth, which alone should be allowed to triumph in the ultimate outcome of the judicial process. The apex court noted that "this provision which ought to be frequently used is rarely pressed in service by our judicial officers and Judges".[95]

X EXECUTION

Execution of money decree: Rule of appropriation

Order 21 rule 1, CPC specifies several alternative modes for payment of 'all money payable under a decree'. The expressions 'all money payable under a decree'

92 *Supra* note 12. Also see *A. Shanmugam, supra* note 89.
93 *Id*., para 33.
94 *Id*., para 34.
95 *Id*., para 41.

used in sub-rule (1) of rule 1 of order 21 are wide enough to include whatever money that is due and payable under a decree. It is not just confined to the decretal amount only. Thus, for the purpose of ascertaining the amount payable under a decree, it is important to scrutinize how the decree has been made while granting the relief as regards payment.[96] 'Interest' granted, if any, by the court is also included within the ambit of the provision. In *BHEL* v. *R.S. Avtar Singh*,[97] the apex court dealt, *inter alia*, with the question of appropriation of the payment made by the judgement – debtor, when it falls short of the total money payable under a decree. This aspect had been dealt with earlier by a constitutional bench of the Supreme Court in *Gurpreet Singh* v. *Union of India*.[98] The court, after detailed examination of the decision of the constitutional bench in the said case, has culled out the following principles:[99]

(i) The general rule of appropriation towards a decretal amount was that such an amount was to be adjusted strictly in accordance with the directions contained in the decree and in the absence of such directions adjustments be made firstly towards payment of interest and costs and thereafter towards payment of the principal amount subject, of course, to any agreement between the parties.

(ii) The legislative intent in enacting sub-rules (4) and (5) is a clear pointer that interest should cease to run on the deposit made by the judgment-debtor and notice given or on the amount being tendered outside the court in the manner provided in Order 21 Rule 1(1) (b).

(iii) If the payment made by the judgment-debtor falls short of the decreed amount, the decree-holder will be entitled to apply the general rule of appropriation by appropriating the amount deposited towards the interest, then towards costs and finally towards the principal amount due under the decree.

(iv) Thereafter, no further interest would run on the sum appropriated towards the principal. In other words if a part of the principal amount has been paid along with interest due thereon as on the date of issuance of notice of deposit interest on that part of the principal sum will cease to run thereafter.

(v) In cases where there is a shortfall in deposit of the principal amount, the decree-holder would be entitled to adjust interest and costs first and the balance towards the principal and beyond that the decree-holder cannot seek to reopen the entire transaction and proceed to recalculate the interest on the whole of the principal amount and seek for reappropriation.

These principles more succinctly clarifies true import and purport of order 21 rule 1 (1), (2), (4) and (5) and, in particular, the rule of appropriation.

Maintainability of premature application for execution of compromise decree

The question relating to maintainability of premature application for execution of compromise decree was considered by the apex court in *Pushpa Sahakari Avas*

96 *BHEL* v. *R. S. Avtar Singh* (2013) 1 SCC 243.

97 *Ibid*.

98 (2006) 8 SCC 457.

99 *Supra* note 96, para 31.

Samiti Ltd. v. *Gangotri Sahakari Avas Samiti Ltd.*[100] The facts are that the appellant/plaintiff initiated a civil action against the respondent and others for permanent injunction. In the suit, the parties entered into a compromise and on the basis of the compromise, a decree was drawn up. The terms and conditions of the compromise were made part of the decree. One of the conditions, which were part of the decree, was that within a span of six months' time, the defendant would pay a certain sum to the plaintiff. However, before the expiry of the said period of six months, the appellant filed an application for execution of the decree. The respondent raised an objection and contended that as the application was premature, it is not maintainable and it vitiates the entire execution proceeding. The apex court refuted the contention. Relying on *Vithalbhai* case,[101] which dealt with maintainability of premature suit, the court observed:[102]

> On a perusal of the various provisions relating to execution as enshrined under Order 21 of the Code, we do not find anything which lays down that premature filing of an execution would entail its rejection. The principles that have been laid down for filing of a premature suit, in our considered opinion, do throw certain light while dealing with an application for execution that is filed prematurely and we are disposed to think that the same can safely be applied to the case at hand.

