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CIVIL PROCEDURE

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I INTRODUCTION

WHEN SUBSTANTIVE justice and the provisions contained in the procedural law are pitted against each other, which one shall be given preference is a substantive question that often confronts the judiciary, while adjudicating disputes. Though, judicial response to such a question has largely been in favour of upholding substantive justice, there are several instances where some of the provisions contained in the procedural law too have been given primacy. This approach is evident in the current survey year as well. During the year, several issues relating to civil procedural law came up before the apex court. Some of them were decided by the larger benches. The judicial decisions, thus, rendered contributed for crystallizing the legal position on disputed questions of law. The present survey briefly restates the contribution of the judiciary, in the survey year, in the development and crystallization of rule and principles in the area of civil procedure.

II JURISDICTION

In the opinion of the apex court, "the term 'jurisdiction' is a term of art; it is an expression used in a variety of senses and draws colour from its context."[1] Thus, when the term is used in wider sense, as in the case of section 9-A,[2] confining it to its conventional and narrow meaning that refers only to either pecuniary or territorial jurisdiction would be contrary to the well-settled interpretation of the term. The apex court made these observations, in *Foreshore Coop. Housing Society Ltd.*,[3] while dealing with the question as to whether the phrase "an objection to the jurisdiction of the court to entertain such suit" as used in section 9-A would include an objection with

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1 *Foreshore Coop. Housing Society Ltd.* v. *Praveen D. Desai* (2015) 6 SCC 412, para 45.

2 Inst. by the Civil Procedure Code (Maharashtra Amendment) Act, 1977.

3 *Supra* note 1.

regard to limitation. The apex court answered the question in the affirmative after considering long line of judicial decisions including the decision of a constitution bench of five judges in *Pandurang Dhondi Chougule* v. *Maruti Hari Jadhav,*[4] where it was held that a plea of limitation or plea of *res judicata* is a plea of law that concerns the jurisdiction of the court which tries the proceeding.

While considering long line of judicial decisions, the apex court came across a recent decision of a division bench in *Kamalakar Eknath Salunkhe* v. *Baburav Vishnu Javalkar*,[5] where contrary view was taken. In this case too, which was decided few months before *Foreshore Coop. Housing Society Ltd.* case,[6] the division bench had dealt with the same question as to whether an issue pertaining to limitation could be considered as preliminary issue of jurisdiction under section 9-A of the Code? Answering the question in the negative, the division bench observed thus:[7]

> The expression "jurisdiction" in Section 9-A is used in a narrow sense, that is, the court's authority to entertain the suit at the threshold. The limits of this authority are imposed by a statute, charter or commission. If no restriction is imposed, the jurisdiction is said to be unlimited. The question of jurisdiction, *sensu stricto*, has to be considered with reference to the value, place and nature of the subject-matter. The classification into territorial jurisdiction, pecuniary jurisdiction and jurisdiction over the subject-matter is of a fundamental character. Undoubtedly, the jurisdiction of a court may get restricted by a variety of circumstances expressly mentioned in a statute, charter or commission. This inherent jurisdiction of a court depends upon the pecuniary and territorial limits laid down by law and also on the subject-matter of the suit. *While the suit might be barred due to non-compliance with certain provisions of law, it does not follow that the non-compliance with the said provisions is a defect which takes away the inherent jurisdiction of the court to try a suit or pass a decree.* The law of limitation operates on the bar on a party to agitate a case before a court in a suit, or other proceedings on which the court has inherent jurisdiction to entertain but by operation of the law of limitation it would not warrant adjudication.

In *Foreshore Coop. Housing Society Ltd.*, the division bench of the Supreme Court termed the judgment in *Kamalakar Eknath Salunkhe* as *per incuriam* as the decision rendered therein was contrary to the law settled by the Constitution Bench

4 AIR 1966 SC 153.

5 (2015) 7 SCC 321.

6 In *Kamalakar Eknath Salunkhe* case, the judgment was delivered on January 12, 2015 and in *Foreshore Coop. Housing Society Ltd.* case, the judgment was delivered on April 08, 2015. Both are two judges division bench decisions.

7 *Supra* note 5, para 16. Emphasis supplied.

and consistently followed by other division benches.[8] The said decision was rendered without reference to any of them.

Decision on the preliminary issue of jurisdiction

Order 14 rule 2, CPC requires the court to pronounce judgment on all the issues even if the case can be disposed of on a preliminary issue itself. But, this rule is subject to an exception carved out under clause (2) of the said rule 2. It provides that where issues both of law and fact arise in the same suit and the court is of the opinion that the case or any part thereof may be disposed of on the issue of law that relates to the jurisdiction of the court or a bar to the suit created by any law, it may try that issue first. The power conferred under clause (2) of rule 2 is a discretionary power to decide preliminary issue before proceeding with the case. The said discretion is curtailed in the State of Maharashtra by virtue of section 9-A inserted by the Civil Procedure Code (Maharashtra Amendment) Act, 1977. Section 9-A contains a express mandate to decide preliminary issue of jurisdiction prior to proceeding with the suit. It is, no doubt, contrary to the provisions contained in order 14 rule 2. But, in view of the fact that the state amendment had received the assent of the President in terms of article 254 (2) of the Constitution of India, the apex court held that section 9-A prevails in the State of Maharashtra. Thus, in the state, issue relating to the jurisdiction of the court shall be decided as a preliminary issue notwithstanding order 14 rule 2, CPC.[9] It is a mandatory provision and does not confer discretion.

It may be further noted that the issue of jurisdiction, as stated in several cases, goes to the very root of the matter, thus, even though it was not raised at the trial court as a preliminary issue, it can be raised subsequently also at any stage.[10]

Territorial jurisdiction: Copyright and trade mark disputes

Section 20 CPC contains provisions with respect to institution of suits. It stipulates that every suit shall be instituted in a court within the local limits of whose jurisdiction the defendant or any of the defendants, if there are more than one, resides or cause of action, wholly or in part arises. But, as far as the copyright and trade mark disputes are concerned, section 62 of the Copyright Act, 1957 and section 134 of the Trade Marks Act, 1999, respectively, provide an additional forum by including a district court within whose limits the plaintiff actually and voluntarily resides or carries on business or personally works for gain. Both these provisions, which are identical, contain *non-obstante* clauses that notwithstanding anything contained in CPC, these provisions would take effect. The question as to whether the expression "notwithstanding anything contained in the Code of Civil Procedure", in both section

8 See *Manick Chandra Nandy* v. *Debdas Nandy* (1986) 1 SCC 512; *NTPC Ltd.* v. *Siemens Atkeingesellschaft* (2007) 4 SCC 451; *Official Trustee* v. *Sachindra Nath Chatterjee*, AIR 1969 SC 823; *ITW Signode India Ltd.* v. *CCE* (2004) 3 SCC 48, and *Kamlesh Babu* v. *Lajpat Rai Sharma* (2008) 12 SCC 577 .

9 *Supra* note 1.

10 *Supra* note 5.

62 of the Copyright Act and section 134 of the Trade Marks Act, oust the applicability of section 20 CPC came up for the consideration of the apex court in *Indian Performing Rights Society Ltd.* v. *Sanjay Dalia*.[11]

The apex court answered the question in the negative. In its opinion, the expressly "notwithstanding anything contained in the Code of Civil Procedure" in the said provisions does not oust the applicability of section 20 CPC. Provisions in the Copyright Act and the Trade Marks Act, referred to above, only provide additional forum for institution of suit by including a district court within whose limits the plaintiff actually and voluntarily resides or carries on business or personally works for gain. On examination of the said provisions contained in section 20 CPC, section 62 of the Copyright Act and section 134 of the Trade Marks Act, the apex court observed:[12]

> ...[t]he object with which the latter provisions have been enacted, it is clear that if a cause of action has arisen wholly or in part, where the plaintiff is residing or having its principal office/carries on business or personally works for gain, the suit can be filed at such place(s). The plaintiff(s) can also institute a suit at a place where he is residing, carrying on business or personally works for gain dehors the fact that the cause of action has not arisen at a place where he/they are residing or any one of them is residing, carries on business or personally works for gain. However, this right to institute suit at such a place has to be read subject to certain restrictions, such as in case the plaintiff is residing or carrying on business at a particular place/having its head office and at such place cause of action has also arisen wholly or in part, the plaintiff cannot ignore such a place under the guise that he is carrying on business at other far-flung places also. The very intendment of the insertion of provision in the Copyright Act and the Trade Marks Act is the convenience of the plaintiff… The interpretation of provisions has to be such which prevents the mischief of causing inconvenience to the parties.

Issue of maintainability of suit

The maintainability of a suit is a question of law. By virtue of section 9 of CPC, civil courts have jurisdiction to try all suits of civil nature unless barred by law either expressly or impliedly. Thus, in a case, when a specific stand is taken that, in view of the provisions of the Companies Act, 1956 the suit is not maintainable, it shall be dealt with as a question of law. The chequered history of litigation between the parties and the actions taken by them are not relevant in deciding the said question.[13]

11 (2015) 10 SCC 161.

12 *Id*., para 18.

13 *Jyoti Ltd.* v. *Bharat J. Patel* (2015) 14 SCC 566.

Limits on high court's jurisdiction under article 226

In *Swati Ferro Alloys (P) Ltd.* v. *Orissa Industrial Infrastructure Development Corpn.*,[14] the apex court has upheld the order of the division bench of the High Court of Orissa dismissing the writ petition filed under article 226 of the Constitution on the ground that the petition is full of disputed facts and the prayer made therein cannot be granted in a proceeding under article 226 as factual disputes cannot be decided in this proceeding.

