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CIVIL PROCEDURE

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I INTRODUCTION

IN THE survey year, as in the most part of the previous year, courts functioning and proceedings were affected due to the spread of COVID - 19. They continued to work mostly in virtual mode with diminished capacity. Suspension of the law of limitation through an order of the court issued under article 142 read with article 141 of the Constitution of India in the previous year continued for the entire period of the current survey year and beyond.[1]

As the courts gradually resumed regular hearings, either physically or by virtual mode, there were many cases that came to be disposed of during the period. Some of them involved procedural questions. Substantial number of such questions pertains to provisions of Civil Procedure Code, 1908 (CPC). Some questions relating to nature, scope and significance of procedural provisions contained in certain other special or local laws *viz*., the Representation of People Act, 1951, the Wakf Act, 1995, the Insolvency and Bankruptcy Code, 2016, the Consumer Protection Act, 2019, etc. also arose for consideration. The present survey analyzes and elucidates the apex court's stance on such questions.

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1 The apex court by its order dated Mar. 23, 2020 [*Cognizance for Extension of Limitation, In re*, (2020) 19 SCC 10] had extended the period of limitation with effect from March 15, 2020 until further orders. However, in view of the improvement in the situation, on March 8, 2021 it passed an order [*Cognizance for Extension of Limitation, In re*, (2021) 5 SCC 452] bringing to an end the order issued on March 23, 2020 with effect from March 14, 2021. It permitted the relaxation of period between March 15, 2020 and March 14, 2021 in computing the limitation. As the spread of the COVID has become even more rapid in the second wave, it issued a further order on September 23, 2021 [*Cognizance for Extension of Limitation, In re*, 2021 SCC OnLine SC 947] restoring the order dated March 23, 2020 thereby extending the period of limitation with effect from March 15, 2020 till October 2, 2021. Subsequently, as the one more variant of the COVID led to its drastic surge, once again the apex court passed another order on January 10, 2022, [*Cognizance for Extension of Limitation, In re*, (2022) 3 SCC 117] extending the relaxation till February 28, 2022. For the detailed comments on the first order dated March 23, 2020, see P. Puneeth, "Civil Procedure" LVI *Annual Survey of Indian Law – 2020,* 27 – 63 (ILI, 2022).

II JURISDICTION

Section 9,CPC confers wide jurisdiction on civil courts to try all suits of civil nature unless it is barred, either explicitly or implicitly. There are many local or special laws, which have barred the civil courts from taking cognizance of certain matters and adjudicate upon them. In the survey year, certain questions relating to nature of the relevant provisions contained in such laws and the extent to which they bar the jurisdiction of civil courts came up for consideration in a number of cases.

In *Salim D. Agboatwala* v. *Shamalji Oddhavji Thakkar*,[2] the apex court remarked that the provision containing bar of jurisdiction in the Maharashtra Tenancy and Agricultural Lands Act, 1948 is very strange "the like of which is not found in many other statutes which contain provisions barring the jurisdiction of Civil Courts".[3] Whereas section 85 of the Act contains an absolute bar on the jurisdiction of the civil court, section 85A, which was added through an amendment, strangely prescribes a two stage procedure to be followed by the civil court whenever a suit is instituted notwithstanding the bar. In the first stage the civil court is required to stay the suit and refer the issues to be determined by the competent authority and in the second stage i.e., after receipt of the decision of such competent authority, it is required to dispose of the suit in accordance with applicable procedure. While noting the provision, the apex court observed:[4]

> If the bar under Section 85(2) was absolute, the Civil Court would have no option except to dismiss the suit. If the bar of jurisdiction is absolute, the question of the Civil Court staying further proceedings in the suit, referring the issues for the adjudication of the competent authority under the Act and disposing of the suit after receipt of a decision from the competent authority, would not arise.

It held that by virtue of section 85A, the bar contained in section 85 of the Act is not absolute and it stands diluted to some extent. The Wakf Act, 1995 also bars the jurisdiction of civil courts but not entirely. In certain matters relating wakf and wakf property, it appears that the civil courts can entertain suits. In *Telangana State Wakf Board* v. *Mohd. Muzafar*,[5] the apex court held that for determining the respective jurisdictions of the wakf tribunal and the civil courts in relation to suits involving wakf property, in each case facts and circumstances needs to be taken note of and appreciated in the light of legal framework contained in the Act.