Accordingly, the argument that the executing court could not have entertained the execution proceeding solely because it was instituted before the expiry of the period stipulated in the compromise decree despite the factum that by the time the court adverted to the petition the said period, was over was rejected as absolutely unacceptable.

Power of court to enforce execution: Scope of section 51 (e), CPC

In *Narayan Dutt Tiwari* v. *Rohit Shekhar*,[103] it was contended that there was no provision in the CPC authorizing the court to implement or enforce its order directing DNA test to determine the paternity. The said contention was refuted by the court by placing reliance on clause (e) of section 51 of CPC. Section 51 deals with the power of the court to enforce execution. It contains various modes of execution and clause (e), in particular, states that "in such other manner as the nature of the relief granted may require". In the opinion of the court, this provision allows the court to pass orders for enforcing a decree in a manner which would give effect to it. The court further observed:[104]

> It cannot also be lost sight of that at the time the civil procedure was codified in the year 1908, the tests such as of DNA were not even comprehensible much less available. However now that such tests, which are an aid in

100 (2012) 4 SCC 751.
101 *Vithalbhai (P.) Ltd.* v. *Union Bank of India* (2005) 4 SCC 315.
102 *Supra* note 100, para 17.
103 (2012) 12 SCC 554.
104 *Id*., para 34.

adjudication are available, the courts cannot allow such advancements to bypass the courts.

XI MISCELLANEOUS

Institution of suit for execution of trust

A suit can be instituted by presentation of a plaint. Orders 4 and 7 of CPC deal with the presentation of the plaint and the contents of the plaint. When the statutory provision clearly says as to how the suit has to be instituted, it can be instituted only in the manner indicated. Thus, since section 59 of the Trusts Act confers a right upon the beneficiaries to sue for execution of the trust, it is a clear indication that the beneficiary is required to institute the suit for the purpose. Therefore, in order to execute the trust, the right is only to file a suit and not any original petition. Though, under the Trust Act, original petitions can be filed for certain other purposes, only a suit can be filed for the purpose of execution of trust.[105]

The concept of restitution

The concept of restitution is basically founded on the idea that when a decree is reversed, the party who received an unjust benefit of the erroneous decree has to restitute the other party for what he has lost during the period the erroneous decree was in operation. Ordinarily, if there is a benefit to one, there is a corresponding loss to other and in such cases, the benefiting party is also under a duty to give to the losing party, the amount by which he has been unjustly enriched. The core of the concept lies in the conscience of the court which prevents a party from retaining money or some benefit derived from another which it has received by way of an erroneous decree of court. Therefore, the court while granting restitution is required to restore the parties as far as possible to their same position as they were in at the time when the court by its erroneous action displaced them. The obligation to restitute lies on the person or the authority that has received unjust enrichment or unjust benefit. If no one has received any unjust benefit, the question of restitution does not arise at all.[106] This principle is contained in section 144 CPC. The principle *actus curiae neminem gravabit*, which means that an act of court cannot prejudice anyone, is also encompassed partly within the doctrine of restitution. This *actus curiae* principle is founded upon justice and good sense and is a guide for the administration of law.[107]

Consent decree obtained by fraud

It is a settled law that a decree obtained by fraud is nothing but a nullity.[108] The apex court reiterated it in *Badami* v. *Bhali.*[109] In this case, the respondent, who is the grandson of the brother of the appellant's husaband, instituted a suit on

105 *Sinnamani* v. *G. Vettivel* (2012) 5 SCC 759.
106 *State of Gujarat* v. *Essar Oil Limited* (2012) 3 SCC 522.
107 *Ibid*.
108 *Santhosh* v. *Jagat Ram* (2010) 3 SCC 251 and *R. Ravindra Reddy* v. *H. Ramaiah Reddy* (2010) 3 SCC 214.
109 (2012) 11 SCC 574.

