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CIVIL PROCEDURE

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I INTRODUCTION

IN THE year under survey too, as in the past, several issues relating to invocation, scope and application of the provisions of the Code of Civil Procedure, 1908 (CPC) and the law of limitation as contained in the Limitation Act, 1963 and other special legislations arose of consideration in the process of adjudication of civil disputes in a number of cases. In some cases, the procedural issues were only incidental to the main disputes whereas in some others, they were very much decisive. While addressing them, the apex court in many cases reiterated and reinforced the well settled rules and principles. In few cases, it even had an opportunity to authoritatively answer certain questions, on which conflicting opinions were expressed by different high courts. Wherever, the views expressed by the coordinate or larger benches on certain questions were found to be incorrect, such questions were referred to the larger benches for authoritative settlement.

All these developments are encapsulated in the current survey. It has been divided, based on the broad theme, into different sections and sub – sections.

II JURISDICTION

Exclusion of jurisdiction of civil courts

Section 9, CPC confers on the civil courts the jurisdiction to try all suits of a civil nature unless barred by law either explicitly or by necessary implication. It is a settled principle that the provisions of law enacted for ousting the jurisdiction of civil courts have to be construed strictly. The inference of exclusion of jurisdiction shall not be drawn readily. Whichever party raises the contention regarding exclusion of jurisdiction is required to prove the same. The burden lies on such party.[1]

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1 *Unichem Laboratories Ltd.* v. *Rani Devi,* (2017) 13 SCC 509.

In *Samar Kumar Roy* v. *Jharna Bera*,[2] relying on the principle that the provisions excluding the jurisdiction of the civil court shall be construed strictly and exclusion shall not be inferred readily, the apex court held that section 8 (a) of the Family Courts Act, 1984 does not exclude the jurisdiction of the civil court to entertain the suit filed under section 34 of the Specific Relief Act, 1963 for declaration as to the legal character of an alleged marriage. The said section 8 (a) only bars the suit between the parties filed under the Hindu Marriage Act, 1955 or Special Marriage Act, 1954 seeking annulment or dissolution of a marriage or restitution of conjugal rights or judicial separation but not the declaratory suit under the Specific Relief Act.

In *Rajasthan Wakf Board* v. *Devki Nandan Pathak*, [3] it was held that by virtue of sections 83 and 85 of the Wakf Act, 1995, the civil court has no jurisdiction to decide a question as to whether a particular property is a wakf property or not. It is the tribunal, which has the jurisdiction to decide such question and the jurisdiction of the civil court is ousted by section 85 of the said Act.

Jurisdiction to resolve service disputes of members of the General Reserve Engineering Force

In *Mohd. Ansari* v. *Union of India*,[4] the apex court considered the question as to whether the members of the General Reserve Engineering Force (GREF) can approach the Central Administrative Tribunal (CAT), if not, the Armed Forces Tribunal (AFT) for resolution of their service disputes.

GREF is a part of Boarder Roads Development Board. The members of the GREF are subject to Army Act, 1950 with respect to 'disciplinary matters' but not with respect to 'service matters' by virtue of the exception carved out under SROs, No. 329 and 330 issued by the Central Government under section 4 (1) of the said Act. They are governed by the Central Civil Services (Classification, Control and Appeal) Rules, 1965. In the present case, the appellant, who is a member of the GREF, made a representation to the competent authority seeking financial upgradation on completion of requisite years of service in the specified cadre. It was denied. He approached the CAT, Guwahati Bench challenging the order denying the upgradation. The respondent filed the preliminary objection regarding the jurisdiction of the CAT. The objection was overruled and the issue was decided in favour of the appellant. Aggrieved by the order of the tribunal, the respondents approached the high court. The high court held, relying on *R. Viswan*[5] and *Vidyawati*,[6] that the members of the GREF are not covered by the provisions of the Administrative Tribunals Act, 1985, thus, the CAT does not have jurisdiction as regards disputes and complaints relating

2 (2017) 9 SCC 591.

3 (2017) 14 SCC 561.

4 (2017) 3 SCC 740.

5 *R. Viswan* v. *Union of India,* (1983) 3 SCC 401.

6 *Union of India* v. *Vidyawati*, SLP (C) No. 8096 of 1995, order dated January 9, 1998 (SC).

to their service conditions. It also observed incidentally, after examining the provisions of the Army Act, 1950; the Armed Forces Tribunal Act, 2007 and the Central Civil Services (Classification, Control and Appeal) Rules, 1965 that members of the GREF could not even approach AFT seeking redressal of their grievances relating to service conditions. The only remedy available to them is to approach the high court under article 226 of the Constitution.

In appeal, the apex court concurred with the views expressed by the high court. After detailed analysis of relevant provisions of laws and the precedents, the apex court held that it is clear from the plain reading of section 2 (a) and section 3 (q) of the Administrative Tribunals Act, 1985 that the CAT had no jurisdiction to deal with the subject matter. As regards the jurisdiction of the AFT, the court observed:[7]

> From the aforesaid, the legal position that emerges is that AFT shall have jurisdiction (i) to hear appeals arising out of courts martial verdicts qua GREF personnel. To this extent alone AFT shall have jurisdiction. At the same time, if the punishment is imposed on GREF personnel by way of departmental proceedings held under the CCS (CCA) Rules, 1965 the same cannot be agitated before AFT; and (ii) AFT shall have no jurisdiction to hear and decide grievances of GREF personnel relating to their terms and conditions of service or alternatively put "service matters".

Further, as the CAT had passed the final order during the pendency of the matter before the high court, the apex court set aside the said order holding that "It has no existence in law. It is well settled in law that the judgment passed is a nullity if it is passed by a court having no inherent jurisdiction".[8]

Transfer of cases: Extent of jurisdiction of high courts

In *P. Ayyanar Pothi* v. *Supriya Ayyanar Pothi*,[9] the order passed by the Aurangabad Bench of the Bombay High Court transferring a divorce petition filed in a court subordinate to the Madras High Court to a family court at Aurangabad, Maharashtra was challenged. It was contended that the Bench committed a jurisdictional error as it does not have the jurisdiction to transfer a case pending before a court subordinate to another high court. The apex court, while upholding the contention, set aside the impugned order. It said, by virtue of section 25, CPC, the jurisdiction to transfer a case from one high court to another high court or a court subordinate to one high court to a court subordinate to another vests solely with the Supreme Court. Thus, the high court has no jurisdiction to entertain a petition seeking transfer of a case pending before a court subordinate to another high court.

7 *Supra* note 4, para 34.

8 *Id*. at para 35.

9 (2018) 11 SCC 686.

III RES JUDICATA

The doctrine of *res judicata*, which aims at bringing 'finality' in litigation, is applicable not only in cases governed by CPC, the underlying principles thereof apply to other litigations as well. Keeping in view its objectives, its application by the court "should be influenced by no technical considerations of form, but by matter of substance within the limits allowed by law".[10]

Prohibition to sue under order 2 rule 2, CPC

Order 2 rule 2 mandates that every suit shall be so framed to include all the claims the plaintiff is entitled to seek in respect of the cause of action. It, however, allows the plaintiff to relinquish any portion of the claim in order to bring the suit within the jurisdiction of any court. Sub – rule (2) of rule (2) contains a bar to sue subsequently in respect of any portion of his claim, which he omitted or intentionally relinquished. In *Noida* v. *Harkishan*,[11] the apex court held that when the 'award' passed under the Land Acquisition Act, 1984 was not challenged in the earlier rounds of litigation, filing of a fresh writ petition to challenge the ward is barred by order 2 rule 2 of CPC. In this case, the court noted that there were three rounds of litigation concerning land acquisition. When the notifications were issued for acquisition of lands by invoking emergency clause, a writ petition was filed in the high court challenging invocation of emergency provision, which resulted in deprivation of right to file objection. The said writ petition was dismissed. Aggrieved by the same, special leave petition was filed in the Supreme Court, which upheld the dismissal of writ petition by the high court while, at the same time, granting liberty to the petitioner (land owners) to file representation to the government under section 48 (1) of the Act. In the meanwhile, as there was no stay, the state government completed the acquisition process and passed the 'award'. The petitioners subsequently submitted the representations to the state government, which came to be rejected. This is when the second round of litigation was started. Another writ petition was filed in the high court challenging only the order rejecting the representation passed by the government. Though the 'award' was made by that time, the same was not challenged. The said writ petition was also dismissed, which was upheld by the Supreme Court in appeal. It is after this that the third writ petition was filed challenging the 'award' on the ground that the same was passed beyond the period of limitation. The high court entertained the writ petition. The Supreme Court, while setting aside the impugned judgment, held that the writ petition is clearly barred under order 2 rule 2.

In *Jayantilal Chimanlal Patel*,[12] the apex court held, relying on *Gurbux Singh*,[13] that in order to sustain a plea of bar to sue under order 2 rule 2, it is mandatory for the defendant to bring on record the plaint of the previous suit and prove the same as per

10 *Kaushik Corp. Building Society* v. *N. Parvathamma,* (2017) 13 SCC 138.

11 (2017) 3 SCC 588.

12 *Jayantilal Chimanlal Patel* v. *Vadilal Purushottamdas Patel,* (2017) 13 SCC 409.

13 *Gurbux Singh* v. *Bhooralal*, AIR 1964 SC 1810.

the law of evidence. If the plaint of the previous suit is not exhibited as evidence and proved according to the procedure in a subsequent proceeding, the plea under order 2 rule 2, which contains a technical bar, cannot be sustained. In *Bapusaheb Chimasaheb Naik-Nimbalkar*,[14] it reiterated the well settled principle that the bar contained in order 2 rule 2 is not applicable where the cause of action in the subsequent suit is different from the former suit.

IV PLEADINGS

Rejection of plaint

Order 7 rule 11, CPC deals with rejection of plaint. It mandates that the plaint shall be rejected in cases, *inter alia*, where it does not disclose a cause of action. Order 14 rule 2 (2) enunciates when a case may be disposed of on determination of preliminary issue(s). It says when a suit involves issues both of law and fact, and the court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first provided that issue relates either to the jurisdiction of the court or bar to the suit created by any law for the time being in force. The relative scope of the powers under order 7 rule 11, on the one hand, and under order 14 rule 2 (2), on the other, are different. The materials that may be considered under different provisions are also different. The apex court underscored these points in *Kuldeep Singh Pathania* v. *Bikram Singh Jaryal*.[15] It held that, while considering application under order 7 rule 11, the enquiry shall be confined to 'institutional defects'. To determine whether a 'cause of action' is disclosed in the plaint, the court can only see the plaint or the pleadings of the plaintiff (including the replication, if any, filed by him) but not the written statement filed by the defendant or any other material produced by him. Whereas, while deciding preliminary issues under order 14 rule 2 (2) for disposal of the case, "the court can and has to look into the entire pleadings and the materials available on record".[16] That means, apart from looking at the 'plaint', it can also look into 'written statement' and other materials made available by either of the parties. The court also further clarified that the application under order 7 rule 11 (a) can be considered at any stage of the proceedings. Even if it is taken up at the stage of trial of preliminary issues under order 14 rule 2 (2), the enquiry under order 7 rule 11 (a) shall only look into the pleadings of the plaintiff and not of the defendant.

As regards the raising of the plea regarding maintainability of the suit, the apex court, in *A. Kanthamani* v. *Nasreen Ahmed*,[17] reiterated the well settled principle that such a plea has to be raised by the defendant in the first instance in the written statement itself for it to be adjudicated as a preliminary issue under order 14, rule 2. Once a finding is recorded by the trial court on such a plea, same may be examined by the higher courts in appeal. The preliminary issue regarding maintainability of the suit

14 *Bapusaheb Chimasaheb Naik-Nimbalkar* v. *Mahesh Vijaysinha Rajebhosale,* (2017) 7 SCC 769.

15 (2017) 5 SCC 345.

16 *Id*. at para 7.

17 (2017) 4 SCC 654.

cannot be raised for the first time before the appellate court. Further, in *Hareendran* v. *Sukumaran*,[18] the apex court held the issues relating to the factum of redemption of mortgage, its legality and the question of limitation, which was dependent on the factum of redemption are both mixed question of law and facts and, thus, cannot be decided as preliminary issue.

An issue relating to rejection of plaint was considered again in *Madanuri Sri Rama Chandra Murthy* v. *Syed Jalal*,[19] where the court reiterated the settled legal position that a plaint can be rejected only on the grounds enumerated in order 7 rule 11, CPC and though the power under the said provision can be exercised by the court at any stage of the suit, while exercising the said power only the averments made in the plaint shall be looked into by the court. The averments made in the written statement and the contentions of the defendant are wholly immaterial. If, on perusal of the plaint as a whole, it is found "the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue,"[20] the same may be rejected. The court, however, added, as a point of caution, that "Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under order 7 rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to".[21]

In *Sejal Glass Ltd.* v. *Navilan Merchants (P) Ltd*.,[22] the apex court held that the word "plaint" in order 7 rule 11 refers to plaint as a whole. Thus, in the opinion of the court, "It is only where the plaint as a whole does not disclose a cause of action that order 7 rule 11 springs into being and interdicts a suit from proceeding".[23] If one part of the plaint cannot proceed whereas the other part can proceed against certain defendants and/or property, then order 7 rule 11 has no application. In such cases, order 6 rule 16 can be invoked to strike out the portion of the plaint which cannot proceed.