In another case, the court also said, the civil dispute between the private parties over the property cannot be made subject – matter of writ proceedings under article 226 of the Constitution.[15]

Approach in dealing with applications under section 8 of the Arbitration and Conciliation Act, 1996

Section 8 of the Arbitration and Conciliation Act, 1996 deals with reference of matter to arbitration by the judicial authority, before which an action is brought in a matter, which is the subject of an arbitration agreement. If either party to the agreement, which contains an arbitration clause to refer dispute or differences arising out of the agreement to arbitration, approaches the civil court ignoring the terms of such an agreement and the other party seeks reference of the matter to the arbitration, as per section 8, in view of the peremptory language of that section, it is obligatory for the court to refer the parties to arbitration in terms of agreement. In *M/s. Sundaram Finance Limited* v. *T. Thankam*,[16] the apex court has observed that once an application is made under section 8 of the Act, the approach of the civil court should be not to see whether it still has jurisdiction but whether its jurisdiction has been ousted. There is a lot of difference between the two approaches. Adopting the former approach, even when it was brought to the notice of the court that its jurisdiction has been taken away in accordance with the provisions of a special statue, would cause delay in resolution of disputes.

Jurisdiction of the high courts to hear appeal under SEBI Act, 1992

Section 15 – Z of the Securities and Exchange Board of India Act, 1992 provided to a person, aggrieved by any decision or order of the Securities Appellate Tribunal, a right to file an appeal to the high court "on any question of fact or law arising out of such order". The said provision was amended with effect from October 29, 2002. The amended provision provides that an aggrieved person may file an appeal to the Supreme Court against any decision or order of the Securities Appellate Tribunal "on any question of law arising out of such order". In *Videocon International Ltd.* v. *SEBI*,[17] the issue that came up for consideration was whether the aforesaid amendment would operate prospectively or retrospectively?

14 (2015) 4 SCC 204.

15 *Maharaji Educational Trust* v. *SGS Construction & Development (P) Ltd.* (2015) 7 SCC 130.

16 2015 SCC OnLine SC 147.

17 (2015) 4 SCC 33.

In the instant case, several appeals were preferred by the SEBI before the High Court of Judicature of Bombay assailing certain orders passed by the securities appellate tribunal. It may be noted that all the orders under challenge had been passed by the tribunal before October 29, 2002. In fact, all appeals were also preferred before October 29, 2002 except one appeal, which was preferred subsequently. The high court was of the opinion that the appeals filed before the coming into force of the amended section 15-Z are maintainable and it had the jurisdiction to hear and dispose of the same. It, however, concluded that appeal filed after the coming into force of the amendment is not maintainable. The matter, thus, came up before the Supreme Court with reference to the appeals which have been held as maintainable by the high court.

The precise question that came up for consideration was whether an appeal would lie to the high court, after the amendment of section 15-Z of the SEBI Act? It was contended on behalf of the appellant that the remedy of second appeal provided for in the unamended section remained unaffected by the amendment of the said provision; and on the basis of the above assumption, it was further contended, that the present controversy relates to an amendment which envisaged a mere change of forum. While refuting the contention, the apex court observed:[18]

> Insofar as the instant aspect of the matter is concerned, it would be pertinent to mention, that a right of appeal can be availed of only when it is expressly conferred. When such a right is conferred, its parameters are also laid down. A right of appeal may be absolute i.e. without any limitations. Or, it may be a limited right. The above position is understandable, from a perusal of the unamended and amended Section 15-Z of the SEBI Act. Under the unamended Section 15-Z, the appellate remedy to the High Court, against an order passed by the Securities Appellate Tribunal, was circumscribed by the words "… on any question of fact or law arising out of such order". The amended Section 15-Z, while altering the appellate forum from the High Court to the Supreme Court, curtailed and restricted the scope of the appeal, against an order passed by the Securities Appellate Tribunal, by expressing that the remedy could be availed of "… on any question of law arising out of such order". It is, therefore apparent, that the right to appeal, is available in different packages, and that, the amendment to Section 15-Z, varied the scope of the second appeal provided under the SEBI Act.

After having clarified that, the apex court answered the precise question that arose for consideration in the affirmative. It stated thus:[19]

> [a]n appellate remedy is available in different packages. What falls within the parameters of the package at the initial stage of the lis or dispute, constitutes the vested substantive right of the litigant concerned.

18 *Id*., para 38.

19 *Id*., para 39.

> An aggrieved party, is entitled to pursue such a vested substantive right, as and when, an adverse judgment or order is passed. Such a vested substantive right can be taken away by an amendment, only when the amended provision, expressly or by necessary intendment, so provides. Failing which, such a vested substantive right can be availed of, irrespective of the law which prevails, at the date when the order impugned is passed, or the date when the appeal is preferred. For, it has repeatedly been declared by this Court, that the legal pursuit of a remedy, suit, appeal and second appeal, are steps in a singular proceeding. All these steps, are connected by an intrinsic unity, and are regarded as one legal proceeding.

The court also clarified that in so far as the vesting of the appellate remedy is concerned, it is neither the date of filing of the second appeal, nor the date of hearing that is relevant. The relevant date when the appellate remedy (including the second appellate remedy) becomes vested in the parties to the *lis*, is the date when the dispute/ *lis* is initiated. Such right to appellate remedy, as was available at the commencement of the proceedings, would continue to vest in the parties engaged in a *lis* till the eventual culmination of the proceedings. No doubt, such right would be subject to an amendment, expressly or impliedly, providing to the contrary. As far as the present case is concerned, the Securities and Exchange Board of India (Amendment) Act, 2002, neither expressly nor impliedly, provides so. The apex court, therefore, held that all appeals preferred by the SEBI, before the high court, are maintainable in law.

III RES JUDICATA

In *Infrastructure Leasing & Financial Services Ltd.* v. *BPL Ltd.*,[20] the appellant extended a short term loan to the respondent, which, in turn, executed a hypothecation deed in favour of the appellant hypothecating by way of an exclusive charge of the monies and right, title and interest relating to amounts, both present and future to be received or payable by M/s Hewlett Packard Ltd. The appellant initiated an arbitration proceeding for recovery, which eventually resulted in passing of the consent award by the arbitral tribunal. The respondent failed to pay the amount as stipulated in the award. It is in this context that the apex court addressed the issue as to whether the award effected extinguishment of appellant's claim as secured creditor as rights of parties crystallized to a simple money claim and security earlier created transformed itself into a decree debt and as such, thereafter, by operation of principle under order 2 rule 2 of CPC, it would not be possible for the appellant to pursue his claim on the basis of hypothecation deed? The apex court, by applying the principles laid down in *Gurbux Singh* v. *Bhooralal*,[21] negatively answered the issue. The court observed:[22]

20 (2015) 3 SCC 363.

21 AIR 1964 SC 1810.

22 *Supra* note 20, para 44.

> ...[i]t can be stated with certitude that there is no shadow of doubt that the consent award in an arbitral proceeding would not bar a suit for enforcement of the charge for the same reasons and it would not be hit by Order 2 Rule 2 CPC. We are absolutely conscious that the present case does not relate to a charge as engrafted under Section 100 of the Transfer of Property Act, or simply for equitable mortgage. In the present case, the charge is by hypothecation and relates to movable property. Needless to say, provisions of Rules 14 and 15 of Order 34 would not be directly applicable but the principle inherent under the said Rules, as enunciated would be applicable.

In *Krishna Hare Gaur* v. *Vinod Kumar Tyagi*,[23] in response to the advertisement issued inviting applications from the eligible candidates for appointment to the post of headmaster, several persons including the appellant and the first respondent, in the present case, have made their applications. The first respondent was selected and appointed. Based on the information obtained through right to information (RTI), the appellant made a representation to all the authorities concerned alleging that first respondent had obtained appointment by using forged experience certificates along with his application. Since no action was taken by any of the authorities, the appellant filed the writ petition in the high court challenging the appointment. The high court, after hearing the parties, directed the district basic *Shiksha Adhikari* to pass a reasoned order within a period of six weeks. The district basic *Shiksha Adhikari*, *vide* order dated 3-2-2011, rejected the representation of the appellant. Aggrieved by the said order, the appellant preferred writ appeal. The high court dismissed the same holding that the district basic *Shiksha Adhikari* has recorded a categorical finding that he inspected the original records and found that the first respondent has requisite five years' teaching experience.

In the meantime, the district magistrate took cognizance of the appellant's representations made earlier and directed the additional district magistrate to conduct an inquiry and submit a report. The additional district magistrate submitted his report stating that the experience certificates filed by first respondent were bogus and obtained with the collusion of the heads of respective institutions. The district magistrate forwarded the report to the basic *Shiksha Adhikari* directing him to take appropriate action in the matter and report at the earliest. Pursuant to the finding and the report, the appointment of first respondent was cancelled. Aggrieved by the same, the first respondent filed a writ petition impleading the appellant as one of the respondents. The high court dismissed the same stating that his appointment was made contrary to the statutory provisions as he did not possess the requisite experience. Against the said order, he preferred a special appeal before the high court which was allowed by the division bench by applying the principles of *res judicata*.

23 (2015) 11 SCC 355.