24.11.1973 against the appellant alleging that she had entered into a family settlement and gave her whole share in the ancestral property to the respondent and possession of the same was also handed over in pursuance of the said settlement. She had also agreed to get the revenue entries of the suit land corrected in favour of the respondent but the same was not done. Despite the request of the respondent not to interfere with the possession, she has started interfering. Surprisingly, on the date of filing of the plaint itself, the appellant – defendant filed the written statement admitting the assertions in the plaint to be correct and, in fact, even prayed for decree of the suit. Accordingly, the court decreed the suit on 27.11.1973. It is to be noted that even after the said decree, revenue records were not corrected and she continued to be in possession. The respondent subsequently filed another suit seeking permanent injunction against the appellant restraining her from alienating the land in any manner. Though, it was contended by the appellant – defendant that the decree dated 27.11.1973 was obtained by fraud, the trail court passed the decree as prayed for rejecting the contention of the appellant. Thereafter, the third suit was filed for possession. The trial court decreed the third suit as well holding that the decree dated 27.11.1973 was validly passed. The first appellate court affirmed the said findings and the second appellate court refused to interfere with the order of the trial court affirmed by the first appellate court on the ground that there was no substantial question of law involved. The apex court, while setting aside the decree dated 27.11. 1973, has held that, in the factual matrix of the case, the fraud played is manifestly writ large and too obvious to ignore. The court observed thus:[110]

> It would not be an exaggeration, but on the contrary an understatement, if it is said that all the facets of fraud get attracted to the case at hand. A rustic and illiterate woman is taken to court by a relation on the plea of creation of a lease deed and magically in a hurried manner the plaint is presented, written statement is drafted and filed, statement is recorded and a decree is passed within three days. On a perusal of the decree it is manifest that there is no reference of any kind of family arrangement and there is total non-application of mind. It only mentions there is consent in the written statement and hence, suit has to be decreed. Be it noted, it was a suit for permanent injunction. There was an allegation that the respondent was interfering with the possession of the plaintiff. What could have transpired that the defendant would go with the plaintiff and accede to all the reliefs. It not only gives rise to a doubt but on a first look one can feel that there is some kind of foul play. However, the learned trial Judge who decreed the first suit on 27-11-1973 did not look at these aspects.
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> When the second suit was filed in 1984 for title and the third suit was filed for possession thereafter, the courts below had routinely followed the principles relating to consent decree and did not dwell deep to find out how the fraud was manifestly writ large. It was too obvious to ignore. The courts below have gone by the concept that there was no adequate material to establish that there was fraud, though it was telltale. That apart, the

110 *Id*., paras 35 – 38.

> foundation was the family arrangement. We have already held that it was not bona fide, but, unfortunately the courts below as well as the High Court have held that it is a common phenomenon that the people in certain areas give their property to their close relations. We have already indicated that by giving the entire property and putting him in possession she would have been absolutely landless and would have been in penury.
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> It is unimaginable that a person would divest herself of one's own property in entirety in lieu of nothing. No iota of evidence has been brought on record that Bhali, the respondent herein, had given anything to Badami in the arrangement. It is easily perceivable that the rustic woman was also not old. Though the decree was passed in 1973 wherein it was alleged that the defendant was already in possession, she lived up to 1992 and expired after 19 years. It is a matter of record that the possession was not taken over and inference has been drawn that possibly there was an implied agreement that the decree would be given effect to after her death.
>
> All these reasonings are absolutely non-plausible and common sense does not even remotely give consent to them. It is fraudulent all the way. The whole thing was buttressed on the edifice of fraud and it needs no special emphasis to state that what is pyramided on fraud is bound to decay.

In consequence, the apex court set aside all the subsequent judgements and decrees passed by the trial courts and appellate courts relying on the basis of the consent decree obtained by fraud. The approach adopted by the court in the instant case is highly appreciable except for the language that it had used while referring to the woman – appellant. It would have been apt to use 'innocent' or 'ignorant' instead of 'rustic', which is derogatory.