In *Bhargavi Constructions* v. *Kothakapu Muthyam Reddy*,[24] it was laid down that the word "law" in order 7 rule 11 (d), includes even the law declared by the Supreme Court. Accordingly, it was held that, by virtue of the ruling of the Supreme Court in *State of Punjab* v. *Jalour Singh*,[25] no suit can be instituted in a civil court to challenge the award of *lok adalat*. It can be challenged only by filing a writ petition in the high court that to on a limited ground. If a suit is filed in a civil court challenging the same, the defendant can seek the rejection of plaint under order 7 rule 11.

18 (2018) 14 SCC 187.
19 (2017) 13 SCC 174.
20 *Id*. at para 7.
21 *Ibid*.
22 (2018) 11 SCC 780.
23 *Id*. at para 3.
24 (2018) 13 SCC 480.
25 (2008) 2 SCC 660.

Amendment of pleadings

In *Chakreshwari Construction (P) Ltd.* v. *Manohar Lal*,[26] the apex court reiterated and applied the principles laid down in *Revajeetu Builders and Developers*[27]on what ought to be taken into consideration while allowing or rejecting application seeking amendment of pleadings. The court also reiterated that, as per the settled legal position, "the parties are permitted to amend their pleadings at any stage not only during the pendency of the trial but also at the first and second appellate stage with the leave of the court provided the amendment proposed is bona fide, relevant and necessary for deciding the rights of the parties involved in the *lis*".[28]

In *Bihar* v. *Modern Tent House*,[29] the defendant, after the completion of the evidence of the plaintiffs, filed an application under order 6, rule 17, CPC seeking amendment of the written statement. The trial court dismissed the application and the high court, in revision, upheld the dismissal. In appeal, the apex court set – aside the judgments of both the courts below and allowed the application for amendment. It observed:[30]

> We have perused the amendment application filed by the appellants. We find that *firstly*, the proposed amendment is on facts and the appellants in substance seek to elaborate the facts originally pleaded in the written statement; *secondly* and in other words, it is in the nature of amplification of the defence already taken; *thirdly*, it does not introduce any new defence compared to what has originally been pleaded in the written statement; *fourthly*, if allowed, it would neither result in changing the defence already taken nor will result in withdrawing any kind of admission, if made in the written statement; *fifthly*, there is no prejudice to the plaintiffs, if such amendment is allowed because notwithstanding the defence or/and the proposed amendment, the initial burden to prove the case continues to remain on the plaintiffs; and *lastly*, since the trial is not yet completed, it is in the interest of justice that the proposed amendment of the defendants should have been allowed by the courts below rather than to allow the defendants to raise such plea at the appellate stage, if occasion so arises.

Filing of additional evidence

As regards filing of addition evidence, the apex court held, in *Chakreshwari Construction (P) Ltd.* v. *Manohar Lal*,[31] that with the leave of the court parties may

26 (2017) 5 SCC 212.

27 *Revajeetu Builders and Developers* v. *Narayanaswamy & Sons,* (2009) 10 SCC 84.

28 *Supra* note 26 at para 16.

29 (2017) 8 SCC 567.

30 *Id*. at para 8.

31 *Supra* note 26 at para 17.

file additional evidence at any stage of the proceedings. They may do so, under order 7 rule 14 (3), during the trial and, under order 41 rule 27, during first and the second appellate stage. In *Satish Kumar Gupta* v. *State of Haryana*,[32] the apex court held if the condition laid down under order 41, rule 27 are not satisfied, the parties shall not be permitted to file additional evidence "to fill in the lacunae or to patch up the weak points in the case"[33] at the appellate stage.

Denial of statement made in the plaint

It is a well settled law that if the defendant wants to deny or dispute any of the statements made in the plaint, he must do so specifically and categorically in the written statement filed by him. Each of the allegations of fact made in the plaint must be dealt with in the written statement. The failure to make specific denial in terms of order 8 rule 3, CPC amounts to admission. Even an evasive denial also amounts to admission of fact.[34]

V PARTIES

Parties in a representative suit

The general rule is that all persons interested in the subject matter of the suit are to be joined as parties, either as plaintiffs or as defendants, thereto. Order 1 rule 8 contains an exception to the said rule. It allows, where numerous persons have the same interest in the subject matter of the suit, one or more such persons, with the permission of the court, to sue or be sued on behalf of all persons so interested. With reference to the said provision, the apex court, in *K.S Varghese* v. *St. Peter's & Paul's Syrian Orth.*,[35] observed:[36]

> The object for which the provision is enacted is to provide an exception to the ordinary procedure in a case where common rights of community or members of such association or large section are involved. It will be practically difficult to institute the suit under the ordinary procedure by impleading every person in which every individual has to maintain account by a separate suit and to avoid numerous suits being filed for a decision on the common question. Order 1 rule 8 had been enacted so as to simplify the procedure. In case parties have bona fide litigated the question and there had been no collusion in such a suit, the decision would bind the others. The rule entitles one party to represent many and the action is maintainable without joinder of other parties.

32 (2017) 4 SCC 760.

33 *Id*. at para 20.

34 *Jaspal Kaur Cheema* v. *Industrial Trade Links,* (2017) 8 SCC 592.

35 (2017) 15 SCC 333.

36 *Id*. at para 79.

Parties in proceedings for determination of Compensation

In *Satish Kumar Gupta*,[37] the apex court considered the question as to whether a post-acquisition allottee of land is necessary or proper party or has any locus to be heard in the matter of determination of compensation under the scheme of the Land Acquisition Act, 1894? It was contended before the court, *inter alia*, that the allottee shall be impleaded as a party since, as per the conveyance deed, the allottee is liable to pay the additional price if the compensation awarded to the land owners is enhanced. Looking into the entire scheme of the Act, the court rejected the contention and held that "the post-acquisition allottee has no locus to be heard in the matter and is neither a necessary nor a proper party".[38] It observed:[39]

> We may refer to the scheme of the Act. The acquisition may either be for a "public purpose" as defined under section 3(f) or for a company under part VII of the Act. If the acquisition is for a public purpose (as the present case), the land vests in the State after the Collector makes an award and the possession is taken. Till the award is made, no person other than the State comes into the picture. Once the land vests in the State, the acquisition is complete. Any transferee from the State is not concerned with the process of acquisition. The State may transfer the land by public auction or by allotment at any price with which the person whose land is acquired has no concern. The mere fact that the Government chooses to determine the allotment price with reference to compensation price determined by the Court does not provide any locus to an allottee to contest the claim for enhancement of compensation.

Suit for declaration as to the legal character of an alleged marriage

In *Samar Kumar Roy* v. *Jharna Bera*,[40] the apex court held that suit under section 34 of the Specific Relief Act, 1963 for declaration as to the legal character of an alleged marriage can be filed even by a third party. If the said suit had been filed by one of the parties to the alleged marriage, after his death, it can be continued by his legal heirs too.

Reversal or variation of a decree on account of misjoinder or non-joinder of parties

Section 99, CPC stipulates, *inter alia*, that a decree shall not be reversed or substantially varied in an 'appeal' on account of any misjoinder or non – joinder of parties in any proceedings in the suit unless such misjoinder or non-joinder affected

37 *Satish Kumar Gupta*, *Supra* note 32.

38 *Id*. at para 18.

39 *Id*. at para 9.

40 *Supra* note 2.

the merits of the case or the jurisdiction of the court. The proviso makes the said provision inapplicable in case of non-joinder of necessary party.

In *Manti Devi* v. *Kishun Sah*,[41] the apex court held that the decree cannot be reversed or varied even in 'revision' on account of misjoinder or non-joinder of parties. To reach this conclusion, the court relied upon section 141, CPC, which says that, in so far as applicable, the procedure prescribed in the CPC with regard to 'suits' shall be followed in all proceedings in any court of civil jurisdiction. The court opined that, by virtue of the said provision, "what is provided under section 99 of the Code of Civil Procedure in respect of appeal would apply to revision as well".[42]

Maintainability of suit for eviction filed by one of the co-owners

It is a well settled law that the suit for eviction of a tenant from the property owned by many can be filed by any one of the co-owners. Such a suit is maintainable unless the other co-owners object to it. The tenant cannot, in his defence, challenge the maintainability of the suit merely on the ground that other co-owners were not joined as parties to the suit.[43]

Consequences of failure to bring the LRs of deceased parties on record

The apex court, in *Gurnam Singh* v. *Gurbachan Kaur*,[44] had dealt with the question regarding the validity of the order passed by the High Court in a second appeal after the death of the appellant and the two respondents even though their legal representatives were not brought on record. In this case, both the parties expired during the pendency of the appeal and no steps were taken to bring their legal representatives on record under order 22 rules 3 and 4, CPC. Even then, the High Court had proceeded and disposed of the second appeal on merits. The legality and correctness of the said judgment of the High Court was questioned before the apex court. The apex court set aside the judgment by holding that if the legal representatives were not brought on record within the stipulated period of ninety days from the date of the death of the party, on the expiry of ninety days, it is automatically dismissed as abated and on ninety – first day, there will be no appeal pending. The High Court, therefore, would have no jurisdiction to proceed further and pass the judgment on merit. If it does, the court reiterated the settled legal position that such a judgment is a nullity and its validity can be questioned in any proceedings including in execution proceedings.

In the instant case, the court also delineated on how to revive the appeal that stand abated for not brining the legal representatives of the deceased on record. It observed:[45]

41 (2018) 12 SCC 500.

42 *Id*. at para 5.

43 *Om Prakash* v. *Mishri Lal,* (2017) 5 SCC 451.

44 (2017) 13 SCC 414.

45 *Id*. at para 20.

> In our considered view, the appeal could be revived for hearing only when firstly, the proposed legal representatives of the deceased persons had filed an application for substitution of their names and secondly, they had applied for setting aside of the abatement under order 22 rule 9 of the Code and making out therein a sufficient cause for setting aside of an abatement and lastly, had filed an application under section 5 of the Limitation Act seeking condonation of delay in filing the substitution application under order 22 rules 3 and 4 of the Code beyond the statutory period of 90 days.

Assignee's right to be brought on record to continue the suit

Order 22 rule 10 deals with cases of assignment, creation or devolution of any interest in the subject matter of the suit during its pendency. In *LIC of India* v. *Sanjeev Builders (P) Ltd.,*[46] the apex court said that in such cases, as per the provision, the suit may be continued, with the leave of the court, by or against person to or upon whom the rights or interests are assigned, created or devolved during the pendency of the suit. The court has the discretion to grant the leave, which needs to be exercised judiciously and not arbitrarily.

VI APPEAL

Power of the appellate courts to remand the case and limitations thereon

Order 41 rules 23, 23-A and 25, CPC confer power on the appellate court to remand the case to the trial court. The apex court elucidated the scope of the powers under these provisions and limitation thereon in *J. Balaji Singh* v. *Diwakar Cole*.[47] In this case, originally the appellant filed suit against the respondent for declaration of his title over the suit property, which came to be dismissed by the trial court. The first appellate court allowed the appeal against dismissal and remanded the case back to the trial court for fresh hearing without being influenced by the observations made, in the remand order, on the merits of the case. Aggrieved by the same, the respondent approached the high court under order 43 rule 1(u), CPC. The said appeal was allowed by the high court, which set aside the judgment of the first appellate court and restored the decree of dismissal passed by the trial court. While dealing with appeal against the said judgment of the high court, the apex court took note of all the three provisions in order 41, CPC that empower the appellate court to remand the case to the trial court. They are:

(i) Rule 23, which provides for remanding of the case to the trial court, if the first appellate court finds that the trial court had disposed of the suit on preliminary issue. Under this provision the appellate court can direct the trial court to decide all issues considering the evidence on record.

46 (2018) 11 SCC 722.
47 (2017) 14 SCC 207.

(ii) Rule 23 – A, empowers the appellate court to remand if it is of the opinion, in cases where it had reversed the decree passed by the trial court disposing of the suit on all the issues, that the retrial is necessary.

(iii) Rule 25, allows the appellate court, in cases where it finds that an issue which is essential to arrive at the right decision in the suit was not framed by the trial court, to frame such issue and refer it to the trial court for recording its findings after taking evidence and return it to the appellate court. The appellate court disposes of the appeal after receiving the findings of the trial court on such issue.