The apex court, relying on *Meghmala* v. *G. Narasimha Reddy*,[24] held that the high court was wrong in applying the principles of *res judicata* in the instant case. It opined that, "[W]hen the appointment is made *dehors* the rules, the same is a nullity. In such an eventuality, the statutory bar like doctrine of *res judicata* is not attracted."[25]

The doctrine of *res judicata* does not apply to cases, where neither the reliefs claimed in the two suits were identical, nor the parties are the same and nor could the decision in the first suit said to have been on merits.[26] Even in cases, where it is asserted that in the earlier suit a decree came to be passed because of fraud and collusion, plea of *res judicata* shall not be entertained to dismiss the subsequent suit. The trail shall be held to ascertain the facts.[27]

IV PLEADINGS

In civil litigation, pleadings are very important. They enable the parties to understand each other's case well and also the court to determine what is really at issue between the parties to the suit. Pleadings are the bases to prevent parties from deviating from the stands they had taken. It is a well settled position of law that fresh pleadings and evidences, which are in variation to the original pleadings, cannot be taken unless they are incorporated by way of amendment to the original pleadings.[28] The courts are not bound to entertain pleas that lack foundation in the plaint.[29]

Description of suit property in the plaint

Order 7 rule 3 CPC deals with requirement of description of immovable property in a plaint, where it is the subject matter of suit. According to the provision the property must be described in a manner sufficient to identify it. Property can be identified in several ways *viz*., by boundaries, or by number in a public record of settlement or survey. Even by plaint map showing the location of the disputed immovable property, it can be described. Where, in a case, the suit property has been described by the plaintiff in the plaint not only by the boundaries but also by the municipal number, and by giving its description in the plaint map, by no stretch of imagination, can it be said that the suit property was not identifiable merely because length and width of the land in question is not mentioned in the plaint.[30]

Amendment of pleadings

It is a settled law that, under order 6 rule 17 CPC, an application for amendment of plaint or written statement should be normally allowed, when necessary and unless by virtue of the amendment nature of the suit is changed or some prejudice is caused

24 (2010) 8 SCC 383.

25 *Supra* note 23, para 15.

26 *City Municipal Council Bhalki* v. *Gurappa* (2016) 2 SCC 200.

27 *Vaish Aggarwal Panchayat* v. *Inder Kumar*, 2015 SCC OnLine SC 751.

28 *Nandkishore Lalbhai Mehta* v. *New Era Fabrics (P) Ltd.* (2015) 9 SCC 755.

29 *N.K. Rajendra Mohan* v. *Thirvamadi Rubber Co. Ltd.* (2015) 9 SCC 326.

30 *Zarif Ahmad* v. *Mohd. Farooq* (2015) 13 SCC 673.

to other party. In *Mount Mary Enterprises*,[31] a suit was filed for specific performance of a contract in relation to the suit property, which was initially valued *i.e.*, at the time of filing of the suit at 13, 50, 000. The plaintiff, thereafter, realised that the market value of the property in question was around 1, 20, 00, 000 and, therefore, filed an application for amending the plaint. The said application for amendment was rejected by the trial court mainly on the ground that upon enhancement of the valuation of the suit property, the suit was to be transferred to the high court on its original side. Thereafter, a writ petition was filed challenging the order rejecting the amendment application, which also came to be dismissed by the high court.

While dealing with the appeal against the said orders, the apex court also took note of the fact that the defendant, in fact, had also made an averment in the written statement that the plaintiff had undervalued the subject – matter of the suit and the plaintiff had submitted an application for amendment in order to give the correct value of the suit property in the plaint. Thus, it allowed the appeal stating that the nature of the suit was not going to be changed by virtue of the amendment. The court also clarified that the reason assigned by the trial court for rejection of the amendment application that if it is allowed the suit was to be transferred to the high court on its original side is not a sound reason to justify its rejection.

In *Mahila Ramkali Devi* v. *Nandram*,[32] the application for amendment of the suit was rejected by the high court on the ground that the same would change the nature of the suit that was filed forty years ago. Initially, the claim was made on the basis of the will and later, through amendment, it was sought to be made on the basis of inheritance. In appeal, the apex court, after considering the factual matrix of the case and contents of amended plaint, felt that the high court ought not to have rejected the application. It also observed:[33]

> It is well settled that rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules of procedure. The court always gives relief to amend the pleading of the party, unless it is satisfied that the party applying was acting mala fide or that by his blunder he had caused injury to his opponent which cannot be compensated for by an order of cost.

In an another case, the apex court held that in a suit for permanent injunction against the respondent - defendant, if the appellant – plaintiff subsequently seeks to add a further relief as to declaration of title by way of amendment of the plaint, such amendment shall not be allowed if the new relief sought to be added is barred by limitation.[34] But, in *Vasant Balu Patil*,[35] the apex court said, once such an amendment

31 *Mount Mary Enterprises* v. *Jivratna Medi Treat (P) Ltd.* (2015) 4 SCC 182.

32 (2015) 13 SCC 132.

33 *Id*., para 20.

34 *L.C. Hanumanthappa* v. *H.B. Shivakumar* (2016) 1 SCC 332.

35 *Vasant Balu Patil* v. *Mohan Hirachand Shah* (2016) 1 SCC 530.

is allowed by the trial court and was not challenged by the defendant, the issue with regard to limitation has to be decided in favour of the plaintiff**.**

In *Ram Niranjan Kajaria* v. *Sheo Prakash Kajaria*,[36] a three judge bench of the apex court dealt with the question as to whether a defendant can be permitted to withdraw an admission made in the written statement by amending it after a pretty long period? Relying on the principle laid down in *Nagindas Ramdas*,[37] which was followed in *Gautam Sarup*,[38] as well, the apex court stated that "a categorical admission made in the pleadings cannot be permitted to be withdrawn by way of an amendment."[39] The court also expressly overruled *Panchdeo Narain Srivastava*,[40] where contrary view was taken.

The court, however, clarified that though the defendant cannot be permitted to withdraw an admission, he or she may be permitted to clarify or explain by way of amendment the admission made in the written statement and also to attack the basis of admission in substantive proceedings.

Rejection of plaint

Order 7 rule 11 of CPC provides for rejection plaint in certain circumstances, which are clearly specified. Rejection of a plaint entails termination of a civil suit at the threshold. It is a very drastic power. It has, therefore, been consistently held that the conditions precedent to the exercise of power under order 7 rule 11 are stringent and they have to be followed mandatorily. As per the provision, it is the averments in the plaint that have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under order 7 rule 11, the statements in the written statement or application for rejection of the plaint filed by the defendant are wholly irrelevant. It is only if the averments in the plaint *ex facie* do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law, the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial.[41]

Though, the statements made in the application for rejection of the plaint filed by the defendant are wholly irrelevant in deciding whether the suit is barred under any law, the defendant can file such an application at any time by taking recourse to the provisions of order 7 rule 11, CPC. The defendant cannot be denied the right to do so since the question of jurisdiction of the civil court to entertain and try the civil suit goes to the very root of the case.[42]

36 (2015) 10 SCC 203.

37 *Nagindas Ramdas* v. *Dalpatram Ichharam* (1974) 1 SCC 242.

38 *Gautam Sarup* v. *Leela Jetly* (2008) 7 SCC 85.

39 *Supra* note 36, para 23.

40 *Panchdeo Narain Srivastava* v. *Jyoti Sahay*, 1984 Supp SCC 594.

41 *P.V. Guru Raj Reddy* v. *P. Neeradha Reddy* (2015) 8 SCC 331.

42 *Om Aggarwal* v. *Haryana Financial Corpn.* (2015) 4 SCC 371.

Period of limitation for filing written statement or replay

Order 8 rule 1, CPC requires the defendant to file written statement within thirty days from the date of service of summons. In case the defendant fails to do so, the court is empowered to accord permission for filing the written statement on any other day, which shall not be later than ninety days from the date of service of summons. Similarly, section 13 of the Consumer Protection Act, 1986 authorizes the district forum to, on acceptance of complaint in certain cases, to refer the same to the opposite party directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days.

There were conflicting decisions on the question as to whether period of limitation prescribed by these provisions for filing written statement or giving the version of the opponent, as the case may be, was mandatory or directory? In *J.J Merchant* v. *Shrinath Chaturvedi*,[43] the three judge bench of the apex court, while considering the question under section 13 of the Consumer Protection Act, 1986 opined that it is mandatory and the district forum cannot grant time beyond forty - five days. In reaching that conclusion, it had also made reference to provision on *pari materia* in CPC. Later in *Kailash* v. *Nanhku*,[44] while considering the question under the said provision of CPC, the court, even after considering the *ratio* laid down in *Dr. J.J. Merchant*, held that the period of limitation prescribed under order 8 rule 1 is not mandatory but directory in nature and, therefore, in the interest of justice, further time can be granted if the circumstances are such that require extension.

In *New India Assurance Co. Ltd.* v. *Hilli Multipurpose Cold Storage Pvt. Ltd*,[45] the three judge bench of the Supreme Court was asked to address the issue and settle the legal position. The court, after considering these conflicting opinions and the relevant statutory provisions, came to the conclusion that the law laid down in *Dr. J.J. Merchant* is the governing the law. In reaching the said conclusion, the court relied upon the principles relating to binding nature of the precedents laid down in *Central Board of Dawoodi Bohra Community* v. *State of Maharashtra*.[46]

V PARTIES

Effect of wrong description of parties in a suit

In *Kuldeep Kumar Dubey*,[47] the question before the apex court was whether the suit filed by the father of the appellants in respect of property owned by them could be held to be not maintainable even when the appellants were subsequently added as plaintiffs as heirs of their father who died during pendency of the suit? In other words, whether description of the appellants who are owners as heirs instead of owners

43 (2002) 6 SCC 635.