Challenge to a decree based on fraudulent compromise

It is a settled law that a compromise forming the basis of the decree can only be questioned before the same court that recorded the compromise. Order 23, rule 3 – A of CPC expressly bars the fresh suit for setting aside a compromise decree on the ground that the compromise on which the decree is based was 'not lawful'. These provisions are aimed at avoiding multiplicity of suits.[111] The apex court, in *Horil* v. *Keshav,*[112] held that the expression 'not lawful' used in order 23 rule 3-A also covers a decree based on a fraudulent compromise, hence, a fresh suit to challenge a compromise decree on the ground that it was obtained by fraudulent means is also barred by provisions of order 23 rule 3-A. However, taking into consideration the significant distinguishing feature in the case that the compromise decree which is alleged to be fraudulent and which is sought to be declared as nullity was passed not by a civil court but by a revenue court in a suit under section 176 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, the court observed that:[113]

111 *Banwari Law* v. *Chando Devi* (1993) 1 SCC 581.
112 (2012) 5 SCC 525.
113 *Id.,* para 14.

> Though the provisions of the Code of Civil Procedure have been made applicable to the proceedings under the Act but that would not make the authorities specified under Schedule II to the Act as "court" under the Code and those authorities shall continue to be "courts" of limited and restricted jurisdiction.

The court was of the opinion that the revenue courts established under the said Act are neither equipped nor competent to effectively adjudicate on allegations of fraud that have overtones of criminality. Issues relating to allegations of fraud need to be tried by the courts really skilled and experienced to try such issues. Thus, the courts constituted under CPC are competent to do so. The court further observed that:[114]

> It is also well settled that under Section 9 of the Civil Procedure Code, the civil court has inherent jurisdiction to try all types of civil disputes unless its jurisdiction is barred expressly or by necessary implication, by any statutory provision and conferred on any other tribunal or authority. We find nothing in Order 23 Rule 3-A to bar the institution of a suit before the civil court even in regard to decrees or orders passed in suits and/or proceedings under different statutes before a court, tribunal or authority of limited and restricted jurisdiction.

Grant or refusal of an injunction

The apex court, in *Maria Margarida Sequeira Fernandes,*[115] having noted that the grant or refusal of an injunction in a civil suit is the most important stage in the civil trial, has opined that due care, caution, diligence and attention must be bestowed by the judicial officers and judges while granting or refusing injunction. The court also stated that:[116]

> In order to grant or refuse injunction, the judicial officer or the Judge must carefully examine the entire pleadings and documents with utmost care and seriousness. The safe and better course is to give a short notice on the injunction application and pass an appropriate order after hearing both the sides. In case of grave urgency, if it becomes imperative to grant an ex parte ad interim injunction, it should be granted for a specified period, such as, for two weeks. In those cases, the plaintiff will have no inherent interest in delaying disposal of injunction application after obtaining an ex parte ad interim injunction.
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> The court, in order to avoid abuse of the process of law may also record in the injunction order that if the suit is eventually dismissed, the plaintiff undertakes to pay restitution, actual or realistic costs. While passing the order, the court must take into consideration the pragmatic realities and

114 *Id.,* para 16.
115 *Supra* note 12. Also see *A. Shanmugam, Supra* note 89.
116 *Id*., paras 84 and 85.

pass proper order for mesne profits. The court must make serious endeavour to ensure that even-handed justice is given to both the parties.

It may be noted that, in many cases, the grant or refusal of an injunction decides their fate. As rightly observed by the court based on the experience that once an injunction is granted, getting it vacated would become a nightmare for the defendant. Thus, the courts should always keep in mind the three main principles that govern the grant or refusal of injunction. They are: (i) *prima facie* case; (ii) balance of convenience; and (c) irreparable injury. In granting or refusing of injunction, pleadings and documents must be duly considered and the court must take the pragmatic view and grant appropriate *mesne* profit, then, as opined by the court, the inherent interest to continue frivolous litigation by unscrupulous litigants would be reduced to a large extent.

Further delineating on the issue, the apex court in *Best Sellers Retail (India) (P.) Ltd.* v. *Aditya Birla Nuvo Ltd*.,[117] has reiterated that the settled principle of law is that even where prima facie case is in favour of the plaintiff, the court will refuse temporary injunction if the injury suffered by the plaintiff on account of refusal of temporary injunction was not irreparable.