In the instant case, the first appellate court had remanded the case under order 41 rule 23–A. The apex court was of the opinion that the first appellate court was fully justified in remanding the case for retrial under the said provision. The only mistake it found on the part of the first appellate court is that it went on to record findings on the merits of the case. In the opinion of the apex court, it is totally uncalled for. When the decision to remand the case is made, it should have abstained from expressing its opinion on the merits of the case. The apex court also found fault with the order passed by the high court in the appeal under order 43 rule 1(u), CPC. In its opinion, the high court had committed a jurisdictional error. While examining the legality of the remand order, it should not have decided the case on merit, set aside the judgment of the first appellate court and restored the judgment of the trial court. It only has limited power under order 43 rule 1 (u). On examination, if the high court finds that the remand order is not justified, it could only set aside such remand order passed by the first appellate court and remand the case back to it to decide the first appeal and merit. It should not have gone into the merits of the case and disposed of the matter. It reiterated that "the jurisdiction to decide the appeal on merits can be exercised by the appellate court only when the appeal is filed under section 96 or 100 of the Code against the decree".[48]

First appeal

The jurisdiction of the first appellate court is as wide as that of the trial court. The parties can challenge the findings of the trial court both on facts as well as on law. As the final court of appeal on facts, it has the duty to appreciate the entire evidence and arrive at its own independent conclusion. The right to file a first appeal under section 96, CPC is, in fact, a valuable right of the litigant.[49]

It is also important to note that the first appellate court is a final court of appeal even on ordinary questions of law as distinguished from 'substantive questions of law'.[50] The second appeal, under the scheme of the CPC, is restricted only to cases that involve substantial questions of law.

48 *Id*. at para 19.

49 *C. Venkata Swamy* v. *H.N. Shivanna,* (2018) 1 SCC 604.

50 *U. Manjunath Rao* v. *U. Chandrashekar,* (2017) 15 SCC 309.

Second appeal

Under CPC, after the 1976 amendment, the second appeal can be entertained by the high court only if the case involves a "substantial question of law" and not otherwise. It was not the mandatory requirement prior to the amendment. As regards the second appeals filed before the amendment but admitted by the high court after the amendment was brought into force, even though the memorandum of appeal did not contain any substantial questions of law, the court may subsequently permit the appellant to amend the pleadings to cure the deficiencies.[51]

Under the scheme of CPC, as it stands today after the amendment, ordinarily the first appellate court is a final court of appeal on questions of fact as well as on (ordinary) question of law. Second appeal lies only on substantial question of law. It is mandatory to formulate the substantial question of law involved in the case at the time of admission of the second appeal itself. As the survey in previous years reveal, the apex court in several cases has criticized the high courts for entertaining second appeal without formulating such questions. Sometimes, it had also held that questions formulated by the high court are not, in fact, substantial questions of law. The current survey year is no exception. In several cases, the apex court set aside the judgments of the high court passed in appeal without formulating substantial questions of law and remanded the case back.[52]

In *Karunanidhi* v. *Seetharama Naidu*,[53] the apex court reiterated the proposition of law that the high court has no jurisdiction to entertain a second appeal without formulating substantial question of law as required under clause (4) of section 100, CPC. Even though under the proviso to clause (5) of the said section, the high court has the power to hear the appeal on any other substantial question of law, not formulated by it at the time of admission, it cannot do so without formulating it. Such question needs to be formulated as additional substantial question of law at the time of hearing. In this case, the court also observed that when the question relating to the applicability of a particular provision in a statute was not even pleaded by the parties, it is not open to the high court to apply the said provision *suo moto* without even formulating the substantial question relating to its applicability by taking recourse to the proviso to clause (5) of section 100. The apex court, accordingly, held that the high court had committed a jurisdictional error in applying section 15 (2) (a) of the Hindu Succession Act, 1956 for deciding the case when the question relating to its applicability was neither pleaded by the parties nor formulated by the high court at the time of hearing.

In the current survey year, the apex court also came across with the cases where the high courts had dismissed the second appeals on the ground that they do not

51 *D.N. Joshi* v. *D.C. Harris,* (2017) 12 SCC 624.

52 See, for example, *Dagadabai* v. *Abbas,* (2017) 13 SCC 705; *Ram Chand* v. *Udai Singh,* (2017) 16 SCC 544; *Apparaju Malhar Rao* v. *Tula Venkataiah,* (2017) 8 SCC 827; *Dharmabiri Rana* v. *Pramod Kumar Sharma,* (2018) 11 SCC 554, and *Aftaruddin* v. *Ramkrishna Datta,* (2018) 11 SCC 77.

53 (2017) 5 SCC 483.

involve substantial question of law. In *S. K. Bhikan*,[54] the plaintiff claimed the partition of the suit property and separate possession. As per her, the suit property was owned by her father, who died intestate. She claimed one – third share in the property as his legal heir as per the law of inheritance. The defendant, who is the brother of the plaintiff, contested the claim and contended that the suit property is his own self – acquired property and his father did not have any right, title or interest over the said property, thus, the plaintiff cannot claim any share as his legal heir. The trial court dismissed the suit against which an appeal was filed in the district court and the same was allowed. The plaintiff was allowed one – third share in the suit property. Aggrieved by the same, the defendant filed the second appeal in the high court, which came to be dismissed on the ground that there is no substantial question of law involved in the case. He approached the apex court challenging the said order of dismissal passed by the high court. In the fact and circumstances of the case, the apex court disagreed with the view expressed by the high court that the case did not involve substantial question of law. It opined that "the high court should have admitted the appeal by first framing substantial question of law arising in the case" and referred the case back to the high court. The apex court, however, did not specifically point out which is the substantial question of law involved in the case. In the past in similar cases, the apex court, while referring the case back to the high court, had specifically formulated substantial question of law that needs to be decided by the high court. As it can be seen from the facts of the case, the only question that is involved in the case is relating to the suit property i.e., whether it is self-acquired property of the defendant and did his father not have any right, title or interest over it? Is this a question of fact or question of law? If it is a question of law, is it an ordinary question of law or a substantial question of law? The apex court did not deal with these questions. It only held that the case involves interpretation of documents (exhibits) and it observed:[55]

> When the Court is called upon to interpret the documents and examine its effect, it involves questions of law. It is, therefore, obligatory upon the High Court to decide such questions on merits. In this case, the High Court could do so after framing substantial questions of law as required under section 100 of the Code. It was, however, not done.

It is not clear as to whether the court meant "substantial question of law" when it said "it involves question of law". It may be noted that there is a substantial difference between "question of law" and "substantial question of law".[56] The difference cannot be overlooked.

Similarly, in *Faridabad Complex Admn.*,[57] where the dismissal of the second appeal by the high court on the ground that it did not involve substantial question of

54 *Sk. Bhikan* v. *Mehamoodabee,* (2017) 5 SCC 127.

55 *Id*. at para 17.

56 Ref. to *SBI* v. *S. N. Goyal,* (2008) 8 SCC 92.

57 *Faridabad Complex Admn.* v. *Iron Master India (P) Ltd.,* (2017) 4 SCC 136.

law was challenged before the Supreme Court, it did not agree with the reasoning and conclusion arrived by the high court. In this case, the respondent originally filed suit challenging the levy of house tax by the appellant – a municipal body. The trial court dismissed the suit against which an appeal was filed. The first appellate court allowed appeal and decreed the suit after setting aside the judgment of the trial court. Aggrieved by the same, the appellant filed the second appeal, which was dismissed by the high court *in limine* on the ground that the same did not involve "question of law much less the substantive question of law". The apex court was of the view that the case indeed involve substantial question of law and remanded the case back to the high court to admit the same after formulating the appropriate substantial questions of law as required under section 100, CPC. It also indicated the probable substantive questions of law that may be formulated:[58]

> Indeed, in our considered view, the questions viz. whether the suit seeking a declaration that the demand of house tax raised under the Act is maintainable, whether such suit is barred and, if so, by virtue of which provision of the Act, whether plaintiff has any alternative statutory remedy available under the Act for adjudication of his grievance and, if so, which is that remedy, and lastly, whether the plaintiff has properly valued the suit and, if so, whether they have paid the proper court fees on the reliefs claimed in the suit were the legal questions arising in the appeal and involved jurisdictional issues requiring adjudication on merits in accordance with law.

In an another case, i.e., *Fateh Singh* v. *Hari Chand*,[59] the appellant approached the Supreme Court challenging the order passed by the high court in the second appeal. The main ground of challenge was that the high court exceeded its jurisdiction under section 100, CPC while allowing the second appeal. In this case, the trail court allowed the suit and passed the decree of eviction, which was set aside by the first appellate court. In the second appeal, the high court reversed the order of the first appellate court and restored the decree of eviction passed by the trial court. The apex court, while holding that the high court was well within its jurisdiction under section 100, observed:[60]

> Perversity was the only substantial question of law framed and pressed before the High Court. There is a specific averment in Para 6 of the plaint that the appellants had been evicted from the premises but were re-inducted and permitted to stay for a short while to have the marriage of the daughter performed in the premises. But thereafter, they refused to vacate and that necessitated the filing of the suit. This specific averment is not denied in the written statement and no issue in that

58 *Id*. at para 14.

59 (2017) 5 SCC 175.

60 *Id*. at para 2.

> regard has been framed also. It is also a fact that no rent whatsoever has been collected… It is shocking as to how such weighty evidence as rightly appreciated by the trial court has been ignored by the first appellate court.

The apex court, however, did not elaborate on 'whose' perversity it was referring to and how it could become a "substantial question of law".

In *Gauri Shankar* v. *Rakesh Kumar*,[61] the apex court disagreed with the high court, which had dismissed the second appeal holding that "the question as to whether the tenancy rights could be surrendered by one of the joint tenants without the consent or concurrence of the other is a question of fact and not a question of law much less a substantial question of law". The apex court remitted the matter back to the high court for fresh consideration after formulating appropriate substantial questions of law taking into consideration the ones urged by the appellant in the memorandum of appeal.

As regards the question of interference with the findings of facts recorded by the courts below, in *Satish Chand* v. *Kailash Chand*,[62] the apex court reiterated that the high court, in second appeal, shall not interfere with the concurrent findings on facts by the trial court and the first appellate court unless it finds perversity in the findings of the first appellate court, which is the last court on facts. In *Agnigundala Venkata Ranga Rao*,[63] the court held that since the question as to who is in possession of the suit property is essential a question of fact, the same needs to be decided on the basis of evidence adduced by the parties. If the trial court, on appreciation of the evidence, renders a finding either way, which was also upheld by the first appellate court, such findings are usually binding on the second appellate court as well as on the Supreme Court. Interference with such findings by the high court, in second appeal, or by the Supreme Court, in further appeal, is permissible:[64]

> Only when such finding of fact is found to be against the pleading or evidence or any provision of law or when it is found to be so perverse or/and arbitrary to the extent that no judicial person of an average capacity can ever record, the same would not be binding on the higher courts and may in an appropriate case call for interference.

In *Ramathal* v. *Maruthathal*,[65] the apex court, after considering sections 100 and 103, CPC, elucidated, in clear terms, the scope of second appellate jurisdiction of the high court as follows:[66]

61 (2017) 5 SCC 792.

62 (2017) 13 SCC 619. Also see, *Jaswinder Kaur* v. *Gurmeet Singh,* (2017) 12 SCC 810; *Dagadabai* v. *Abbas, supra* note 52; *Narendra* v. *Ajabrao,* (2018) 11 SCC 564.

63 *Infra* note 85.

64 *Id*. at para 24.

65 2017 SCC OnLine SC 1100.

66 *Id*. at para 15.

> A clear reading of sections 100 and 103 of the CPC envisages that a burden is placed upon the appellant to state in the memorandum of grounds of appeal the substantial question of law that is involved in the appeal, then the high court being satisfied that such a substantial question of law arises for its consideration has to formulate the questions of law and decide the appeal. Hence a prerequisite for entertaining a second appeal is a substantial question of law involved in the case which has to be adjudicated by the high court. It is the intention of the Legislature to limit the scope of second appeal only when a substantial question of law is involved and the amendment made to section 100 makes the legislative intent more clear that it never wanted the High Court to be a fact finding court. However it is not an absolute rule that high court cannot interfere in a second appeal on a question of fact, section 103 of the CPC enables the High Court to consider the evidence when the same has been wrongly determined by the courts below on which a substantial question of law arises as referred to in section 100. When appreciation of evidence suffers from material irregularities and when there is perversity in the findings of the court which are not based on any material, court is empowered to interfere on a question of fact as well. Unless and until there is absolute perversity, it would not be appropriate for the High Courts to interfere in a question of fact just because two views are possible, in such circumstances the High Courts should restrain itself from exercising the jurisdiction on a question of fact.