44 (2005) 4 SCC 480.

45 2015 SCC OnLine SC 1280.

46 (2005) 2 SCC 673.

47 *Kuldeep Kumar Dubey* v. *Ramesh Chandra Goyal* (2015) 3 SCC 525.

in their own right will be a case of mere "error, defect or irregularity" not affecting the merits or jurisdiction of the court which did not affect the maintainability of the suit.

In the instant case, one Raj Kumar, who was owner of the suit property, died on February 4, 1994. Subsequently, Shiv Kumar Dubey, brother of Raj Kumar filed the suit for eviction of the respondent tenant in his capacity as heir of Raj Kumar on the ground of non-payment of rent. During pendency of the suit, even he died and the appellants Kuldeep Kumar and Pradeep Kumar, sons of Shiv Kumar Dubey were substituted as plaintiffs being his heirs. During the trial, it was brought to light that Raj Kumar had, in fact, executed a will in favour of appellants Kuldeep Kumar and Pradeep Kumar but the said appellants were shown in cause-title only as heirs of Shiv Kumar and not as owners. No objection was, however, raised by the tenant on that account in the trial. The suit was allowed. Aggrieved by the decree, the tenant preferred the revision petition before the district judge precisely on the said ground only. The said revision petition was allowed. When it was challenged before the high court, the decision of the district judge was confirmed.

In appeal, the apex court set aside the impugned orders of the high court and the district court and restored the order of the trial court. In the case, on admitted facts, only defect pointed out was of formal nature that too with respect to description of parties. Thus, in the opinion of the apex the district court, particularly in view of section 99 CPC, was not justified in reversing the order of the trial court on such a technicality, which did not in any manner affect the merits of the case. Such irregularity could have been corrected by the court under order 1 rule 10 and can be corrected even by the Supreme Court in appeal unless the defendant is in any manner prejudiced.

Manner of bringing the legal representatives on record

On the death of either party to the suit or appeal, wherever necessary, their respective legal representatives shall be brought on record lest the suit or appeal stands abetted. Order 22 stipulates the manner in which the legal representatives of either party ought to be brought on record. The prescribed procedure cannot be circumvented by filing application under order 1 rule 10 read with section 151 CPC. In *Banwari Lal*,[48] where the party had adopted the latter course, the court has reiterated this rule. It was, however, of the opinion that it would be unjust to non-suit the appellants on the ground of these technicalities. It observed that "[P]rovisions of Order 22 CPC are not penal in nature. It is a rule of procedure and substantial rights of the parties cannot be defeated by pedantic approach by observing strict adherence to the procedural aspects of law."[49]

Necessary party

Necessary party is the one, who is 'entitled to defend'. It is the person who is or likely to be affected by an order to be passed by any legal forum, who has the inherent

48 *Banwari Lal* v. *Balbir Singh* (2016) 1 SCC 607.

49 *Id*., para 9.

right to defend. It is based on the principle of *audi alteram partem*. The proviso to order 1 rule 9, CPC enjoins the said principle, which is applicable to the writ proceedings as well.[50]

VI APPEAL

Powers of the first appellate court

The question relating to powers of the first appellate court under section 96 read with order 41 rule 31 of CPC is no longer *res integra*. They are well defined in various judicial pronouncements of the apex court. The first appellate court has the power to decide both questions of law and fact. As per the scheme envisaged in CPC, it, indeed, is the final court on facts. V. R. Krishna Iyer J., has stated this in his characteristic style as far back in 1969 that "[A]n appellate court is the final court of fact ordinarily and therefore a litigant is entitled to a full and fair and independent consideration of the evidence at the appellate stage. Anything less than this is unjust to him…".[51] In *Shasidhar*,[52] the apex court has reiterated it. It emphatically stated that being the first appellate court, it is the duty of the high court to decide the first appeal keeping in view the scope and powers conferred on it under section 96 read with order 41 rule 31 CPC. Since it was not done in the instant case, the court said, prejudice has been caused to the appellants whose valuable right to prosecute the first appeal on facts and law was adversely affected and that, in turn, deprived them of a hearing in the appeal in accordance with law.

Second appeal

Under the CPC, second appeal lies only to the high court and only when the case involves substantial question of law. It is expressly and unambiguously stated in section 100 and the apex court time again reiterated it in several cases and reminded the high courts not to entertain second appeals without formulating substantial question of law. It has also attempted to define 'substantial question of law' by distinguishing it from 'question of law' and 'question of fact' in some cases. Nevertheless, high courts sometimes entertain second appeals without formulating substantial question of law or by treating ordinary questions of law or fact as substantial question of law. This has happened in the current survey year as well.

In *Laxmidevamma* v. *Ranganath*,[53] the high court entertained second appeal in a case that did not involve substantial question of law and interfered with the concurrent findings of fact recorded by the trial court and the first appellate court. On perusal, the apex court held that the order of the high court is unsustainable. In *Lisamma Antony* v. *Karthiyayani*,[54] the apex court considered the question formulated by the

50 *Poonam* v. *State of U.P.* (2016) 2 SCC 779.

51 *Kurian Chacko* v. *Varkey Ouseph,* AIR 1969 Ker 316.

52 *Shasidhar* v. *Ashwini Uma Mathad* (2015) 11 SCC 269.

53 (2015) 4 SCC 264.

54 (2015) 11 SCC 782.

high court, while entertaining the second appeal i.e., "Did the courts below go wrong in overlooking the boundaries and descriptions in Ext. B-1, which is a vital document so far as it relates to the identity of the property claimed by the defendants?" It held that the said question "cannot be termed to be a question of law, much less a substantial question of law. The above question formulated is nothing but a question of fact."[55] Further, it was of the opinion that merely because on appreciation of evidence another view could have been taken, the high court is not justified in entertaining second appeal by terming such a question as a substantial question of law.

In *Ashok Rangnth Nagar*,[56] the apex court had to again deal with a case, where second appeal was entertained without formulating substantial question of law. After referring to section 100, CPC and *ratio* laid down and followed in several cases, the apex court stated what the high courts are required to do while entertaining second appeal:[57]

> (i) On the day when the second appeal is listed for hearing on admission if the High Court is satisfied that no substantial question of law is involved, it shall dismiss the second appeal without even formulating the substantial question of law;
>
> (ii) In cases where the High Court after hearing the appellate is satisfied that the substantial question of law is involved, it shall formulate that question and then the appeal shall be heard on those substantial question of law, after giving notice and opportunity of hearing to the respondent;
>
> (iii) In no circumstances the High Court can reverse the judgment of the trial court and the first appellate court without formulating the substantial question of law and complying with the mandatory requirements of Section 100 CPC.

It may be noted that it is not for the first time the apex court has noticed how high courts, in some cases, entertain second appeals without formulating substantial question of law. If one goes through the annual surveys published in the preceding years, it is evident that not a single year has passed without the apex court coming across at least one such case. It has dealt with such cases every year and, in some, it had even castigated the practice of entertaining second appeals without formulating the substantial question of law.

On a plain reading of section 100, it is very much clear that formulating such question/s at the time of admission of the second appeal itself is mandatory. The apex court in plethora of decisions has consistently reiterated the mandatory nature of the provision. It is a peremptory norm as far as second appeal under the CPC is concerned. Too many instances of violation of this rule show that those who entertain second

55 *Id*., para 12.

56 *Ashok Rangnth Nagar* v. *Shrikant Govindrao Sangvikar*, 2015 SCC OnLine SC 1064.

57 *Id*., para 20.

appeal without formulating substantial question of law are either totally ignorant of the mandatory requirement of law or totally indifferent to it.

In *Gujarat Maritime Board* v. *G.C. Pandya*,[58] the apex court appreciated the high court for not admitting the second appeal on the ground that the case did not involve any substantial question of law.

Maintainability of letters patent appeals

In *Jogendrasinhji Vijaysinghji* v. *State of Gujarat*,[59] the apex court dealt with an issue relating to maintainability of letters patent appeal before the division bench of the High Court of Gujarat, under clause 15 of Letters Patent, against the orders of single judge bench of the high court issued in exercise of writ jurisdiction. After extensive discussion of case laws, the apex court summarized the legal positions as follows:

1. Whether a letters patent appeal would lie against the order passed by the learned single judge that has travelled to him from the other tribunals or authorities, would depend upon many a facet.[60]
2. The order passed by the civil court is only amenable to be scrutinized by the high court in exercise of jurisdiction under article 227 of the Constitution of India which is different from article 226 of the Constitution and as per the pronouncement in *Radhey Shyam*,[61] no writ can be issued against the order passed by the civil court and, therefore, no letters patent appeal would be maintainable.[62]
3. The writ petition can be held to be not maintainable if a tribunal or authority that is required to defend the impugned order has not been arrayed as a party, as it is a necessary party.[63]
4. The tribunal being or not being party in a writ petition is not determinative of the maintainability of a letters patent appeal.[64]

Power of the appellate court to remand a case

Under section 107 CPC, the appellate court has power, *inter alia*, to remand a case. The said provision also empowers the appellate court to take additional evidence or to require such evidence to be taken. Further, rule 24 order 41 provides that where evidence on record is sufficient, the appellate court may determine the case finally. Having regard to the said provisions, the apex court, in *Zarif Ahmad*,[65] stated that it is

58 (2015) 12 SCC 403.
59 (2015) 9 SCC 1.
60 *Id*., para 45.1.
61 *Infra* note 67.
62 *Supra* note 59, para 45.2.
63 *Id*., para 45.3.
64 *Id*., para 45.4.
65 *Supra* note 30.

not a healthy practice to remand a case to the trial court unless it is necessary to do so as it results in delay, which is unnecessary and avoidable. In its opinion, only in rare circumstances, should a case be remanded e.g. when the trial court has disposed of a suit on a preliminary issue without recording evidence and giving its decision on the rest of the issues.