Interference with the discretionary interim orders passed by the high court under article 136 of the Constitution

It is only in exceptional cases that the Supreme Court entertains a petition, under article 136 of the Constitution, against a discretionary interim order passed by the high court. In cases, where, for example, the repercussions are grave or the legal bases for passing the interim order are obscure; or there is a miscarriage of justice; or it is imperative that it is required to exercises its corrective jurisdiction, the apex court entertains such petitions. The Supreme Court exercises its jurisdiction subject to such self-imposed limitations. The Supreme Court's opinion is that it would, generally, be more appropriate for an aggrieved litigant to approach the high court for rectifying any error that may have been committed in passing (or declining to pass) an interim order. However, it was also clarified that in an emergent and appropriate situation it is always open to a litigant to approach the Supreme Court.[118]

Payment of deficit court fee

Section 149 of CPC confers the power on the court to allow payment of deficit court fee in cases where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fees has not been paid at the time of filing of such document. The word 'document' in section 149 is very wide and covers not only plaints but various other documents including written statements in a suit with respect to which court fee is required to be paid under any law for the time being in force.[119]

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117 (2012) 6 SCC 792.

118 *Guru Ghasidas University* v. *Craig Macleod* (2012) 11 SCC 275.

119 *A. Nawab John* v. *V.N. Subramaniyam* (2012) 7 SCC 738.

When a plaint is presented to a court without the payment of appropriate court fee payable thereon, the court, under section 149, has the authority to call upon the party to make payment of the deficit court fee. This power can be exercised by the court at any stage of the suit. Any amount of lapse of time does not fetter the authority of the court to direct the payment of such deficit court fee. As a logical corollary, even the party cannot be said to be barred from paying the deficit court fee because of the lapse of time. It may, however, be noted that the power of the court under the said provision is discretionary in nature. It is a well settled law that the judicial discretion is required to be exercised in accordance with the established principles of law. It must not be exercised in a manner so as to confer an unfair advantage on one of the parties to the litigation. In a case, where the plaint is filed within the period of limitation prescribed by law but with deficit court fee and the plaintiff seeks to make good the deficiency after the expiry of the period of limitation, the court, though has discretion under section 149, must scrutinize the explanation offered for the delayed payment of the deficit court fee carefully because exercise of such discretion would certainly have some bearing on the rights and obligations of the defendants or persons claiming through the defendants. The clear inference can be drawn from the above is that section 149 does not confer an absolute right in favour of a plaintiff to pay the court fee as and when it pleases him/her. It only enables the plaintiff to seek the permission of the court to make the payment of deficit court fee at a point of time later than the presentation of the plaint. The court is not obligated to exercise its discretion in favour of the plaintiff. The exercise of the discretion is conditional upon the satisfaction of the court that the plaintiff offered a legally acceptable explanation for not paying the court fee within the period of limitation.[120]

The underlying philosophy of Limitation Act, 1963

The apex court had explained the underlying philosophy of Limitation Act, 1963, in *B. Madhuri Goud* v. *B. Damodar Reddy,*[121] in the following words:

> The Limitation Act, 1963 has not been enacted with the object of destroying the rights of the parties but to ensure that they approach the court for vindication of their rights without unreasonable delay. The idea underlying the concept of limitation is that every remedy should remain alive only till the expiry of the period fixed by the legislature. At the same time, the courts are empowered to condone the delay provided that sufficient cause is shown by the applicant for not availing the remedy within the prescribed period of limitation.
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> The expression "sufficient cause" used in Section 5 of the Limitation Act, 1963 and other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which serves the ends of justice. No hard-and-fast rule has been or can be laid down for deciding the applications for condonation of delay but over the years courts have repeatedly observed

120 *Ibid*.
121 (2012) 12 SCC 693.

> that a liberal approach needs to be adopted in such matters so that substantive rights of the parties are not defeated only on the ground of delay.

It is hoped that this elucidation of the apex court should serve as a guiding torch in dealing with issues relating to delay. In exercising discretion to condone delay, the courts should emphasis, as rightly pointed out by the apex court, more on 'sufficient and satisfactory explanation' and not on 'length of delay'.