Letters Patent Appeal

In *Ram Kishan Fauji* v. *State of Haryana*,[67] the apex court clarified certain aspects relating to latters patent appeal. After examining the case law, it has drawn the following conclusions:

(i) An appeal shall lie from the judgment of a Single Judge to a Division Bench of the High Court if it is so permitted within the ambit and sweep of the Letters Patent.[68]

(ii) The power conferred on the High Court by the Letters Patent can be abolished or curtailed by the competent legislature by bringing appropriate legislation.[69]

(iii) A writ petition which assails the order of a civil court in the High Court has to be understood, in all circumstances, to be a challenge under article 227 of the Constitution and determination by the High Court under the said article and, hence, no intra-court appeal is entertainable.[70]

67 (2017) 5 SCC 533.

68 *Id*. at para 42.1.

69 *Id*. at para 42.2.

70 *Id*. at para 42.3.

(iv) The tenability of intra-court appeal will depend upon the Bench adjudicating the *lis* as to how it understands and appreciates the order passed by the learned Single Judge. There cannot be a straitjacket formula for the same.[71]

Appeal from orders

Order 43, CPC deals with appeals from 'orders'. Rule 1 of order 43 stipulates the orders from which the appeals lie under section 104. Sub – rule I of rule 1 of order 43 provides for an appeal from an order under rule 9 of order 9 and sub – rule (d) of rule 1 of order 43 provides for an appeal from an order under rule 13 of order 9.

Order 9, rule 9 allows the plaintiff to file an application to set aside the order dismissing suit for default and order 9, rule 13 allows the defendant to file an application for setting aside a decree passed *ex parte*.

In *Jaswant Singh* v. *Parkash Kaur*,[72] after the trial court had passed an *ex parte* decree, an application was filed by the defendant under order 9 rule 13 for setting aside the same. The said application came to be dismissed for default by the trial court. Even though, the order of dismissal for default was appealable under order 43 rule 1 (d), the legal heirs of the defendant (after his death), did not do so but they filed an application in the trial court seeking restoration of the earlier application filed under order 9 rule 13. The trial court dismissed the said application as well. Against the said dismissal, an appeal was filed under order 43 rule 1 read with section 104, CPC, the first appellate court allowed the appeal and restored the application filed under order 9, rule 13. Against the said decision of the first appellate court, a revision petition was filed before the high court. It was contended by the revisionist that when an application for restoration of application under order 9 rule 13 CPC is dismissed, then such order was not amenable to appeal as the said order is not covered either under order 43 rule 1I or 1(d), CPC. The high court accepted the contention and held that the appeal before the first appellate court was not maintainable and, accordingly, set aside its orders. Aggrieved by the judgment of the high court, the appellants approached the apex court. The important question that was raised before it was whether the appeals filed by the appellants under order 43 rule 1 before the first appellate court was maintainable or not?

The apex court, while examining the question, had made reference to the relevant provisions of law and case law. It noted the contradictions in the stands taken by different high courts on the question. After detailed analysis, it answered the question in the affirmative. While doing so, in order to settle the legal position, it laid down certain propositions pertaining to appeals under sub – rules I and (d) of rule 1 of order 43:

(i) The order 43 rules 1I and 1(d) uses the words "rejecting an application". When the appeal is provided on rejection of an application, there is no need to read any further precondition in the word "rejecting". The right of appeal

71 *Id*. at para 42.4.

72 (2018) 12 SCC 249.

is not limited only to cases where applications are rejected on merit. Accepting such interpretation would amount to adding words to the statute, which is clearly impermissible. Thus, the order rejecting application for default (non – appearance of parties) is also appealable under the said provision.[73]

(ii) Dismissal of an application filed under order 9 rule 13, CPC for default, is an order passed in miscellaneous proceedings, as it is explicitly included in the explanation to section 141, CPC, which define "proceedings".[74]

(iii) Even the subsequent application filed, after dismissal of the application under order 9, rule 13, seeking its restoration is also a miscellaneous proceeding within the meaning of "proceedings" under section 141. Thus, as per section 141, the procedure prescribed in the CPC for suits apply to such application as well.[75]

(iv) No doubt, section 141 only provides for procedure to be followed in a miscellaneous proceeding and it does not confer right of appeal. The right of appeal has to be located in other provisions.[76]

(v) The subsequent restoration application filed by the appellants, in the instant case, is referable to order 9 rule 9 as it was filed seeking restoration of miscellaneous proceedings dismissed in default.[77] Hence, the right of appeal shall also accrue when such application is rejected.[78] In other words, when the application initially filed under order 9 rule 13 CPC was dismissed for default, the subsequent application, which seeks to recall the said order of dismissal and restore the earlier application, can very well be treated as an application under order 9 rule 9, which is akin to suit. Against the order rejecting such application an appeal is permissible under order 43 rule 1I CPC.[79]

(vi) When the order dismissing an application filed under order 9 rule 13 was appealable under order 43 rule 1 (d), the said right is not lost for the appellants because they tried to get that order of dismissal recalled by filing an application.[80]

On the basis of the propositions of law laid down, the apex court allowed the appeal, set aside the order of the high court and restored the order of the first appellate court. The trial court was, accordingly, asked to proceed as per the direction of the

73 *Id*. at para 20.
74 *Id*. at para 28.
75 *Ibid*.
76 *Id*. at para 37.
77 *Id*. at para 35.
78 *Id*. at para 58.
79 *Id*. at para 40.
80 *Id*. at para 42.

first appellate court.

High Court's power to issue certificate for filing appeal in the Supreme Court

In civil matters, appeal from the decision of the high court can be filed in the Supreme Court, without obtaining its leave as contemplated under article 136 of the Constitution, if the high court, which passed the judgment to be impugned, issues certificate either under article 132 or under article 133 both read with article 134 – A of the Constitution of India. Article 132 (1) of the Constitution provides for an appeal to the Supreme Court from any judgment, decree or final order passed by the high court in *any proceedings*, including civil proceedings, if the high court certifies… that the "case involves a substantial question of law as to the interpretation of this Constitution".[81] Article 133 (1) of the Constitution also provides for an appeal to the Supreme Court from any judgment, decree or final order passed by the high court only in a *civil proceedings*, if the high court certifies that the case "involves a substantial question of law of general importance"[82] and in its opinion "the said question needs to be decided by the Supreme Court".[83] The article 134-A of the Constitution empowers the high court concerned to issue certificate of appeals contemplated under article 132 or under article 133, as the case may be. One of the significant differences between article 132 and article 133 is that the single judge of the high court cannot issue, under article 134-A, a certificate of appeal contemplated under article 133 (1) whereas he/she is competent to issue certificate contemplated under article 132. Clause (3) of article 133 explicitly bars an appeal, unless the Parliament by law provides otherwise, to the Supreme Court from the judgment, decree or final order passed by a single judge of the high court. Earlier, in *SBI* v. *Employees' Union*,[84] the apex court had categorically held, having regard to the said clause (3) of article 133, that the single judge is not competent to issue a certificate of appeal under article 133 (1) read with article 134-A of the Constitution of India.

In the current survey year, the apex court reiterated it in *Agnigundala Venkata Ranga Rao*.[85] In this case an appeal was filed in the Supreme Court on the basis of certificate granted by the single judge of the High Court under article 133 (1) read with article 134-A. Though the respondent did argue on this question, the apex court took note and revoked the certificate of appeal issued by the single judge. It, however, treated the appeal as a special leave petition under article 136 and dealt with the merits after granting leave.

Civil appellate jurisdiction of the Supreme Court under article 136: Scope

In *Rasiklal Kantilal & Co.,*[86] a substantive question of law regarding the liability of the appellant to pay the demurrage, which was neither raised before the high court

81 Art. 132 (1).

82 Art. 133 (1) (a).

83 Art. 133 (1) (b).

84 (1987) 4 SCC 370.

85 *Agnigundala Venkata Ranga Rao* v. *Indukuru Ramachandra Reddy,* (2017) 7 SCC 694.

86 *Rasiklal Kantilal & Co.* v. *Port of Bombay,* (2017) 11 SCC 1.

not considered by it, was raised for the first time before the apex court in a civil appeal arising out of a petition under article 136 of the Constitution of India. The respondent contended that the appellant shall not be permitted to raise the said question before the apex court as the same was not raised before the high court, which passed the impugned judgment. Rejecting the contention, the apex court ruled that the appellant shall not be barred from raising a question, which was not raised in the high court, before it if it is a "pure and substantial question of law" particularly when deciding the said question does not require the court to enquire into any facts.

In *A. Kanthamani* v. *Nasreen Ahmed*,[87] the court expressed that in an appeal filed under article 136 of the Constitution of India, it is loath to undertake the task of appreciating the evidence, particularly, when there are concurrent finding of fact recorded by the court from where the appeal arose.

VII REVIEW AND REVISION

Review

Under CPC, review of the decree passed or order made by a court is permissible only on certain grounds. Order 47 rule 1, CPC clearly enumerates them. The court, which has passed the decree or order, is entitled to review the same only if the grounds specified exist. The scope of review is very much limited. It is not an appeal in disguise. In *Sasi* v. *Aravindakshan Nair*,[88] the apex court directed, having regard to the nature and limited scope of the review jurisdiction, that the courts shall dispose of the review applications as expeditiously as possible. In this case after the dismissal of the second appeal, the appellant filed a review petition that too after the expiry of limitation period. Even then the high court took almost four years to dismiss the review petition on the ground that the applicant is expecting the high court to do what it can do in exercise of its appellate jurisdiction. After the dismissal of the review petition, the special leave petition was filed in the Supreme Court challenging the principal order passed in the second appeal. There was a delay of 1700 days in filing it which was sought to be excluded while computing the limitation. The apex court, while dismissing the special leave petition, took serious note of the issue. It was of the opinion that, though no time – limit can be fixed, review petitions shall be disposed of within a reasonable time. It elucidated what needs to done to expedite the process:[89]

An endeavour has to be made by the High Courts to dispose of the applications for review with expediency. It is the duty and obligation of a litigant to file a review and not to keep it defective as if a defective petition can be allowed to remain on life support, as per his desire. It is the obligation of the counsel filing an application for review to cure or remove the defects at the earliest. The prescription of limitation for filing an application for review has its own sanctity. The Registry of the High Courts

87 (2017) 4 SCC 654.

88 (2017) 4 SCC 692.

89 *Id*. at para 12.

has a duty to place the matter before the Judge/Bench with defects so that there can be pre-emptory orders for removal of defects. An adroit method cannot be adopted to file an application for review and wait till its rejection and, thereafter, challenge the orders in the special leave petition and take specious and mercurial plea asserting that the delay had occurred because the petitioner was prosecuting the application for review. There may be absence of diligence on the part of the litigant, but the Registry of the High Courts is required to be vigilant. Procrastination of litigation in this manner is nothing but a subterfuge taken recourse to in a manner that can epitomize "cleverness" in its conventional sense.

The apex court directed that the copy of its order to be sent to the Registrar Generals of all the high courts to be placed before their respective chief justices for doing the needful.

In *Suraj Pal* v. *Ram Manorath*,[90] the apex court restated the well-established principle that if it is pointed out to the court, in a review petition, that it has committed an error, which is apparent on the face of the record, there is nothing that prevents the court from correcting such error in exercise of its review jurisdiction.

Revision

The high court can exercise its revisional jurisdiction under section 115 of the CPC only in cases that involves illegal or irregular exercise of jurisdiction by the subordinate courts. It cannot exercise its revisional jurisdiction to correct errors of law or facts unless such errors go to the root of the issue of jurisdiction. It cannot interfere with the concurrent findings of facts by the trial court and the first appellate court.[91] It can interfere only in cases where findings are found to be illegal or perverse in the sense that no reasonably informed person would have recorded such findings.[92]

Section 25 of the Provincial Small Cause Courts Act, 1887 also confers revisional jurisdiction on the high court. The said provision is wider than section 115, CPC. It does not, however, mean that the high court, under section 25 of the 1887 Act, can interfere with a pure finding of fact based on appreciation of evidence. It can do so only if such findings have been recorded after taking into consideration irrelevant factors or without taking into consideration relevant factors.[93]

VIII JUDGMENT, DECREE AND ORDERS

Judgment: Minimum ingredients

The apex court, in *Municipal Board, Sumerpur* v. *Kundanmal*,[94] delineated the minimum ingredients the judicial order which decides the *lis* between parties should contain. In this case, the appellant filed a writ petition challenging an order passed by

90 (2017) 14 SCC 862.

91 *Ambadas Khanduji Shinde* v. *Ashok Sadashiv Mamurkar,* (2017) 14 SCC 132.

92 *Gandhe Vijay Kumar* v. *Mulji,* (2018) 12 SCC 576.

93 *Ram Murti Devi* v. *Pushpa Devi,* (2017) 15 SCC 230.