Production of additional evidence before the appellate court

The parties to the dispute are required to adduce all their evidence before the trial court. Order 41, rule 27 categorically denies the parties an opportunity to produce additional evidence, whether oral or documentary, as a matter of right at the appellate stage. It, however, confers discretionary power on the appellate court to allow, for reasons to be recorded, such evidence in three situations mentioned therein. In *Andisamy Chettiar*,[66] the apex court held that excepting those situations mentioned in rule 27, in no other situation, parties can be allowed to produce additional evidence and fill the lacunae in their case at the appellate stage. Allowing the parties to produce evidence, excepting in those situations, would be against the spirit of the provision.

VII REVIEW AND REVISION

Maintainability of writ petition against the order of the civil court

An important question regarding amenability of orders of civil courts to the writ jurisdiction under article 226 of the Constitution came up, on reference, before the three judge bench of the apex court in *Radhey Shyam* v. *Chhabi Nath*.[67] The reference was made by the two judge bench, which, *vide* order dated April 15, 2009,[68] doubted the correctness of the law laid down in *Surya Dev Rai* v. *Ram Chander Rai*,[69] where it was held that an order of the civil court is amenable to the writ jurisdiction of the high court under article 226 of the Constitution of India. It may be noted that in *Surya Dev Rai*,[70] the two judge bench of the Supreme Court did not follow the *ratio* laid down by a nine – judge constitutional bench in *Mirajkar*[71] and one of the reasons it accorded for not following the said *ratio* was that "the law relating to certiorari changed both in England and in India".

The three judge bench in *Radhey Shyam*[72] overruled *Surya Dev Rai* and reaffirmed the correctness of the *ratio* laid down in *Mirajkar*. After referring to plethora of judicial decisions, the bench categorically stated that the challenge to orders of judicial courts (civil or criminal) lie by way of appeal or revision under relevant statutory provisions or under article 227 of the Constitution and not by way of a writ either under article

66 *Infra* note 78.
67 (2015) 5 SCC 423.
68 *Radhey Shyam* v. *Chhabi Nath* (2009) 5 SCC 616.
69 (2003) 6 SCC 675.
70 *Ibid*.
71 *Naresh Shridhar Mirajkar* v. *State of Maharashtra*, AIR 1967 SC 1.
72 *Supra* note 67.

226 or article 32. Comparing the position under the Constitution with the law relating to writs in England, it observed:[73]

> It is true that this Court has laid down that technicalities associated with the prerogative writs in England have no role to play under our constitutional scheme. There is no parallel system of King's Court in India and of all the other courts having limited jurisdiction subject to the supervision of the King's Court. Courts are set up under the Constitution or the laws. All the courts in the jurisdiction of a High Court are subordinate to it and subject to its control and supervision under Article 227.Writ jurisdiction is constitutionally conferred on all the High Courts. Broad principles of writ jurisdiction followed in England are applicable to India and a writ of certiorari lies against patently erroneous or without jurisdiction orders of tribunals or authorities or courts other than judicial courts. *There are no precedents in India for the High Courts to issue writs to the subordinate courts. Control of working of the subordinate courts in dealing with their judicial orders is exercised by way of appellate or revisional powers or power of superintendence under Article 227. Orders of the civil court stand on different footing from the orders of authorities or tribunals or courts other than judicial/civil courts.*

In *Himalayan Coop. Group Housing Society* v. *Balwan Singh*,[74] another three judge bench of the Supreme Court, while dealing with an issue relating to the jurisdiction of the high courts in dealing with petitions filed under articles 226 and 227 of the Constitution of India, made a passing reference to *Radhey Shyam* [75] and observed thus:[76]

> The scope and extent of power of the writ court in a petition filed under Articles 226 and 227 of the Constitution came up for consideration before a three-Judge Bench of this Court in the recent case of *Radhey Shyam* v. *Chhabi Nath*. This Court observed that the writ of certiorari under Article 226 though directed against the orders of an inferior court would be distinct and separate from the challenge to an order of an inferior court under Article 227 of the Constitution. The supervisory jurisdiction comes into play in the latter case and it is only when the scope and ambit of the remedy sought for does not fall in the purview of the scope of supervisory jurisdiction under Article 227, the jurisdiction of the Court under Article 226 could be invoked.

73 *Id*., para 25. Emphasis supplied.

74 (2015) 7 SCC 373.

75 *Supra* note 67.

76 *Supra* note 74, para 16.

It is submitted that the above observation is not wholly correct. It does not seem that the three judge bench in *Himalayan Coop. Group Housing Society* had correctly appreciated the principle laid down in *Radhey Shaym*. As it can be seen from the discussion above, in *Radhey Shaym*, the Supreme Court did not contemplate the possibility of invoking jurisdiction of high courts under article 226 and issuing writ of *certiorari* against the orders of inferior judicial courts. It has clearly and categorically said, it is worth stating even at the cost of repetition, that the challenge to orders of subordinate judicial courts lies by way of appeal or revision under relevant statutory provisions or under article 227 of the Constitution and not by way of a writ either under article 226 or article 32 of the Constitution of India.

It may, however, be noted that in *Himalayan Coop. Group Housing Society*, the said observation was made in passing only. The case did not actually involve any issue relating to high court's interference, in exercise of its writ jurisdiction, with the order passed by a subordinate court.[77]

Revision

The high court has, under section 115 CPC, revisional jurisdiction. It can exercise the said jurisdiction only in certain circumstances and grant only those reliefs that are permitted under the privison. In *Andisamy Chettiar* v. *Subburaj Chettiar*,[78] the apex court considered the question as to whether the high court can interfere, in exercise of its revsional jurisdiction, in the matter of allowing the application of additional evidence at the appellate stage, when the appeal is still pending before the lower appellate court. It answered the question in the negative.

VIII JUDGMENT, DECREE AND ORDERS

Conditional decree

When the court decrees the suit with a condition, non-compliance with such a condition automatically results in deemed dismissal of suit, if so specified in the decree. In *P.R. Yelumalai* v. *N.M. Ravi*,[79] a buyer, who had entered into an agreement of sale, filed a suit against the seller for specific performance of contract. The court decreed the suit in favour of the buyer and directed him, since he had paid only advance money at the time of the agreement, to deposit the balance sale consideration in the court within one month from the date of decree and the seller was directed to make the regular sale deed thereafter. It was, however, made clear in the decree that if the

77 In *Himalayan Coop. Group Housing Society*, what was challenged before the high court by invoking its jurisdiction under articles 226 and 227 wan not the order of any inferior court but the orders passed by the registrar and the revisional authority under the Delhi Cooperative Societies Act, 1972 and the Rules made there under. Though, the high court upheld the impugned orders, it issued certain directions to the housing society. The Housing Society filed a review petition, which was dismissed. It is against the said dismissal that it approached the Supreme Court in the present case.

78 2015 SCC OnLine SC 1285.

79 (2015) 9 SCC 52.

balance sale consideration is not deposited within the stipulated time, the suit shall be deemed to have been dismissed.

The buyer did not deposit the amount within the stipulated time but he made an application for extension of time to make the deposit and same was granted by the trial court. He again failed to make the deposit within the extended time. But, the very next day after the expiry of the extended time, he filed a memo for issue of receipt order for depositing the said amount, it was issued and the amount was deposited on the same day. After depositing the amount, a copy of the memo was, however, not served to the seller to notify him about the deposit. After some lapse of time, buyer filed an execution petition. In the meantime, the seller had sold the property to someone else and created a third party interest. The execution petition came to be dismissed. The buyer challenged the dismissal by filing, it is important to note, a writ petition before the Karnataka High Court. The writ petition was also dismissed, however, with a liberty to the buyer to move the court which had passed the decree, for seeking, retrospectively, extension of time for depositing the amount. In view thereof, he filed an application for extension and that also got dismissed. He filed another writ petition challenging the order of dismissal. The high court remanded the matter to the trial court by formulating four questions to be answered by it even though three out of the four questions are actually questions of law and the high court itself could have answered it.[80] It is against this order of remand, both parties have approached the Supreme Court. While disposing of the appeals, the apex court clarified the legal position on extension of time to comply with the conditions laid down in the decree. The apex court said, *firstly*, that "the court has the discretion to extend the time upon an application made by the party required to act within a stipulated time period. Extension of time can be granted even after the expiry of the period originally fixed."[81] *Secondly*, the acceptance of deposit by the court after the expiry of the prescribed time-limit does not amount to deemed/implied extension of time for making deposit. In holding so, the apex court distinguished the facts of the present case from that of *Mohd. Alimuddin* v. *Waizuddin*.[82] After careful consideration of the facts, arguments and legal position, the apex court, in the instant case, allowed the appeal by the seller and dismissed the appeal by the buyer.