Maintainability of *inter partes* suit for interim relief

In *Bharat Aluminium Co.* v. *Kaiser Aluminium Technical Services Inc.,*[122] the apex court has dealt, *inter alia*, with the question as to the maintainability of *inter partes* suit claiming interim relief. While answering the question in the negative, the court stated that under the Indian law, "the source of a court's power to grant interim relief is traceable to Section 94 and in exceptional cases Section 151 CPC. The Civil Procedure Code presupposes the existence of a substantive suit for final relief wherein the power to grant an interim relief may be exercised only till disposal thereof". Therefore, under the existing law in India, an *inter partes* suit only for the purpose of claiming interim relief pending arbitration proceedings outside India would not be maintainable. The court emphasised that the fundamental to the maintainability of a civil suit is the existence of cause of action in favour of the plaintiff. In the opinion of the court, pendency of arbitration proceedings outside India would not provide a cause of action for the suit where the main prayer is for injunction.

Maintainability of review petition before the high court after dismissal of SLP

There are conflicting opinions expressed by the different benches of the Supreme Court on the issue of maintainability of review petitions after the disposal of the special leave petition without granting leave but with or without assigning reasons. It was pointed out in the *Annual Survey of Indian Law – 2011,*[123] where a suggestion was also made that the *per incuriam* judgment of *Gangadhara Palo*[124] needs reconsideration. In the year under survey, the apex court, in *Khoday Distilleries Ltd.* v. *Mahadeswara S.S.K. Ltd.,*[125] has taken note of the existing conflicting judgments and in order to resolve those conflicts and for proper guidance to the high courts, referred the matter to a larger bench for an authoritative pronouncement.

Election petition under the Presidential and Vice-Presidential Elections Act, 1952: Applicability of CPC

In *Purno Agitok Sangma* v. *Pranab Mukherjee*,[126] the apex court considered the question whether, by virtue of section 141 of CPC, the provisions of CPC can be made applicable in dealing with election petitions under the Presidential and

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122 (2012) 9 SCC 552.
123 P. Puneeth, "Civil Procedure" XLVII *ASIL* 115 – 119 (2011).
124 *Gangadhara Palo* v. *Revenue Divisional Officer* (2011) 4 SCC 602.
125 (2012) 12 SCC 291.
126 (2013) 2 SCC 239.

Vice-Presidential Elections Act, 1952? The apex court answered the question in the negative and held that "[w]e are also not convinced that Section 141 of the Code is required to be incorporated into a proceeding taken under Order 39 of the Supreme Court Rules read with Part III of the Presidential and Vice-Presidential Elections Act, 1952, which includes Sections 14 to 20 of the aforesaid Act and Article 71 of the Constitution of India".[127]

XII CONCLUSION

Judicial decisions rendered in the year under survey are mainly concerned with explaining, elucidating and brining more clarity to the existing rules and principles in the area of civil procedural law. No new significant rule or principle had been laid down. In most of the cases, the apex court reiterated the earlier positions and strictly followed them. In cases, where the court noticed existence of conflicting opinions, rendered in earlier cases, on question of law, it adopted the most appropriate method of referring the matter to the larger bench for resolving such conflicts.

Like in the previous years, in the present survey year as well, the apex court had to emphasise on the mandatory requirement of framing substantial questions of law while allowing second appeal. It shows that repeated reminders by the Supreme Court, in several cases, to strictly comply with the requirement of section 100 CPC while entertaining second appeal have not reached all the judges in different high courts. It is unfortunate to note that sometimes, even now, they entertain second appeal without formulating substantial question of law.

The courts emphasis, in particular, on the role of the judges in ascertaining "where in fact the truth lies" is also noteworthy. It delineated on how section 30 CPC, which confers a very wide power on courts, can be invoked by judges to ascertain the truth. Unfortunately, as noted by the apex court, it is rarely pressed into service by judges. It is time that the judges play more active role in ascertaining truth and administering justice instead of merely performing the role of an umpire.

127 *Id*., para 67.