94 (2017) 13 SCC 606.

the Collector. The single judge bench of the high court dismissed it *in limine* with a cryptic order. The intra – court appeal filed by the appellant had also met the same fate. Neither the writ court nor the appellate court stated reasons in support of their decisions. In orders passed, not even the factual controversy involved in the case was set out. Neither of them stated the issues raised or the contentions urged by the parties. While allowing the appeal, the apex court set aside the orders of both the writ court and the appellate court and remanded the case back to the former. It stated that the judicial order, the least that is expected of it, shall contain:[95]

> the brief facts involved in the case, the grounds on which the action is impugned, the stand of the parties defending the action, the submissions of the parties in support of their stand, legal provisions, if any, applicable to the controversy involved in the *lis*, and lastly, the brief reasons as to why the case of one party deserves acceptance or rejection, as the case may be.

It was pointed out that without those contents, the superior court cannot examine, in appeal, the correctness of the decision rendered in proper perspective. The apex court reiterated it in *Navnirman Development Consultants (I) (P) Ltd.* v. *District Sports Complex Executive Committee, Pune*,[96] where the high court had disposed of the appeal filed under section 37 of the Arbitration and Conciliation Act, 1996 with a cryptic order without stating the facts, etc. The court made the similar observations, while setting aside the impugned order and remanding the appeal back to the high court for deciding it afresh on merits and in accordance with law.

In *U. Manjunath Rao* v. *U. Chandrashekar*,[97] while examining the correctness of the judgment passed by the high court as the first appellate court, the apex court had referred to order 41 rule 31, CPC, which stipulates the contents, the judgment of the appellate court shall contain. On perusal of the said provision, the apex court held that it is mandatory for the appellate court to provide reasons in support of the decision reached. Further, it particularly dealt with the approach the first appellate court should adopt in disposing of the first appeal. It was stated that as per the law laid down, the parameters should be different while – (i) affirming the judgment of the trial court and (ii) while reversing same. Relying on the propositions laid down in *Girijanandini Devi*[98] and *Santosh Hazari*,[99] the apex court elucidated the approach the first appellate court shall adopt while affirming the judgment of the trial court. It observed:[100]

95 *Id*. at para 9.

96 (2017) 8 SCC 603. Also see, *Kanailal* v. *Ram Chandra Singh,* (2018) 13 SCC 715.

97 *Supra* note 50.

98 *Girijanandini Devi* v. *Bijendra Narain Choudhary*, AIR 1967 SC 1124.

99 *Santosh Hazari* v. *Purushottam Tiwari,* (2001) 3 SCC 179.

100 *Supra* note 50 at para 13.

> In *Girijanandini Devi*, the Court ruled that while agreeing with the view of the trial court on the evidence, it is not necessary to restate the effect of the evidence or reiterate the reasons given by the trial court. Expression of general agreement with reasons given in the trial court judgment which is under appeal should ordinarily suffice. The same has been accepted by another three-Judge Bench in *Santosh Hazari*. However, while stating the law, the Court has opined that expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage to be adopted by the appellate court for shirking the duty cast on it.

The apex court was of the opinion that the law laid down has to be understood in proper perspective. It said "By no stretch of imagination it can be stated that the first appellate court can quote passages from the trial court judgment and thereafter pen few lines and express the view that there is no reason to differ with the trial court judgment. That is not the statement of law expressed by the Court".[101]

Prerequisite for setting aside a decree on the ground of fraud

The decree obtained by playing fraud on the court is a nullity and it can be set aside at any stage of the proceedings. It is a settled position of law. Thus, whenever there is allegation of fraud by non-disclosure or concealment of relevant/material facts, the court must inquire into such allegation. It is, however, only after the evidence led to prove not just the non-disclosure or concealment of material facts but also the 'intent to deceive' that the conclusion of fraud could be arrived at. It must be noted, as held by the apex court in *Harjas Rai Makhija*,[102] that "A mere concealment or non-disclosure without intent to deceive or a bald allegation of fraud without proof and intent to deceive would not render a decree obtained by a party as fraudulent".[103] The court also opined that "To conclude in a blanket manner that in every case where relevant facts are not disclosed, the decree obtained would be fraudulent, is stretching the principle to a vanishing point".[104]

IX EXECUTION

Powers of the executing court

Under section 47, CPC, the executing court does not have a wider power. As per the provision, it can only determine questions, between parties or their representatives, relating to execution, discharge or satisfaction of the decree. It cannot go beyond the same. In *Brakewel Automotive Components (India) (P) Ltd.* v. *P.R. Selvam Alagappan*,[105] the apex court held that the "executing court can neither travel

101 *Ibid.*

102 *Harjas Rai Makhija* v. *Pushparani Jain,* (2017) 2 SCC 797.

103 *Id.* at para 20.

104 *Ibid.*

105 (2017) 5 SCC 371.

behind the decree nor sit in appeal over the same or pass any order jeopardizing the rights of the parties thereunder".[106] It was of the opinion that the execution of a decree passed by a court of law, which is sacrosanct, cannot be thwarted on untenable and purported grounds. The decree can be considered *non est* and unexecutable by an executing court only in limited cases where the decree is passed by a court lacking jurisdiction or is a nullity. It quoted with approval the view expressed by the apex court in *Dhurandhar Prasad Singh*,[107] that the powers of the executing court under section 47 are quite different and much narrower than those in appeal, review or revision.

In *Punjab State Civil Supplies Corpn. Ltd.* v. *Atwal Rice & General Mills*,[108] it was held that an executing court, while holding executing proceedings, cannot hold an inquiry into facts, which ought to have been inquired into in a suit or in appeal arising out of the suit or in proceedings under section 34 of the Arbitration and Conciliation Act, 1996. If the objections filed in execution proceedings were on facts and pertains to the merits of the case adjudicated upon, executing court cannot entertain such objections. Probing such objections requires the executing court to travel beyond the decree/award, which is impermissible in law. If objections relates to the jurisdiction of the court, whose decree is sought to be executed, only such objections can be inquired into under section 47, CPC.

Execution of decree against the legal representative of a judgment debtor

On the question as to whether a decree of permanent injunction is executable against the legal representatives of a judgment – debtor, there were divergent views expressed by the high courts in different cases. In *Prabhakara Adiga* v. *Gowri*,[109] the apex court, after considering in detail the relevant provisions of law and case law, answered the question in the affirmative. The court observed:[110]

> In our considered opinion the right which had been adjudicated in the suit in the present matter and the findings which have been recorded as basis for grant of injunction as to the disputed property which is heritable and partible would ensure not only to the benefit of the legal heir of decree-holders but also would bind the legal representatives of the judgment-debtor.

In the opinion of the court, it is abundantly clear from section 50 of the CPC that the decree is executable against the legal representatives of the judgment – debtor, if he or she dies before the decree has been satisfied. The said section 50 is not confined to a particular kind of decree. It includes decree of injunction as well. The court,

106 *Id*. at para 20. Also see, *Lekh Raj* v. *Ranjit Singh,* (2018) 12 SCC 750.

107 *Dhurandhar Prasad Singh* v. *Jai Prakash University,* (2001) 6 SCC 534.

108 (2017) 8 SCC 116.

109 (2017) 4 SCC 97.

110 *Id*. at para 25.

relying on *Girijanandini Devi*,[111] held that the maxim *actio personalis moritur cum persona* is applicable to limited class of cases only. It is not applicable to cases where the right litigated upon is heritable. In such cases, normally the decree is enforceable even against the legal representatives of the judgment – debtor at the behest of the decree – holder or his legal representatives. To hold otherwise would be against the public policy, which seeks to ensure that there shall be no second or subsequent litigation in respect of the same right and the same property between the same parties or parties claiming under them. When the cause and the injunction survive, the court opined that "It would be against the public policy to ask the decree-holder to litigate once over again against the legal representatives of the judgment-debtor".[112] It, accordingly, expressly overruled the contrary view expressed by the High Court of Karnataka in *Shivappa Basavantappa Devaravar*.[113]

Further, taking note of the rule that "a decree for injunction normally does not run with the land", the court held that, though it is true, the rule is not applicable when there is specific statutory provision permitting enforcement of the decree against legal representatives. Section 50, CPC contains such a specific provision. While allowing the appeals, the court also observed that if the legal representatives of the judgment – debtor are failed to abide by the decree, the executing court may proceed to execute the same in accordance with order 21 rule 32, CPC.

Setting aside of 'auction – sale' of property in execution proceedings

Under order 21 rule 90, any person, whose interest is affected by the auction – sale of the property in an execution proceeding, may approach the court for setting aside the sale of immovable property. As regards the grounds on which it can be set aside, the apex court, in *Chilamkurti Bala Subrahmanyam* v. *Samanthapudi Vijaya Lakshmi*,[114] had held that the 'material irregularity' or 'fraud' alone is not sufficient to set aside the sale. Relying on *Saheb Khan*,[115] it observed that the person applying for setting aside the sale has to establish additionally to the satisfaction of the court that "the material irregularity or fraud, as the case may be, has resulted in causing substantial injury to the judgment-debtor in conducting the sale. It is only then the sale so conducted could be set aside under order 21 rule 90(2) of the Code".[116] Further, as regards the fifteen days' notice that is to be given for auction – sale as required by the provision, the court held that the said period shall be calculated from the date on which the order for proclamation of sale was issued under order 21 rule 64.

111 *Supra* note 98.

112 *Surpa* note 109 at para 25.

113 *Shivappa Basavantappa Devaravar* v. *Babajan*, 1999 SCC OnLine Kar 120.

114 (2017) 6 SCC 770.

115 *Saheb Khan* v. *Mohd. Yousufuddin,* (2006) 4 SCC 476.

116 *Supra* note 114 at para 21.

Filing of application under wrong provision

What is the effect of filing an application under the wrong provision was the question considered by the apex court in *Raja Venkateswarlu* v. *Mada Venkata Subbaiah*.[117] In this case, execution proceedings were initiated for execution of a decree of permanent injunction, which had attained finality. The petitioner filed an application, under section 151, CPC, seeking police protection in the execution proceedings. The executing court granted it. When it was challenged, the high court set it aside on the ground that such an application should have been filed only under order 21 rule 32. The apex court, while setting aside the judgment of the high court, held that the high court is not justified in interfering merely on the ground that the application was filed before the executing court under a wrong provision. The crucial question is whether the court has the jurisdiction to entertain such application. If the answer is yes and the court had followed the procedure, the order of the court has to be upheld, particularly when the judgment – debtor has neither suffered any injury nor any prejudice caused to him. Non – invocation of exact provision by the applicant cannot be a ground to set aside the order granted by the court if it, otherwise, has jurisdiction to pass such order.

X LIMITATION

Condonation of delay: Section 5 of the Limitation Act, 1963

Under section 5 of the Limitation Act, 1963, courts have the power to condone delay in filing appeals or applications, except the ones filed under order 21, CPC, if there was a "sufficient cause" for the delay. In *K. Subbarayudu* v. *LAO*,[118] the apex court observed:[119]

> The term "sufficient cause" is to receive liberal construction so as to advance substantial justice, when no negligence, inaction or want of bona fides is attributable to the appellants, the Court should adopt a justice-oriented approach in condoning the delay.

In particular, the apex court observed that in dealing with an application for condonation of delay in filing appeal in land acquisition matters for enhancement of compensation, if the court finds omission on the part of the claimants to adopt extra vigilance, the same shall not be used to depict them as negligent or to question their bona fides. It opined that "In case of acquisition of lands of agriculturists, the courts ought to adopt a pragmatic approach to award just and reasonable compensation and not be pedantic in their approach".[120] It, however, added that "The interest of justice

117 (2017) 15 SCC 659.
118 (2017) 12 SCC 840.
119 *Id*. at para 11.
120 *Id*. at para 12.

would be served by declining the interest on the enhanced compensation and also on the solatium and other statutory benefits for the period of delay".[121]

Further, the court also noted that ordinarily the superior court does not interfere with the exercise of discretion by the court concerned either condoning or declining to condone the delay. However, having regard to the facts and circumstances of the case, it thought it appropriate to do so and, accordingly, set aside the impugned order, whereby the high court had declined to condone the delay.

Application by the auction purchaser for delivery of possession: Limitation

As per article 134 of the Limitation Act, 1963 the limitation for filing an application by purchaser for delivery of possession of immovable property purchased at a sale in execution of a decree is one year from the date "when the sale becomes absolute". The question as to when does the sale become absolute fell for the consideration of the Supreme Court in *United Finance Corpn.* v. *M.S.M. Haneefa*.[122] In the present case, as per the execution decree, the property of the judgment – debtor was auctioned on 27.10.2001 and the same was purchased by the decree – holder himself. The sale was confirmed on 1.6.2002 and the sale certificate was issued on 17.3.2003. In the meanwhile, the judgment – debtor filed two applications in the executing court – *one* asking for setting aside the auction sale and *another* seeking appointment of the Commissioner to value the property. Both applications came to be dismissed by the executing court. Being aggrieved by the order dismissing the application seeking appointment of the Commissioner, the judgment – debtor filed a revision petition before the high court, which initially granted stay of further proceedings in execution petition with effect from 17.9.2002. The said revision petition came to be dismissed by the high court on 9.7.2003. After the dismissal, the auction – purchaser filed an application on 30.8.2003 before the executing court under order 21 rule 95 of CPC for delivery of possession of the property. The court ordered the delivery of possession, which was challenged by the judgment – debtor in a civil revision petition before the high court. The high court allowed the revision petition and held that the application filed by the auction – purchaser under order 21 rule 95 is barred by limitation. It is in the factual matrix of the case that the apex court dealt with the question as to when does the sale become absolute?