Since provisions relating to exclusion of jurisdiction of civil courts contained in the Wakf Act, 1995 are very intricate and somewhat confusing, they are giving rise to many contestations. In view of the recurring disputes arising in many cases year after year, a three-judge bench of the apex court in *Rashid Wali Beg* v. *Farid Pindari*,[6]

2 2021 SCC OnLine SC 735.

3 *Id*., para 20.

4 *Id*., para 23.

5 2021) 9 SCC 179.

6 (2022) 4 SCC 414.

had examined the entire legislative scheme and previous authorities to answer the question as to whether bar of civil court's jurisdiction under the Wakf Act, 1995 is confined only to disputes revolving around two questions mentioned in sections 6 (1) and 7 (1) of the Act.

While answering the question in the negative, the bench held that "[A] conjoint reading of Sections 6, 7 and 85 would show that the bar of jurisdiction of civil court contained in Section 6(5) and Section 7(2) is confined to Chapter II, but the bar of jurisdiction under Section 85 is all pervasive."[7]

The bench pointed out that under section 83 (1) of the Act, the wakf tribunal has the jurisdiction to determine "any dispute, question or any other matter" relating to "wakf" and/or "wakf property." Section 85 of the Act excludes jurisdiction of the civil courts "in respect of any dispute, question or other matter relating to any waqf, waqf property or other matter which is required by or under this Act to be determined by a Tribunal." Thus, the bar of jurisdiction, contrary to what many courts have mistakenly held, is not confined to only questions mentioned in sections 6 (1) and 7 (1) of the Act.

In this case, the bench has also pointed out the confusion created by some of the provisions of the Act *viz*., sections 68 (6), 86, 90, and 93, which make specific reference to court/civil courts. As a result, the bar of jurisdiction contained in section 85 of the Act does not apply to matters covered under those provisions. It regretted that even the amendment made in 2013 did not clear this confusion.

In *Milkhi Ram* v. *H.P. SEB*,[8]a similar question was considered in the context of the Industrial Dispute Act, 1947. The apex court held that when a challenge to the termination of service was founded on the provisions of Act, the civil court lacks jurisdiction to entertain the suit. Thus, the decree passed by the civil court in such matters is "hit by the principle of *coram non judicie* and therefore, the same is a nullity."[9] The court also endorsed the view that the jurisdictional objection can be raised at any stage including at the stage of execution.

In *Assa Singh(D) by Lrs.* v. *Shanti Parshad(D) by Lrs*.,[10] a question regarding bar of jurisdiction of civil courts under section 25 of the Punjab Security of Land Tenures Act, 1953 came up before the court. The court, after examining the scheme of the legislation, held that despite the exclusive jurisdiction conferred on the revenue court, in cases where the very relationship between the landlord and tenant is disputed, the civil court would retain its jurisdiction. It does not, however, mean that the authorities under the Act should stop exercising jurisdiction on mere plea by the tenant disputing the relationship without anything more. In a case, where such a plea disputing the landlord-tenant relationship itself is found to be completely frivolous and raised

7 *Id*., para 42.

8 (2021) 10 SCC 752.

9 *Id*., para 14.

10 2021 SCC OnLine SC 1064.

only to block the proceedings, the revenue courts can reject such plea and continue the proceedings.[11]

III *RES JUDICATA*

The principle of *res judicata* essentially means that once the *res* is adjudicated, the same *res* shall not be subjected to adjudication again. The principle gives finality to judicial decisions. In *Ebix Singapore (P) Ltd.* v. *Educomp Solutions Ltd. (CoC)*,[12] while discussing the conditions to be fulfilled for applying the principle, the apex court held "[R]es judicata cannot apply solely because the issue has previously come up before the court. The doctrine will apply where the issue has been "heard and finally decided" on merits through a conscious adjudication by the court."[13]

In *National Confederation of Officers Assn. of Central Public Sector Enterprises* v. *Union of India*,[14] a question regarding application of principles of *res judicata* to public interest litigations filed under article 32 of the Constitution of India arose for consideration. In this case, the respondent had raised the plea that similar questions were raised in *Maton Mines Mazdoor Sangh*,[15] even though it was dismissed *in limine* without adjudication on the merits of the claim. While rejecting the plea, the apex court, at the outset, pointed out that the principle of *res judicata* is applicable in cases where the similar issues have not only been raised in earlier proceedings but they have also been adjudicated finally. In cases, where there was no adjudication on merits, it is not applicable.