In the present case, the decision of the apex court on the merits of the case appears to be correct. But, there are two other important aspects in the case, which are matters of concern.

As it can be noticed, in the instant case, the buyer had filed two writ petitions before the high court challenging the order of the judicial courts, first, against the

80 Four questions formulated by the high court were: (*i*) whether the amount deposited on 29-5-2007 amounts to a deemed extension of time and a valid deposit; (*ii*) whether one Rajesh who has purchased the property is a notified purchaser; (*iii*) whether the appellant is entitled to extension of time when third-party interest is created; and (*iv*) whether the suit stood dismissed on 28-5-2007 or earlier when the amount was not deposited in terms of the decree.

81 *Supra* note 79, para 12.

82 (1998) 9 SCC 108.

dismissal or execution petition and, second, against the dismissal of the application seeking retrospective extension of time for depositing the amount by the court, which passed the original conditional decree. As per the law laid down by the nine – judge constitutional bench of the apex court, which was reiterated, in the survey year, in *Radhey Shyam*,[83] filing of writ petitions to challenge judicial orders is impermissible. Notwithstanding such a settled position of law, the high court had entertained the writ petitions filed by the buyer. It shows how the binding decisions of the apex court, sometimes passed by the constitutional benches, are ignored and the orders passed in ignorance of such decisions often go unnoticed.

Another important aspect is that while disposing of the second writ petition filed by the buyer, the high court remanded the matter to the trial court after formulating four questions. It may be noted that three out of four questions formulated by the high court were questions of law. The high court should have decided them instead of remanding the case back to the trial court. It is not a healthy practice, as stated in *Zarif Ahmed*,[84] to remand a case unless it is necessary to do so. It results in unnecessary and avoidable delay as such questions of law, when decided by the trial court, would most probably come back to the high court in appeal. The high court is expected to resolve such questions at a later stage.

Contents of judgments of the courts

Order 20 rule 4 (2) states that judgments of courts, other than small cause courts, "shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision." Rule 5 of the said order further mandates that "the court shall state its findings or decision, with the reasons thereof, upon each separate issue, unless the finding upon any one or more of the issue is sufficient for the decision of the suit." As regards the judgment of the appellate courts, in particular, order 41 rule 31 stipulates, *inter alia*, that it shall be in writing and shall state –

(a) The points for determination;
(b) The decision thereon;
(c) The reasons for the decision; and
(d) Where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

In *Chintaman Namdev Patil* v. *Sukhdev Namdev Patil*,[85] the apex court set aside the impugned judgment for not meeting the requirements under order 20 rules 4 (2) and (5) read with rule 31 of order 41. The impugned judgment was a judgment passed by the high court in second appeal. Though the high court had framed two substantial questions of law at the time of admission of second appeal as required under section 100, CPC it did not deal with them in the impugned judgment. While disposing of the second appeal, the high court dealt with an entirely different question even though it

83 *Supra* note 67.
84 *Supra* note 30.
85 (2016) 1 SCC 681.

was not formulated as a substantial question of law at the time of admission. It has even stated that it was the only question that was involved in the case. The apex court, after setting aside the judgment, remanded the matter back to the high court with a direction to decide the second appeal afresh on merits in accordance with law. It observed:[86]

> In our considered opinion, it was legally obligatory upon the High Court to properly set out the case of the parties, findings recorded by the trial court and the first appellate court, arguments of the parties on the questions of law framed and then answer the questions framed in the light of law applicable to the controversy involved by giving its reasoning. Order 20 Rule 4(2) and Rule 5 read with Order 41 Rule 31 provides for this requirement.

IX EXECUTION

Execution of orders of the consumer forums

In case of non-compliance with the orders of the consumer forums, apart from initiating proceedings under section 27 of the Consumer Protection Act, 1986, an alternative right is also available to the aggrieved person to execute such orders by invoking the provisions of CPC. The provisions of the CPC are applicable for disposal of the complaints by the district forum not only in relation to the matters enumerated under sections 13 (4), (6) and (7) of the Consumer Protection Act, 1986 but also for the purpose of execution of the order of the district forum and to give effect to the order passed by it on the complaint as the same will be in the nature of decree as defined under CPC.[87]

X MISCELLANEOUS

Applicability of CPC to tribal areas

By virtue of section 1 clause (3), CPC has no application to tribal areas unless made applicable by the concerned state government by notification in the official gazette. The courts constituted either by the district council or the regional council, as the case may be, under para 4 of the sixth schedule of the Constitution of India are ordinarily not bound by the procedures prescribed in the CPC. Such regional councils and the district councils also have the power, under clause (4) of para (4), to make rules regulating procedure to be followed by the courts constituted by them. The idea is to simplify the technicalities of procedural laws in backward areas. It is under the said clause, the United Khasi-Jaintia Hills Autonomous District (Administration of Justice) Rules, 1953 has been framed. Rule 28 of the said Rules provides right of appeal from all decisions of subordinate district council court to the district council court without any reference to minimum time period. Further, rule 47 of the said

86 *Id*., para 16.

87 *Kamlesh Aggarwal* v. *Narain Singh Dabbas* (2015) 11 SCC 661.

Rules clearly stipulates that in all matters not covered by recognized customary laws or usages of the district, procedure of the courts, in civil cases, shall be guided by the spirit of CPC and not by its letters.

In *Westarly Dkhar* v. *Sehekaya Lyngdoh*,[88] the apex court dealt with an appeal arose out of an *ex parte ad interim* injunction order passed by the subordinate district council court in a suit. An appeal was filed against said order before the district council court, which allowed the appeal and set aside the *ex parte ad interim* injunction order granted by the subordinate district council court. A civil revision petition was filed against the order of the district council court before the High Court of Gauhati. The high court allowed the petition stating that since an appeal had been filed within 30 days of the *ad interim ex parte* order, it would not be maintainable under CPC. The reason provided by the court was that since both the parties were effectively and adequately represented before the courts below by their respective counsel, it cannot be said that they were unaware of the complexities of CPC. Further, no plea is made by the respondents that they have been substantially prejudiced or hampered by the technicalities of CPC, which ordinarily bars an appeal from an *ex parte* order of injunction. The Supreme Court, while setting aside the order of the high court, observed:[89]

> We fail to understand how the letter of the Civil Procedure Code would apply depending upon whether the parties are or are not assisted by legal experts. The Division Bench has unfortunately failed to refer to Rule 28 of the 1953 Rules and has applied the letter of Order 39 Rule 3-A read with Order 43 of the Code of Civil Procedure. This is the basic error in the judgment. On the facts of this case, the appeal becomes maintainable because Rule 28 of the 1953 Rules provides for such appeal without any requirement that ordinarily it should be filed only after 30 days.

Application of CPC to appeals under section 260A of Income Tax Act, 1961

Section 260A of the Income Tax Act, 1961 provides for an appeal to the high court from every order passed in appeal by the appellate tribunal. Clause (7) thereof states that all the provisions in the CPC relating to appeals to the high court shall apply to appeals under section 260A as well. It may, however, be noted that the said clause does not expressly provide for exclusion of the application of other provisions of the CPC to appeals filed under section 260A. In view of that, the apex court held that the said clause does not in any manner suggest either that the other provisions of CPC are necessarily excluded or that the high court's inherent jurisdiction is in any manner affected.[90]

88 (2015) 4 SCC 292.

89 *Id*., para 11.

90 *Commnr. of Income Tax, Guwahati-I* v. *M/s. Meghalaya Steels Ltd.*, 2015 SCC OnLine SC 1198.

Condonation of delay

The courts are empowered under section 5 of the Limitation Act, 1963 to condone delay in filing cases, if there was 'sufficient cause'. The expression 'sufficient cause' always receives very liberal construction so as to advance substantial justice. No doubt, the power to condone delay is a discretionary power vested with the courts and, thus, it has to be exercised like any other discretion with vigilance and circumspection. It is not to be exercised in any arbitrary, vague or fanciful manner. The true test, in condoning the delay, is to see whether the litigant has acted with due diligence. The courts, generally, condone the delay if there is no negligence, inaction or want of bonafide on the part of the party concerned. In condoning the delay, the courts can, however, impose conditions or pass such directions to compensate the other party for the inconveniences suffered because of delay. But such conditions should not be unreasonable or excessive. [91]

In *Antiyur Town Panchayat* v. *G. Arumugam*,[92] while dealing with the question of condonation of delay of 1373 days in filing second appeal by the executive officer of panchayat in a case relating to panchayat property, the apex court has reiterated its policy. The court said that the justice – oriented approach must always be adopted while considering an application for condonation of delay in such cases. If the court is convinced that there had been an attempt on the part of the government officials or public servants to defeat justice by causing delay, the court, in view of the larger public interest, should take a lenient view in such situations, condone the delay, howsoever huge may be the delay, and have the matter decided on merits.

Setting aside of *ex parte* decree

Setting aside of *ex parte* decree under order 37 rule 4 CPC cannot be done in a routine manner. It can be done only when there are special circumstances existing. However, the expression "special circumstances" has to be construed having regard to the fact situations of each case. The court has to balance the equities. If the defendant makes out a debatable case, which *prime facie* shows injustice in case the *ex parte* decree was not set aside, the court can set aside such decree. For safeguarding the interest of the plaintiff, in such cases, appropriate conditions can be laid down while setting aside the *ex parte* decree.[93]

In *Dilip Kumar Sharma*,[94] an *ex parte* decree was passed, when the legal representatives of the demised sole defendant have failed to appear before the court on the scheduled date despite notice being served to them. They filed an application for setting aside the *ex parte* decree within five days of passing of the said decree. The said application was dismissed by the trial court and the high court dismissed the appeal against the order of the trial court. While allowing further appeal, the apex

91 *M/s. GMG Engineering Industries* v. *M/s. Issa Green Power Solution*, 2015 SCC OnLine SC 497.