The apex court, relying on the principle laid down in *Chandra Mani Saha*[123] and *Sri Ranga Nilayam Rama Krishna Rao*,[124] held that the sale become absolute only after the disposal of the revision petition by the high court on 9.7.2003. It observed that:[125]

121 *Id*. at para 13.

122 (2017) 3 SCC 123.

123 *Chandra Mani Saha* v. *Anarjan Bibi*, AIR 1934 PC 134.

124 *Sri Ranga Nilayam Rama Krishna Rao* v. *Kandokori Chellayamma*, AIR 1953 SC 425.

125 *United Finance Corporation*, *Supra* note 122 at para 17.

> So long as the said revision was pending, the court auction-sale was yet to become absolute. For the sake of arguments, assuming that the said revision was allowed, then in that case the court auction-sale would have been set aside on the ground that the property was sold for a lesser price. Therefore, till the revision in CRP No. 2829 of 2002 was disposed of in one way or the other, the sale was yet to become absolute.

The court further highlighted that "Be it noted that in article 134 of the Limitation Act, the legislature has consciously adopted the expression "when the sale becomes absolute" and not when the sale was confirmed". Accordingly, the application filed by the auction – purchaser under order 21 rule 95 was considered to be well within the limitation period prescribed under the said article.

In the instant case, the apex court left open two substantive questions of law arose incidentally as they were not necessary to be answered to dispose of the case. They were:

(i) Whether issuance of sale certificate is a *sine qua non* or not for filing the application under order 21 rule 95 CPC?
(ii) Whether section 15(1) of the Limitation Act is applicable to an application filed under order 21 rule 95 CPC?

As regards the first question, it, however, expressed doubts on the view taken by the apex court earlier in *Pattam Khader Khan*[126] but chose not to refer it to a larger bench as it was not required to answer the question in the present case.

Reckoning of limitation period prescribed under section 13 (2) of the CP Act, 1986

Section 13 (2) of the Consumer Protection Act, 1986 requires the district forum, on admission of the complaint relating to any service, to refer a copy of the same to the opposite party with a direction to provide "his version of the case" within a period of thirty days. The said period may be extended for a further period not exceeding fifteen days. The provision does not, however, stipulate the date from which the period of limitation is to be reckoned. In *J. J. Merchant* v. *Srinath Chaturvedi*,[127] the three judge bench of the apex court had held that "the opposite party has to submit his version within 30 days from the date of receipt of the complaint by him".[128] In the current survey year, the two judge bench of the apex court, in *New India Assurance Co. Ltd.*,[129] felt that the said ruling of the three judge bench in *J.J. Merchant* needs to be reconsidered. The two judge bench noted that there is no such explicit stipulation

126 *Pattam Khader Khan* v. *Pattam Sardar Khan,* (1996) 5 SCC 48.

127 (2002) 6 SCC 635.

128 *Id.* at para 31.

129 *New India Assurance Co. Ltd.* v. *Hilli Multipurpose Cold Storage Pvt. Ltd.,* 2017 SCC OnLine SC 599.

in section 13 of the Consumer Protection Act, 1986. It was of the opinion that if it were mandatory to reckon the period of thirty days from "the date of receipt of the notice", the Parliament would have made it explicit. The language of clause (2) of section 13 appears to indicate that the forum can stipulate different dates in different cases. The bench also felt that when there is no prospect of the matter being taken up for hearing immediately after filing written statement, it serves no useful purpose to insists that the written statement shall be filed within 30 days from the date of receipt of such notice by the opposite party. Thus, the matter was referred to be placed before the larger bench for authoritative determination after critical analysis.

Petitions under article 227 of the Constitution: Limitation

Under article 227 of the Constitution of India, the high courts have the supervisory jurisdiction over all subordinate courts and tribunals within its jurisdiction. This jurisdiction can be invoked in appropriate cases for challenging the orders of subordinate courts and tribunals. There is no limitation prescribed for invoking the said jurisdiction. It does not, however, mean that delay or laches in filing petition under article 227 are immaterial. The petitioners are expected to file such petitions without unreasonable delay. If there is some delay that needs to be duly and satisfactorily explained. However, in the absence of statutory prescription of limitation, it is not appropriate for the high court to hold that petitions under article 227 shall be filed within a period of limitation prescribed for applications under section 115 of the CPC and dismiss the same on the ground of delay.[130]

Need to file claims within reasonable time, where no period of limitation prescribed

The section 166 (3) of the Motor Vehicles Act, 1988, as originally enacted, stipulated a limitation period of six months from the date of occurrence of the accident for filing a claim petition before the Motor Accident Claims Tribunal (MACT). Under the proviso to the said provision, the MACT had the discretion to entertain the claim petition even after the expiry of the said period of six months, but not later than twelve months, if it is satisfied that the applicant was prevented by 'sufficient cause' from filing a claim petition within the period. In 1994, *vide* amendment, the said clause (3) of section 166 providing for limitation came to be omitted entirely. An issue relating to the consequence of such omission came up for consideration of the apex court in *Purohit & Co.* v. *Khatoonbee*.[131] In this case, the claim petition was filed after the lapse of twenty – eight years from the occurrence of the accident. The condonation of delay was sought on the ground that "the petitioners are poor person and they have no knowledge about the Law. Also the respondent has not paid the single pie towards any compensation". The MACT entertained the claim and the high court also upheld maintainability of the claim petition. In an appeal before the apex

130 *Bithika Mazumdar* v. *Sagar Pal,* (2017) 2 SCC 748.

131 (2017) 4 SCC 783.

court, the question that was raised was does the omission of clause (3) of section 166 have the effect of permitting a claimant, to file a claim petition, at any time after the accident?

It was contended by the appellants that even though there may no longer be a defined period of limitation, it is necessary to file the claim petition within a reasonable time. Analogy was drawn from cases decided under the Consumer Protection Act, 1986[132] and the Industrial Disputes Act, 1947,[133] wherein also no period of limitations prescribed. The claimants, on the other hand, relied upon the *ratio* laid down in *Dhannalal*[134] and *C. Padma*[135] cases to contend that in the absence of limitation period prescribed, a claim petition shall not be dismissed merely on the ground of delay. After considering the contentions, the apex court observed:[136]

> We are satisfied, that the submission advanced at the hands of the learned counsel for the appellant merits acceptance. The judgments on which the High Court had relied, and on which the respondents have emphasised, in our considered view, are not an impediment, to the acceptance of the submission canvassed on behalf of the appellant. We say so, because in *Dhannalal* case the question of inordinate delay in approaching the Motor Accidents Claims Tribunal, was not considered. In the second judgment in *C. Padma* case[137], it was considered. And in *C. Padma* case, the first conclusion drawn was "…if otherwise the claim is found genuine…". We are of the considered view, that a claim raised before the Motor Accidents Claims Tribunal, can be considered to be genuine, so long as it is a live and surviving claim. We are satisfied in accepting the declared position of law, expressed in the judgments relied upon by the learned counsel for the appellant. It is not as if, it can be open to all and sundry, to approach a Motor Accidents Claims Tribunal, to raise a claim for compensation, at any juncture, after the accident had taken place. The individual concerned, must approach the Tribunal within a reasonable time.

The court, however, stated that the question of reasonability depends on the facts and circumstances of each case. Having regard to the facts and circumstances of the instant case, it held that the claim was "stale, and ought to have been treated as a dead claim," when the respondents approached the MACT. The appeal was allowed and the orders of the MACT and the high court were set aside.

132 *Corporation Bank* v. *Navin J. Shah,* (2000) 2 SCC 628.

133 *Haryana State Coop. Land Development Bank* v. *Neelam,* (2005) 5 SCC 91.

134 *Dhannalal* v. *D.P. Vijayvargiya,* (1996) 4 SCC 652.

135 *New India Assurance Co. Ltd.* v. *C. Padma,* (2003) 7 SCC 713.

136 *Supra* note 131 at para 15.

137 *Supra* note 135 at para 12.

In *Chhedi Lal Yadav* v. *Hari Kishore Yadav*,[138] where the petition for restoration of land was filed by the appellants, under the provisions of the Bihar Kosi Area (Restoration of Lands to Raiyats) Act, 1951, after a period of twenty – four years since the accrual of such right, it was contended that since no limitation was prescribed under the Act, the delay may be overlooked. Rejecting the contention, the court held that "where no period of limitation is prescribed, the action must be taken, whether *suo motu* or on the application of the parties, within a reasonable time".[139] It also clarified that "Undoubtedly, what is reasonable time would depend on the circumstances of each case and the purpose of the statute".[140]

Delay in filing appeal under section 125 of the Electricity Act, 2003

Section 125 allows the person aggrieved by any decision or order of the appellate tribunal to file an appeal before the Supreme Court within sixty days from the date of communication of the decision or order of the appellate tribunal. The proviso to the said section confers a discretionary power on the Supreme Court to extend the period of limitation by a further period of maximum sixty days if it is satisfied that there existed 'sufficient cause', which prevented the appellant from filing the appeal within time. On a plain reading of the provision, it is crystal clear that under no circumstances, filing of appeal can be permitted after the expiry of one hundred and twenty days from the date of communication of the decision or order of the appellate tribunal. It has been the consistent stand of the apex court, in several cases, that it cannot condone the delay in filing appeal beyond the period stipulated in the proviso by invoking section 5 of the Limitation Act, 1963.[141] In the year under survey, the apex court reiterated this position in *ONGC* v. *Gujarat Energy Transmission Corpn. Ltd.*[142] The court also went a step ahead and stated that when there is a statutory command as regards limitation, which is based "on certain underlined, fundamental, general issues of public policy", the delay beyond the statutorily condonable period cannot be condoned even by taking recourse to article 142 of the Constitution of India.

Application for setting aside arbitral award

Like section 125 of the Electricity Act, 2003, section 34 (3) of the Arbitration and Conciliation Act, 1996 also stipulates the limitation period for assailing the arbitral award. As per the provision, an application for setting aside the arbitral award can be made within three months from the date of receipt of the award. The proviso to the said clause (3) of section 34, however, empowers the court to entertain the application, if there exists "sufficient cause", within a further period of thirty days. In *Haryana State Coop. L&C Federation Ltd.* v. *Unique Coop. L&C Coop. Society Ltd.*,[143] the

138 (2018) 12 SCC 527.

139 *Id*. at para 13.

140 *Ibid*.

141 See, for example, *Suryachakra Power Corpn. Ltd.* v. *Electricity Deptt*., (2016) 16 SCC 152; *Chhattisgarh SEB* v. *Central Electricity Regulatory Commission,* (2010) 5 SCC 23.

142 (2017) 5 SCC 42.

143 (2018) 14 SCC 248.

apex court held that the provision leaves no room for any doubt that the delay beyond three months and thirty days, in filing an application assailing the arbitration award, cannot be condoned.

The limitation for execution of preliminary decree for partition

The apex court, in *Venu* v. *Ponnusamy Reddiar*,[144] had dealt with the question regarding the limitation for execution of preliminary decree passed in a partition suit. In this case, the application for execution was filed after thirty years of passing of the partition decree. While disposing of the appeal, the court observed:[145]

> A preliminary decree for partition crystallizes the rights of parties for seeking partition to the extent declared, the equities remain to be worked out in final decree proceedings. Till partition is carried out and final decree is passed, there is no question of any limitation running against right to claim partition as per preliminary decree. Even when application is filed seeking appointment of Commissioner, no limitation is prescribed for this purpose, as such, it would not be barred by limitation, *lis* continues till preliminary decree culminates into final decree.

XI MISCELLANEOUS

Interference by the high court with the order passed by the trial court under Order 39, Rule 2A CPC.