It was the opinion of the court that even though principles of *res judicata* and constructive *res judicata* have been applied to proceedings under article 32 of the Constitution including public interest litigations, courts have always been rightly cautious in doing so. It observed:[16]

> While determining the applicability of the principle of res judicata… the Court must be conscious that grave issues of public interest are not lost in the woods merely because a petition was initially filed and dismissed, without a substantial adjudication on merits. There is a trend of poorly pleaded public interest litigations being filed instantly following a disclosure in the media, with a conscious intention to obtain a dismissal from the Court and preclude genuine litigants from approaching the Court in public interest. This Court must be alive to the contemporary reality of "ambush public interest litigations" and interpret the principles of res judicata or constructive res judicata in a manner which does not debar access to justice. The jurisdiction under Article 32 is a fundamental right in and of itself.

11 *Id*., para 54.

12 (2022) 2 SCC 401.

13 *Id*., para 186.

14 (2022) 4 SCC 764.

15 *Maton Mines MazdoorSangh* v. *Union of India*, WP (C) No. 513 of 2012, order dated 10-12-2012 (SC).

16 *Id*., para 35.

In *Union of India* v. *S. Narasimhulu Naidu (Dead) Through Lrs*.,[17] an interesting question as to when can the plea of *res judicata* be raised by a party against his/her co-defendant in the previous suit arose for consideration before the apex court.The court while answering the question reiterated the three principles laid down in *MunniBibi*[18] and *Govindammal*.[19] They are:[20]

(i) Existence of conflict of interest between the defendants,

(ii) Necessity of resolving such conflict in order to give the plaintiff the relief he had claimed, and

(iii) The court must have finally decided on the conflicts between the defendants.

According to the court, in addition to meeting all the essential requirements for invoking the bar of *res judicata*, the aforestated three criteria need to be satisfied in order to invoke the principle against those who were co-defendants in a previous suit.

In *Jamia Masjid* v. *K.V. Rudrappa*,[21] the apex court dealt with the question as to whether the plea of *res judicata* can be determined as a preliminary issue. Rejecting the argument that such a plea can *never* be decided as a preliminary issue, it opined that in cases where the plea of *res judicata* involves determination of mixed question of law and fact, same cannot be dealt with as a preliminary issue as it requires adducing of evidence and full-fledged trial thereafter. But in cases, where examination of pleadings and judgments in the earlier suits, which have been brought on record, are sufficient, the plea of *res judicata* can be determined as a preliminary issue.

IV PLEADINGS

Importance and contents of pleadings

In civil litigations pleadings – plaintand written statement – are very crucial. Boundaries of contestations are determined on the basis of pleadings. During the course of the proceedings, pleadings are the basis for adducing evidence and for granting relief. No evidence can be adduced to prove a point that is not part of the pleadings and no relief can be granted if the same is not based on the averments made in the pleadings. That is precisely the reason as to why elaborate provisions are made in CPC to deal with various facets of pleadings. While highlighting the importance of pleadings, the apex court in *V. Prabhakara* v. *Basavaraj K*.,[22] has very succinctly enumerated the requirements:[23]

> Order 6 of the Code while defining the word "pleading" makes it applicable on even terms to both a plaint and written statement. Every

17 2021 SCC OnLine SC 644.

18 *MunniBibi (since deceased)* v. *TirlokiNath*, AIR 1931 PC 114.

19 *Govindammal (Dead) by LRs* v. *Vaidiyanathan* (2019)17 SCC 433.

20 *Supra* note 17, para34.

21 (2022) 9 SCC 225.

22 (2022) 1 SCC 115.

23 *Id*., para 20.

> pleading under Order 6 Rule 2 shall contain a statement of material facts on which a party relies either for his claim or defence. Such a pleading should contain the necessary foundation for raising an appropriate issue. Under Order 8 Rule 2 a defendant shall make specific pleadings while under Rule 3 a denial should be specific. Rule 4 prohibits an evasive denial and Rule 5 speaks of consequences of not denying specifically an averment in a plaint leading to presumption of an admission.