92 (2015) 3 SCC 569.

93 *Mahesh Kumar Joshi* v. *Madan Singh Negi* (2015) 12 SCC 254.

94 *Dilip Kumar Sharma* v. *Ankam Nageswara Rao* (2015) 14 SCC 555.

court set aside the *ex parte* decree. It was of the opinion that the courts below should have considered the fact that all the three legal representatives were stationed at far away places from the place of institution of suit. Two of them were employed at different places and the third one was also studying in a different place. They could have undertaken a journey to the jurisdictional court, only when their employment/ education schedule permitted them to do so. In the opinion of the court, these were sufficient causes for non - appearance on the scheduled date of hearing.

Object of order 12 rule 8 CPC

Order 12 rule 8 of CPC deals with notice to produce documents. The apex court, in *Rohini Traders* v. *J.K. Lakshmi Cement Ltd.*,[95] explained the object of the said provision in the following words:[96]

> The object of Order 12 Rule 8 of the Code is to facilitate the plaintiff or any other party to get a document on record which is not in their possession or in possession of the other party. If a document has been produced then it is the duty of the party who has asked for such production to get it placed on record. If, however, the said document is not placed on record, then adverse inference against the party who has produced the same cannot be drawn, more so, when the party who has produced the said document before the Court has been cross-examined vis-à-vis that document.

Judgment on admission of facts

Order 12 rule 6 of CPC authorises the court to pass orders or judgment with reference to admissions of fact made by the parties "either in pleading or otherwise, whether orally or in writing" without waiting for the determination of any other question between them. It may, however, be noted that the power conferred under the said rule is discretionary and, thus, no judgment, on admission, can be claimed by a party as a matter of right. It is only an enabling provision, which allows the court to deliver quick judgment on admission of facts. Where the defendants have raised objections which go to the root of the case, it would not be appropriate to exercise the discretion under the said rule.[97]

In a suit for eviction filed by the landlord, the tenant, after admitting the existence of tenancy and the period of lease agreement, had resisted the landlord's claim by setting up a defence plea of agreement for sale and payment of advance money. He had also brought to the notice of the court that he had filed a suit for specific performance, which of course is contested by the landlord. In such a scenario, the apex court said, it is not appropriate for the court to exercise its discretion under order 12 rule 6 merely because of admission of relationship of tenant and landlord.[98]

95 (2015) 12 SCC 46.

96 *Id*., para 14.

97 *S.M. Asif* v. *Virender Kumar Bajaj* (2015) 9 SCC 287.

98 *Ibid.*

However, an issue that stood decided in a prior suit between the parties can be a basis for a decree under order 12 rule 6.[99]

Power of the court to order restitution

Section 144, CPC embodies the principle of restitution that on the reversal or modification of a decree or order, the party who received the benefit of any such erroneous decree or order shall make restitution to the other party for what he had lost. The said provision imposes an obligation on the court, which passed the decree or order, to cause such restitution to be made. It is a salutary principle. The apex court, in *Citibank N.A.* v. *Hiten P. Dalal*,[100] after discussing the case law on the subject, has summarized the principles that shall be followed while ordering restitution. It observed thus:[101]

> In the ultimate analysis we find that the law on restitution under Section 144 CPC is quite well settled. It vests expansive power in the court but such power has to be exercised to ensure equity, fairness and justice for both the parties. It also flows from more or less common stand of parties on the principle of law that for ascertaining the value of the property which is no longer available for restitution on account of sale, etc., the court should adopt a realistic and verifiable approach instead of resorting to hypothetical and presumptive value. It is also one of the established propositions that in the context of restitution the court should keep under consideration not only the loss suffered by the party entitled to restitution but also the gain, if any, made by other party who is obliged to make restitution. No unmerited injustice should be caused to any of the parties.

The apex court also said that section 144 accords a statutory recognition to an already existing rule of justice, equity and fair play and, therefore, even apart from section 144, the courts have inherent jurisdiction to order restitution so as to do complete justice between the parties.

Transfer of suits

Section 25 of CPC confers discretionary power upon the Supreme Court to transfer any suit, appeal or other proceeding from a high court or other civil court in one state to a high court or other civil court in any other state if satisfied that it is expedient to do so in order to meet the ends of justice. In *Bank of Sharjah* v. *Joplin Overseas Investment (P) Ltd.*,[102] the petitioner, claiming to be mortgagee of a vessel, filed admiralty suits before the High Court of Bombay for its sale and the respondent, on the other hand, being the purchaser of the vessel filed suits before the High Court

99 *Raveesh Chand Jain* v. *Raj Rani Jain* (2015) 8 SCC 428.

100 (2016) 1 SCC 411.

101 *Id.*, para 19.

102 (2015) 11 SCC 486.

of Gujarat for arrest of the vessel. Subsequently, both filed transfer petitions before the Supreme Court – one claiming that the suit before the High Court of Gujarat shall be transferred to the High Court of Bombay and the other claiming the opposite. Though, the apex court was clearly of the opinion that all the suits must be heard together by one high court, it was confronted with the question as to, in the facts and circumstances of the case, which high court is the appropriate court to hear the matter. The court took note of the fact that the vessel has always been positioned in the territorial waters adjoining the State of Gujarat and within the area of a port over which the High Court of Gujarat has territorial jurisdiction. Having regard to the said fact, though it was of the opinion that it is the High Court of Gujarat, which has territorial jurisdiction, the Supreme Court gave more credence to the fact that various orders of arrest were passed by the High Court of Bombay prior to the filing of admiralty suit before the High Court of Gujarat and also that the respondent filed a caveat before the High Court of Bombay and took advantage of the orders of arrest passed by it. Accordingly, it felt it appropriate to transfer all the admiralty suits pending in the High Court of Gujarat with regard to the vessel in question to the Bombay High Court.

Suit for land

A suit for land is a suit in which the relief claimed relates to the title or delivery of possession of land or immovable property. In determining whether a suit is a 'suit for land', the court shall look into the plaint only and no other evidence. It is an established rule. If the averments in the plaint and prayers therein indicate that the suit is one for land, it shall be so held. As far as the suit for specific performance of an agreement to sell land is concerned, in view of section 22 of the Specific Relief Act, 1963, it cannot be considered as a 'suit for land' unless such suit contains a prayer for delivery of possession. But, such a prayer need not be explicit. Even if the prayer for delivery of possession is implicit in a suit for specific performance, such suit can be considered as 'suit for land'.[103]

Discharge of receiver

A question regarding discharge of receiver appointed by the court during the pendency of the suit or appeal fell for the consideration of the apex court in *Sherali Khan Mohamed Manekia* v. *State of Maharashtra.*[104] While noting that the prime objective behind appointing receiver during the pendency of the case is to preserve the property and to keep an account of rent and profits till the case is finally decided, the court opined that ordinarily the function of the receiver comes to an end with the final decision of the suit or appeal. However, ever after the final decision, the court has the discretion to take further assistance of the receiver as and when the need arises. If the receiver was appointed on an interlocutory application without any time

103 *Excel Dealcomm (P) Ltd.* v. *Asset Reconstruction Co. (India) Ltd.* (2015) 8 SCC 219.
104 (2015) 12 SCC 192.

limit, it is necessary to provide for the continuance of his appointment in the final judgment.

Compromise decree

In *Rajasthan Housing Board* v. *New Pink City Nirman Sahkari Samiti Ltd.*,[105] the court held that a compromise decree passed by a court affirming the transaction, which is void, is a nullity. A transaction, which is void cannot be affirmed by a court of law on the basis of compromise.

Application of Limitation Act, 1963

The question as to whether the Limitation Act, 1963 applies only to courts and not to tribunals arose for consideration before the Supreme Court in *M. P. Steel Corpn.* v. *CCE*.[106] While examining the question, the court undertook extensive analysis of case law on the question and noted that a number of decisions have established that the Act applies only to courts and not to tribunals or other quasi-judicial bodies. It also noted the cases, where contrary views were taken and on careful examination, it termed the decisions rendered in some of those cases as *per incuriam*.

The Supreme Court also opined that the "courts" referred to in various provisions of the Limitation Act refers, in the strict sense, only to those courts, which are part of the judicial branch of the state. Only courts established under chapter - IV of part - V and chapter – V of part VI of the Constitution fall in this category and not tribunals and quasi-judicial bodies.

The particular provision of the Limitation Act, the applicability of which to appeals under section 128 of the Customs Act was in question, in the present case, was section 14. After having said that section 14, as such, does not apply to tribunals and other quasi-judicial bodies, the apex court, however, clearly and categorically held that the general principle underlying section 14, which is a principle based on advancing the cause of justice, would certainly apply to tribunals and quasi-judicial bodies as well. In essence, to put it in other words, the Supreme Court said that the law as such does not apply but the underlying principle does.

Going by this proposition, the argument that the Limitation Act, 1963 does not apply to tribunals and quasi-judicial bodies can be raised, technically, in appropriate cases. But advancing such an argument, sometimes painstakingly as in the present case, does not necessarily make material difference as far as the outcome of the case is concerned.