Under order 39, rule 2A, CPC, the court has the power to order the detention of a person who disobeys any injunction granted or other order made for a term not exceeding three months. In *Rajivkumar Panjabi* v. *Vinod Rode*,[146] the trial court sent the petitioner therein to simple imprisonment for a period of one month for violating the injunction order passed by it. The said order was set aside by the high court. The only disputed question of fact considered by the high court was whether the petitioner had the knowledge about the injunction order passed by the trial court or not? After considering the submission of both the parties, the high court reached the conclusion that in the absence of any evidence tendered by the respondent to prove that the petitioner had the knowledge of the injunction order, the order passed by the trial court under order 39, rule 2A cannot be sustained. Against the said order of the high court, a civil appeal was filed in the Supreme Court. The Supreme Court allowed the appeal and set aside the order of the high court holding that it is not sustainable. In a brief order, the Supreme Court mentioned two reasons in support of its decision. Firstly, it noted that "It is not in dispute that the order was duly informed to the petitioners (the respondents herein)". Secondly, that "the High Court, without following the rule which has been made out under order 39 rule 2-A of the Code of Civil Procedure and without giving any reasons set aside the order passed by the trial court".

144 (2018) 15 SCC 254.

145 *Id*. at para 3.

146 (2017) 12 SCC 777.

It is wholly surprising that though the only contentious issue considered by the high court was whether the petitioners therein had the knowledge of the injunction order or not, the Supreme Court has noted that it was "not in dispute that the order was duly informed to the petitioners". The high court, after considering the contentions of both the parties, had in fact decided the issue in favour of the said petitioner. Further the apex court was of the opinion that the high court had not given any reasons for setting aside the order of the trial court. If one peruse the order the high court,[147] it is difficult appreciate the finding of the apex court that the high court has not assigned "any reason".

Rescission of contract on default of decree – holder (purchaser) to pay the decretal amount within time

Order 20 rule 12A, CPC stipulates that "Where a decree for specific performance of a contract for the sale or the lease of immovable property orders that the purchase – money or other sum be paid by the purchaser or lessee, it shall specify the period within which the payment shall be made". In case of default of the purchaser or lessee to pay the decretal amount within the time stipulated or within such further period allowed by the court, the vendor or lessee may apply, under section 28 of the Specific Relief Act, 1963, to have the contract rescinded. In *Prem Jeevan*,[148] the apex court held that merely because the vendor or lessee did not file an application seeking rescission of contract in terms of section 28 does not automatically results in extension of time for the decree – holder (purchaser) to pay decretal amount. If there is a failure to make the payment of the decretal amount within the stipulated time or within such further period allowed by the court, the decree does not remain executable. It ceases to be executable after the expiry of period stipulated for payment.

Withdrawal of suit

Under order 23 rule 1 of CPC, the plaintiff, who instituted a suit, has the liberty to withdraw it at any time. The consequence of such withdrawal is that he/she is precluded from instituting a fresh suit in respect of the same subject matter except in cases, where the suit is withdrawn with the permission of the court, which also granted liberty to institute a fresh suit. Sub-rule (3) of rule 1 of order 23 confers a discretionary power on the court to grant permission to withdraw the suit with liberty to institute a fresh suit if it is satisfied that: (a) the suit must fail by reason of 'formal defect' or (b) if there are 'sufficient grounds' for allowing the plaintiff to institute a fresh suit. In *V. Rajendran* v. *Annasamy Pandian*,[149] the apex court delineated what constitutes 'formal defect'. It observed:[150]

147 *Vinod* v. *District Judge-2,* (2013) 2 Mah LJ 493.

148 *Prem Jeevan* v. *K.S. Venkata Raman,* (2017) 11 SCC 57.

149 (2017) 5 SCC 63.

150 *Id*. at para 10.

> "Formal defect" is a defect of form prescribed by the rules of procedure such as, want of notice under section 80 CPC, improper valuation of the suit, insufficient court fee, confusion regarding identification of the suit property, misjoinder of parties, failure to disclose a cause of action, etc. "Formal defect" must be given a liberal meaning which connotes various kinds of defects not affecting the merits of the plea raised by either of the parties.

Having regard to the facts of the case, it categorically held that the wrong description of the suit property is a 'formal defect', on which permission can be granted to withdraw the suit with liberty to institute a fresh suit.

In *Anil Kumar Singh* v. *Vijay Pal Singh*,[151] the apex court dealt with the right of the defendant to object to the withdrawal of the suit. It observed that the defendant has no right to raise any objection to the application seeking withdrawal of the suit filed under order 23 rule 1. He is only entitled to seek payment of the costs from the plaintiff as provided under sub-rule (4). However, in cases where the plaintiff seeks permission to withdraw the suit with liberty to institute fresh suit, the defendant can object to such prayer. It is, then, for the court to decide, keeping in view the objections, whether or not the permission to withdraw shall be granted, if granted, subject to what terms and conditions, it may be granted.

Another important question as to whether withdrawal of a suit without obtaining explicit permission to institute a fresh suit amounts to abandonment of the claim arose before the Supreme Court in *H.P. Financial Corpn.* v. *Anil Garg*.[152] In this case, the respondent had obtained a loan from the appellant i.e., Himachal Pradesh Financial Corporation for purchase of a truck. On failure to repay, the appellant instituted a money suit. Later an application was filed under order 23 rule 1, CPC seeking withdrawal of the suit stating that they desire to proceed under the provisions of the H.P. Public Money (Recovery of Dues) Act, 1973 as it is more expeditious. Initiation of proceedings under the said Act for recovery of money was challenged by the respondent on the ground that withdrawal of suit amounts to abandonment of the claim. The high court upheld the contention. While allowing the appeal and setting aside the impugned order of the high court, the apex court held that as the question i.e., whether withdrawal of the suit amounts to abandonment of claim, is a mixed question of law and fact, the said question cannot be determined only by looking at the language of the order passed by the court. It is necessary to examine the background facts as well in order to reach a proper and just decision. Further, the apex court held that the bar under order 23 rule 1, CPC would apply only to a fresh suit and not to proceedings initiated under the special laws like the H.P. Public Money (Recovery of Dues) Act, 1973.

151 (2018) 12 SCC 584.
152 (2017) 14 SCC 634.

Specific Relief

Under the Specific Relief Act, 1963, the court is not bound, merely because it is lawful to do so, to grant the relief of specific performance. The apex court, in *Jayakantham* v. *Abaykumar*,[153] had reiterated that the jurisdiction conferred on the court to grant the relief is 'discretionary' as is clearly indicated in clause (1) of section 20 of the Act. The exercise of the discretion should not be arbitrary, it should be sound and reasonable and guided by judicial principles. Further, noting the stipulation of cases under clause (2) of section 20, where the court may decline to grant specific performance, the apex court indicated that the "terms of the contract, the conduct of parties at the time of entering into the agreement and circumstances under which the contract was entered into"[154] are all relevant factors to be taken into consideration while deciding the case.

In *Arulmigu Chokkanatha Swamy Koil Trust*,[155] the apex court held that a suit filed by the plaintiff, who is not in possession of the property, claiming only a declaratory relief along with mandatory injunction is not maintainable by virtue of section 34 of the Specific Relief Act, 1963. If the plaintiff is not in possession of the property at the time of filing of the suit, recovery of possession is a further relief the plaintiff ought to have claimed in such cases. A suit filed seeking mere declaration and mandatory injunction and not the possession of property is bound to be dismissed.

Suit alleging breach of trust

According to section 92, CPC, a suit alleging breach of any trust created for public purpose may be filed by the Advocate General, or two or more persons having an interest in the trust after having obtained the leave of the court. In *Swami Shivshankargiri Chella Swami*,[156] the apex court held that it is a prerequisite to annex the 'plaint' to the application filed under section 92 seeking leave of the court for filing the suit. The issue of maintainability of the application under the said provision can be examined only in the light of averments made in the plaint.

Imposition of cost for abusing the process of court

Abusing the process of courts, particularly when they are chocked with litigation, is a reprehensible act. The courts have the discretionary power, under section 35, CPC, to impose cost to prevent such abuse and in past, in some cases, even the apex court had imposed exemplary costs for filing frivolous cases or appeals. In the year under survey, the apex court very sternly dealt with one such case and sent out a strong warning against possible abuse of the process of court. In *Dnyandeo Sabaji Naik,*[157] the court observed:[158]

153 (2017) 5 SCC 178.

154 *Id*. at para 11.

155 *Arulmigu Chokkanatha Swamy Koil Trust* v. *Chandran,* (2017) 3 SCC 702.

156 *Swami Shivshankargiri Chella Swami* v. *Satya Gyan Niketan,* (2017) 4 SCC 771.

157 *Dnyandeo Sabaji Naik* v. *Pradnya Prakash Khadekar,* (2017) 5 SCC 496.

158 *Id*. at para 13.

> This Court must view with disfavor any attempt by a litigant to abuse the process. The sanctity of the judicial process will be seriously eroded if such attempts are not dealt with firmly. A litigant who takes liberties with the truth or with the procedures of the Court should be left in no doubt about the consequences to follow. Others should not venture along the same path in the hope or on a misplaced expectation of judicial leniency. Exemplary costs are inevitable, and even necessary, in order to ensure that in litigation, as in the law which is practiced in our country, there is no premium on the truth.

In this case, the suit for eviction/possession filed by the respondent was decreed by the trail court against which first appeal was filed by the appellant before the high court. Though, the high court did not find any merit in the appeal, considering the facts and circumstances of the case and the undertaking provided by the appellant, given the appellant one year time to vacate the suit premises. After taking the benefit of the order of the high court, the appellant filed an application for extension of time to vacate and the court granted another four months' time to do so. When the second extension granted by the high court was nearing expiration, the appellant filed a review petition and along with it another application seeking further period of five years to vacate the premises. It is against the dismissal of the review petition, the appellant approached the Supreme Court under article 136 of the Constitution. The apex court, while dismissing the special leave petition, directed the appellant to vacate the premises within one week and also imposed exemplary cost of 5,00,000 to be paid to the respondents. It warned that if the appellants failed to vacate the premises within the stipulated time, "they shall expose themselves to civil and criminal consequences under the law".[159] Further, while emphasizing on the need to adopt an institutional approach to penalize the misuse of judicial process, the court observed:[160]

> The imposition of exemplary costs is a necessary instrument which has to be deployed to weed out, as well as to prevent the filing of frivolous cases. It is only then that the courts can set apart time to resolve genuine causes and answer the concerns of those who are in need of justice. Imposition of real time costs is also necessary to ensure that access to courts is available to citizens with genuine grievances. Otherwise, the doors would be shut to legitimate causes simply by the weight of undeserving cases which flood the system. Such a situation cannot be allowed to come to pass. Hence it is not merely a matter of discretion but a duty and obligation cast upon all courts to ensure that the legal system is not exploited by those who use the forms of the law to defeat or delay justice. We commend all courts to deal with frivolous filings in the same manner.

159 *Id*. at para 15.2.

160 *Id*. at para 14.

Matrimonial disputes: Transfer of proceedings

Section 19 of the Hindu Marriage Act, 1955, allows choice of forum to a party seeking adjudication of any matrimonial disputed arising under the Act. As per the provision, a petition seeking adjudication of dispute may be presented in the district court having territorial jurisdiction over the place where: (i) the marriage was solemnized, or (ii) the respondent is residing at the time of filing of the petition, or (iii) the couple last resided together, or (iv) the petitioner is residing at the time of filing of the petition provided if the respondent is residing outside the territories to which the Act applies, or has not been heard of as being alive for a period of seven years or more.

Instituting a petition in any of the district courts having jurisdiction might cause acute hardship or inconveniences to the other party residing outside the jurisdiction of the court, where the petition is filed. Thus, in many cases either the concerned high court or the Supreme Court is approached seeking transfer of such cases. Under section 24, CPC, the high court has the jurisdiction to transfer a case pending in any of the court to the other provided if both the courts are subordinate to it. If the case needs to be transferred from a court subordinate to one high court to a court subordinate to another, the Supreme Court needs to be approached under section 25, CPC. Whenever the Supreme Court is approached, particularly by the wife, under the said provision seeking transfer of matrimonial proceedings, the transfer is normally allowed keeping in view her convenience.[161] As the number of such petitions seeking transfer of matrimonial proceedings has increased, as noted by the apex court itself in some of the cases,[162] a two judge bench, in *Krishna Veni Nagam* v. *Harish Nagam*,[163] attempted to remedy the situation by finding alternatives to transfer of proceedings. It appointed a senior advocate as *amicus curie* and also asked the Attorney General for India to depute a law officer to assist the court in exploring the options. After considering the submissions by both the *amicus* and the law officer, the court directed that:[164]

> Wherever the defendants/respondents are located outside the jurisdiction of the court, the court where proceedings are instituted, may examine whether it is in the interest of justice to incorporate any safeguards for ensuring that summoning of defendant/respondent does not result in denial of justice. Order incorporating such safeguards may be sent along with the summons. The safeguards can be:

161 The same approach has been adopted by the Supreme Court in many cases in the current survey year as well. See, for example, *Mamta Sahu* v. *Jayendra Sahu,* (2017) 13 SCC 320; *Bhartiben Ravibhai Rav* v. *Ravibhai Govindbhai Rav,* (2017) 6 SCC 785.