The Limitation Act, 1963, as far as tribunals and quasi-judicial bodies are concerned, is, thus, technically inapplicable but virtually applicable.

In *Fatehji & Co.* v. *L.M. Nagpal*,[107] the court dealt with a specific question as to the applicability of limitation period prescribed under article 54 of the Limitation Act

105 (2015) 7 SCC 601.
106 (2015) 7 SCC 58.
107 (2015) 8 SCC 390.

to a suit for specific performance of agreement to sell immovable property, where the property has been delivered in part – performance of the agreement. Article 54 prescribes a limitation period of three years for filing a suit for specific performance of contract. The Supreme Court, while endorsing the view that article 54 does not make any difference between a case where possession of the property has been delivered in part-performance of the agreement and a case where it is not, held that "[T]he fact that the plaintiffs were put in possession of the property agreed to be sold on the date of agreement itself would not make any difference with regard to the limitation of filing the suit for specific performance."

Injunction order against non-party

It is a well-settled principle of law that an injunction, either temporary or permanent, can be granted only against the parties to a suit. No injunction order can be issued against the person, who is not a party to the suit. Further, even the consent order made in terms of order 39, CPC is also binding only against the parties to the suit.[108]

Consequences of assignment of property during the pendency of proceedings

Order 22 rule 10, CPC provides that in case of assignment or devolution of any interest in the suit scheduled property during the pendency of a suit, the suit may, by leave of the court, be continued by or against the person to or upon whom such interest has come or devolved. The provision gives an option to the assignee to move an application for impleadment. It does not take away the right of the assignor to continue the suit. From a bare reading of the provision, it is clear that the legislature has not envisaged the penalty of dismissal of the suit or appeal on account of failure of the assignee to move an application for impleadment and to continue the proceedings. Even if the assignee has not filed an application for impleadment, it would be open to the assignor to continue the proceedings notwithstanding the fact that he ceased to have any interest in the subject-matter of dispute. He can continue the proceedings for the benefit of assignee. The assignee, in such cases, will be bound by the decree, particularly when he had the knowledge of the proceedings. Even ordinarily, the person is bound by the decree until and unless it is shown that the decree was based upon fraud or collusion, etc.[109]

Notice under section 80, CPC

When a suit is filed against a municipality, no notice as contemplated under section 80, CPC need to be issued as a municipal council is not a 'public officer' for the purpose of the said provision.[110]

108 *W.B. Housing Board* v. *Pramila Sanfui* (2016) 1 SCC 743.

109 *Sharadamma* v. *Mohd. Pyrejan* (2016) 1 SCC 730.

110 *City Municipal Council Bhalki*, *supra* note 26.

Leave to defend in summary suit

In summary trial, defendant needs to obtain leave of the court to defend his case. He cannot claim 'leave to defend' as a matter of right. Under order 37 rule 3, the court has a discretion to grant it. In *State Bank of Hyderabad* v. *Rabo Bank*,[111] the apex court, after considering the principles laid down in earlier cases, has held that the leave to defend ought to be granted in certain cases. It stated that in cases where the defendant has raised a triable issue or a reasonable defence, he is entitled to unconditional leave to defend. Leave to defend shall be granted even in cases where the defendant upon disclosing a fact, though lacks the defence, but makes a positive impression that at the trial the defence would be established to the plaintiff's claim.

If the defendant raises a triable issue as to the meaning or correctness of the documents on which the plaintiff's claim is based or the alleged facts are of such nature, which justifies interrogation or cross – examination of the plaintiff or his witnesses by the defendant, leave to defend the summons for judgment, the court held, shall always be granted. Only in cases where the defence set up is illusory or sham or practically moonshine, the defendant is not entitled for the leave to defend and the plaintiff is entitled to leave to sign judgment.

Interference with the interlocutory orders in appeal

The apex court, in exercise of its extraordinary appellate jurisdiction under article 136 of the Constitution, does not ordinarily entertain appeals against interlocutory orders. In *Neon Laboratories Ltd. case*,[112] while reiterating this rule, the court said, however, in case of trademarks, it is justified for the appellate court to interfere with such orders. In the opinion of the court, keeping in view the delay in concluding the cases in India, temporary ad interim injunctions are of far-reaching consequences, oftentimes effectively deciding the *lis* and the disputes themselves.

The apex court also said that in exercising its jurisdiction in such matters, the appellate court should not flimsily, whimsically or lightly interfere in the exercise of discretion by a subordinate court unless such exercise is palpably perverse. Perversity can pertain to understanding of law or appreciation of pleadings or evidence. The court approvingly cited the principle laid down in *Wander Ltd*.,[113] and said that the same shall not be transgressed.

111 (2015) 10 SCC 521.

112 *Neon Laboratories Ltd.* v. *Medical Technologies Ltd.* (2016) 2 SCC 672.

113 *Wander Ltd.* v. *Antox India (P) Ltd.*, 1990 Supp SCC 727. In this case the court has said that the appellate court, while entertaining appeal against the interlocutory orders issued by the subordinate courts, ought not to "reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion" (para 14).

The court also reiterated the three cardinal aspects that shall be looked into, while granting interlocutory orders. They are:[114]

(a) whether a prima facie case in favour of the applicant has been established;
(b) whether the balance of convenience lies in favour of the applicant; and(c) whether irreparable loss or damage will visit the applicant in the event injunctory relief is declined.

Overriding effect of high courts letters patent

CPC expressly provides overriding effect to provisions of letters patent of the high courts in certain cases. Clause (3) of section 98, CPC is one such example. Section 98 provides that where an appeal is heard by a bench of even number of judges, which is equally divided in a judgment varying or reversing the decree appealed from, such decree shall be confirmed. This rule is subject to one exception i.e., if the judges comprising the bench differ in opinion on point of law, they may state such point of law and the appeal, thereafter, shall be heard only upon that point by other judge/s. But, this provision does not alter or otherwise affect any provisions of the letters patent of any high court. Clause (3) of section 98 expressly states so. Clause 36 of the Letters Patent of the High Court of Andhra Pradesh provides that in a case, where the division bench hears the appeal and the judges are divided evenly in opinion as to the decision to be given on any point, not necessarily a point of law, they shall state the point upon which they differ and the case shall then be heard on that point by other judge/s and the decision, on such point, shall be made according to the opinion of majority of judges who have heard the case including those who first heard it. On perusal of these two provisions, it is amply clear that they suggest, in similar cases, two different courses. Where a division bench of even number of judges hears the appeal and the judges are evenly divided in their opinion as to the decision to be given on any point, the following consequences would ensue:

(i) Under section 98, CPC, if the difference is not on a point of law, then the decree appealed from shall stand confirmed. If it is on a point of law, it shall be referred to other judge/s for decision.
(ii) Under clause 39 of the said letters patent, if there is difference in opinion as to the decision to be given on any point, whether of law or of fact, it shall be referred to other judge/s for decision.

In view of clause (3) of section 98, CPC, which gives overriding effect to the provisions contained in the letters patent of any high court, clause 39 prevails.[115]

In *Sumer Builders (P) Ltd.* v. *Narendra Gorani*,[116] the apex court held that the high courts, in exercise of their original civil jurisdiction, are not bound by the provisions contained in sections 16, 17 and 20, CPC. Section 120 expressly excludes

114 *Supra* note 112, para 6.
115 *State of A.P.* v. *Pratap Karan* (2016) 2 SCC 82.
116 (2016) 2 SCC 582.

the application of these provisions to high courts. Thus, as far as the High Court of Bombay is concerned, the provision contained in clause 12 of its letters patent would govern the exercise of its original civil jurisdiction.

XI CONCLUSION

Several decisions rendered in the survey year brought greater clarity on certain aspects in the area of civil procedural law. Wherever existence of conflicting judicial decisions on any question of law was brought to the notice, the apex court adopted the most appropriate course of referring the matter to larger benches for authoritative determination. In the process, the apex court has reiterated the principles laid down by the earlier larger benches and overruled the subsequent decisions rendered by the smaller benches, where contrary views were taken. On perusal of these cases, it is evident that some of the smaller benches of the Supreme Court and high courts have not followed the principles laid down by the constitutional benches. Such *per incurium* judgments were passed mainly because such binding precedents were not brought to the notice of the court. But, in *Surya Dev Rai*,[117] the smaller bench of the apex court did so even after taking into account the law laid down by the nine – judge constitutional bench.

Further, the practice of admitting the second appeal without formulating substantive question/s of law, which is a mandatory requirement, continues unabated. There is absolutely no ambiguity in the legal position. But, yet, some high courts do so. It is hoped that the guidelines laid down, in *Ashok Rangnath Nagar*,[118] are going to be followed strictly, without any exception, by the high courts while entertaining second appeals in future. Where the statute confers right of appeal only on a particular ground, courts cannot entertain appeals in the absence of such a ground. The right of appeal is a statutory right and, thus, subject to the limitations envisaged therein.

It may be noted that lack of clarity in legal position on any question of law, which is a result of conflicting judicial decisions, is one of the major reasons for increase in avoidable litigations. If all binding precedents are duly followed or a proper course is adopted, wherever necessary, for overruling them, that leads to greater clarity, certainty and predictability, which are the basic components of the formal thinner version of rule of law. Failure or refusal to follow the binding precedents violates rule of law, which is one of the basic features of the Constitution of India.

117 *Supra* note 69.

118 *Supra* note 56.