162 See, for example, *Anindita Das* v. *Srijit Das,* (2006) 9 SCC 197, where the court noted that "… On an average at least 10 to 15 transfer petitions are on board of each court on each admission day".

163 (2017) 4 SCC 150.

164 *Id*. at para 18.

(i) Availability of videoconferencing facility.
(ii) Availability of legal aid service.
(iii) Deposit of cost for travel, lodging and boarding in terms of order 25 CPC.
(iv) E-mail address/phone number, if any, at which litigant from outstation may communicate.

In addition, the court also suggested the application of the common law doctrine of "forum non-conveniens" for advancing the interest of justice in matrimonial proceedings. This doctrine allows the court to refuse to admit the petition, where more appropriate forum is available to the party. The court observed that "In a civil proceeding, the plaintiff is the *dominus litis* but if more than one court has jurisdiction, court can determine which is the convenient forum and lay down conditions in the interest of justice subject to which its jurisdiction may be availed".

When this ruling was brought to the notice of another two judge bench of the Supreme Court in a subsequent case i.e., in *Santhini* v. *Vijaya Venketesh*,[165] it found it difficult to countenance the idea of resolving matrimonial disputes through videoconferencing. After examining, in detail, the scheme and objectives of the Family Court Act, 1984; the Hindu Marriage Act, 1955 and order 32A, CPC which deals with "suits relating to matters concerning family", the apex court opined that conducting proceedings through videoconferencing would undermine the principal thrust of the law in family matters, which is "to make an attempt for reconciliation before processing the disputes in the legal framework".[166] It observed:[167]

> To what extent the confidence and confidentiality will be safeguarded and protected in videoconferencing, particularly when efforts are taken by the counsellors, welfare experts, and for that matter, the court itself for reconciliation, restitution of conjugal rights or dissolution of marriage, ascertainment of the wishes of the child in custody matters, etc., is a serious issue to be considered. It is certainly difficult in videoconferencing, if not impossible, to maintain confidentiality. It has also to be noted that the footage in videoconferencing becomes part of the record whereas the reconciliatory efforts taken by the duty-holders referred to above are not meant to be part of the record. All that apart, in reconciliatory efforts, physical presence of the parties would make a significant difference. Having regard to the very object behind the establishment of the Family Courts Act, 1984, to order 32-A of the Code of Civil Procedure and to the special provisions introduced in the Hindu Marriage Act under sections 22, 23 and 26, we are of the view that the directions issued by this Court in *Krishna*

165 (2018) 1 SCC 62.
166 *Id*. at para 17.
167 *Id*. at para 19.

> *Veni Nagam* need reconsideration on the aspect of videoconferencing in matrimonial disputes.

The bench, thus, directed the matter to be referred to a larger bench to examine the correctness of the said direction. The Chief Justice of India, thereafter, constituted a three judge bench to decide the reference. The bench, however, delivered a split verdict. By 2:1 majority, the bench, in *Santhini* v. *Vijaya Venketesh*,[168] overruled *Krishna Veni Nagam*,[169] to the extent that it allowed the court to conduct the proceedings through videoconferencing if either of the parties gives consent for the same. The majority opined that such a direction is contrary to section 11 of the Family Court Act, 1984. The majority also agreed with the reasoning given in the referral judgment. It, however, carved out a space for using videoconferencing in certain cases after certain stage. It opined thus:[170]

> Once a settlement fails and if both the parties give consent that a witness can be examined in videoconferencing that can be allowed. That apart, when they give consent that it is necessary in a specific factual matrix having regard to the convenience of the parties, the Family Court may allow the prayer for videoconferencing. That much of discretion, we are inclined to think can be conferred on the Family Court. Such a limited discretion will not run counter to the legislative intention that permeates the 1984 Act. However, we would like to add a safeguard. A joint application should be filed before the Family Court Judge, who shall take a decision. However, we make it clear that in a transfer petition, no direction can be issued for videoconferencing. We reiterate that the discretion has to rest with the Family Court to be exercised after the court arrives at a definite conclusion that the settlement is not possible and both parties file a joint application or each party filing his/her consent memorandum seeking hearing by videoconferencing.

The majority summed up its conclusions as follows:

(i) In view of the scheme of the 1984 Act and in particular section 11, the hearing of matrimonial disputes may have to be conducted in camera.[171]

(ii) After the settlement fails and when a joint application is filed or both the parties file their respective consent memorandum for hearing of the case through videoconferencing before the Family Court concerned, it may exercise the discretion to allow the said prayer.[172]

168 (2018) 1 SCC 1.

169 *Supra* note 162.

170 *Supra* note 167 at para 56.

171 *Id*. at para 58.1.

172 *Id*. at para 58.2.

(iii) After the settlement fails, if the Family Court feels it appropriate having regard to the facts and circumstances of the case that videoconferencing will subserve the cause of justice, it may so direct.[173]

(iv) In a transfer petition, videoconferencing cannot be directed.[174]

It ordered that its directions shall operate prospectively. D. J. Chandrachud J., did not agree with the view expressed by the majority and wrote a dissenting opinion with detailed reasoning, which are persuasive. He had explained in detail how the videoconferencing does not affect the confidence or the confidentiality. He was of the opinion that the technology facilitates access to justice. He attempted to allay the apprehensions expressed by the majority on employing videoconferencing. He ended his dissent with the following observation:[175]

> Should this Court even attempt to put a lid on the inexorable movement towards incorporating technology? If we do so, we risk ourselves being left behind as an anachronism in a digital age.

Challenge to the preliminary decree in an appeal against the final decree

In *T. Ravi* v. *B. Chinna Narasimha*,[176] the apex court, relying section 97, CPC, has reiterated the well settled position of law that the "preliminary decree cannot be re-agitated in an appeal against the final decree".[177] If the party aggrieved by the preliminary decree has not appealed against the same, he/she cannot challenge its correctness in an appeal against the final decree.

Filing of translated version of the document already on record: Need for filing an application under order 41 rule 27

It was held by the apex court, in *Chandreshwar Bhuthnath Devasthan* v. *Baboy Matiram Varenkar*,[178] that there is no requirement of filing an application under order 41 rule 27 for filing a translated copy of the document, which has already been tendered in evidence and on record of the court. Order 41 rule 27 is not attracted at all in such cases. An application under the said provision is required for filing additional evidence and not the translated copy of the document which is already produced.

Filing of counterclaim before the small cause court

In *Vaishali Abhimanyu Joshi* v. *Nanasaheb Gopal Joshi*,[179] the apex court dealt with the question as to whether the small cause court established under the Provincial Small Cause Courts Act, 1887 can entertain a counterclaim filed by the defendant

173 *Id*. at para 58.3.
174 *Id*. at para 58.4.
175 *Id*. at para 118.
176 (2017) 7 SCC 342.
177 *Id*. at para 47.
178 (2018) 12 SCC 548.
179 (2017) 14 SCC 373.

under section 19 of the Protection of Women from Domestic Violence Act, 2005 in a suit filed under section 26 of the former Act seeking mandatory injunction against her?

The apex court answered the question in the affirmative. It also observed that "There cannot be any dispute that proceeding before the Judge, Small Cause Court is a legal proceeding and the Judge, Small Cause Court is a civil court".[180] Thus, it can entertain a counterclaim filed by the defendant.

Applicability of section 89, CPC to consumer fora

In *Bijoy Sinha Roy* v. *Biswanath Das*,[181] the apex court held that even though the section 89, CPC, which lays down mechanism for settlement of disputes outside court, is made applicable, strictly speaking, only to civil courts, having regard to the object of the said provision, there is no reason to exclude its applicability to consumer fora. It was of the opinion that even they should also invoke these provisions and, hence, it requested the National Commission to issue appropriate direction in this regard.

Setting aside an *ex parte* decree

An *ex parte* decree can be set aside under order 9 rule 13, CPC. Referring to the said provision, the apex court held, in *Vijay Singh* v. *Shanti Devi*,[182] that it is permissible to set aside such a decree only on grounds that the summons was not duly served or the defendant could not appear when the suit was called for hearing as he/she was prevented by "sufficient cause". The court also observed that the defendants' right to seek setting aside of an *ex parte* decree under the said provision is not lost merely because of the fact that the *ex parte* decree has been executed. If the *ex parte* decree is set aside, the parties are relegated to the same position on which they stood before the passing of the said decree.

Non – appearance of the appellant during the hearing of appeal

As per order 41 rule 17 (1), CPC the appellate court has the discretion to dismiss for default the appeal if the appellant does not appear for hearing on the day fixed or on any other day to which hearing is adjourned. The explanation to the sub-rule (1) of rule 17, however, makes it categorically clear that, if the appellant defaults, the appeal shall not be dismissed on merit. In *Navnirman Development Consultants (I) (P) Ltd.* v. *District Sports Complex Executive Committee, Pune,*[183] where the high court disposed of the appeal on merit even though neither the counsel for the appellant nor the counsel for the respondent were present when the appeal was heard, the apex court held that it is impermissible for the high court to do so. It said in such a case the appeal can be

180 *Id*. at para 24.
181 (2018) 13 SCC 224.
182 (2017) 8 SCC 837.
183 *Supra* note 96.

dismissed only for default and not on merit. If dismissed for default as contemplated under order 41 rule 17 (1), the appellant can take recourse to rule 19 of the order 41, CPC for seeking readmission provided if he proves existence of "sufficient cause", which prevented him from appearing when the appeal was called for hearing. There is no need to approach the Supreme Court against the order dismissing appeal for default, when there is provision for seeking readmission of the same before the high court.

XII CONCLUSION

As the forgoing analysis reveal, the apex court in most of the cases reiterated and reinforced well settled rules and principles of civil procedural law, thereby, ensured certainty and predictability in the area. In some cases, where there were uncertainties owing to contradictory views expressed by different high courts, the apex court brought clarity and certainty in the legal position by authoritatively settling them. In *Prabhakara Adiga*,[184] it held that even the decree of injunction is executable against the legal representatives of the judgment – debtor and the maxim *actio personalis moritur cum persona* does not apply to cases, where the right litigated upon is inheritable. It explicitly overruled *Shivappa Basavantappa Devaravar*,[185] where the High Court of Karnataka had adopted contrary position on the question. Similarly, in *Jaswant Singh*,[186] while taking note of the contradictions in the stands taken by different high courts on the question of maintainability of an appeal under order 43 rule 1 from the order dismissing an application seeking restoration of an application filed under order 9 rule 13, which was dismissed for default, the apex court clarified and settled the legal position.

In some cases, after expressing doubts over the correctness of the law laid down by coordinate or larger benches, issues have been referred to larger benches for settlement. In *New India Assurance Co. Ltd.*,[187] the two judge bench did not agree with the law laid down by the three judge bench earlier in *J.J. Merchant*[188] on the question as to from which date the period of limitation prescribed under section 13 (2) of the Consumer Protection Act, 1986 needs to be reckoned. It, thus, referred the matter to the larger bench. However, in *United Finance Corpn*.,[189] though it did express doubts on the correctness of the law laid down in *Pattam Khader Khan*,[190] on the question as to whether the issuance of sale certificate is a *sine qua non* for filing application under order 21 rule 95, CPC by the auction – purchaser for delivery of

184 *Supra* note 109.
185 *Supra* note 113.
186 *Supra* note 72.
187 *Supra* note 129.
188 *Supra* note 127.
189 *Supra* note 122.
190 *Supra* note 126.

possession, it did not refer the issue to a larger bench as it was felt that the decision on the said question was not necessary for deciding the case.

The question regarding use of videoconferencing facility for conducting proceedings in matrimonial cases engaged the minds of judges for quite some time in the survey year. It was recommended as an alternative to transfer of cases by a two judge bench in *Krishna Veni Nagam*,[191] but another two judge bench in *Santhini*,[192] disagreed with it and, thus, referred the matter to a larger bench. The larger bench consisting of three judges was also constituted, which heard and disposed of the matter by 2:1 majority. The majority in *Santhini*,[193] overruled *Krishna Veni Nagam* on the issue of videoconferencing.

Further, on the question of limitation in cases where no period of limitation is statutorily prescribed, as in the case of petitions to be filed under article 227 of the Constitution of India or claim petitions under section 166 (3) of the Motor Vehicles Act, 1988, the apex court opined that there shall be no unreasonable delay in approaching the court even in such cases. It, however, advocated for lenient stand to be taken while considering an application for condonation of delay in filing appeal, by agriculturalists, in land acquisition matters for enhancement of compensation. Another noteworthy aspect is the direction given by the apex court in *Bijoy Sinha Roy*,[194] where it had asked the consumer forums to use section 89, CPC for refereeing disputes to settlement outside the court even though the said provision is not made applicable to them.

191 *Supra* note 162.
192 *Supra* note 164.
193 *Supra* note 167.
194 *Supra* note 180.