In *Electrosteel Castings Ltd*. v. *UV Asset Reconstruction Co. Ltd*.,[24] the court held that in case of 'fraud', the party pleading it must provide all the material particulars with respect to it in the pleading. Mere mentioning of the word 'fraud' or 'fraudulent' is not sufficient to satisfy the test so as to consider it as pleading of 'fraud'.

Pleadings in proceedings before tribunals/quasi-judicial bodies

It is true that tribunals and quasi-judicial bodies are not bound by the rigours of CPC and Evidence Act. Ordinarily the statutes creating such bodies explicitly exempt them from strictly following procedures envisaged in the CPC and the Evidence Act. The underlying idea is to avoid delay in dispensation of justice. This exemption has, however, led to certain unintended consequences in some cases. This was pointed out by the apex court in *Tata Consultancy Services Ltd.* v. *Cyrus Investments (P) Ltd*.,[25] where the National Company Law Appellate Tribunal had gone beyond pleadings and granted certain reliefs. While taking exception to it, the apex court observed that exempting tribunals from following the rigours of CPC has "*instead of eliminating delay, it has eliminated discipline in pleadings and procedure*".[26] It is important that the tribunals and quasi-judicial bodies also observe some discipline lest it might result in miscarriage of justice.

Rejection of plaint

Order 7 rule 11, CPC provides for rejection of plaint in certain cases enumerated in clauses (a) to (f). The order rejecting the plaint is a 'decree' within the meaning of section 2 (2), CPC. Hence, the apex court, in *Sayyed Ayaz Ali* v. *Prakash G. Goyal*,[27] held that such orders are subject to first appeal under section 96, CPC and writ proceedings cannot be initiated to challenge them.

It was further held that while rejecting the plaint under order 7 rule 11 (d), the court cannot grant liberty to the party to amend the plaint to incorporate appropriate reliefs and pay court fee accordingly. It is only in cases covered under the proviso to order 7 rule 11, such liberty can be granted and the said proviso covers cases falling under clauses (b) and (c) only.

In *Srihari HanumandasTotala* v. *Hemant Vithal Kamat*,[28] the apex court, after discussing the previous authorities on the question, has succinctly summarized the

24 (2022) 2 SCC 573.

25 (2021) 9 SCC 449.

26 *Id*., para 74.

27 (2021) 7 SCC 456.

28 (2021) 9 SCC 99 .

guiding principles that need to be borne in mind while deciding applications under order 7 rule 11 (d), CPC.

(i) While considering an application for rejection of plaint under the aforesaid provision, only the averments made in the plaint will have to be taken into account but not the contents of the written statement.[29]

(ii) Plea of *res judicata* cannot be adjudicated as it is beyond the scope of order 7 rule 11 (d). Adjudication of the plea of *res judicata*requires consideration of pleadings of the parties, issues raised in the previous suit as well as the present suit and the decision rendered in the previous suit.[30]

In *RajendraBajoria* v. *Hemant Kumar Jalan*,[31] it was held that while considering the application for rejection of plaint, "reading of the averments made in the plaint should not only be formal but also meaningful".[32] As observed in several cases, "if clever drafting has created the illusion of a cause of action, and a meaningful reading thereof would show that the pleadings are manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue…"[33] In the opinion of the court, such suits should be nipped in the bud in exercise of the power under order 7 rule 11.

V PARTIES

Representative suit: Sameness of interest

> According to order 1 rule 8, where there are several persons having the same interest in a suit, one or more of them may "sue, or be sued or may defend such suit." In *Brigade Enterprises Ltd.* v. *Anil Kumar Virmani*,[34] the apex court highlighted that the provision distinguishes between the persons having the 'same interest' in one suit and the persons having the 'same cause of action'. The court pointed out that "[T]o establish sameness of interest, it is not necessary to establish sameness of the cause of action."[35]

Initiation of insolvency process in a representative capacity: IBC, 2016

Order 1 rule 8, CPC allows even single person to set in motion a civil suit, in which numerous persons have the same interest. In such a suit, when the decree is passed, such decree is binding on all persons. Section 7 of the Insolvency and Bankruptcy Code, 2016, (IBC, 2016) on other hand, imposes stringent threshold requirements to be complied with by financial creditors for initiating corporate insolvency resolution process against a corporate debtor. It requires a financial creditor, interested in initiating the process, to muster the support of at least ninety-nine other creditors or not less than ten percent of the total number of creditors (whichever is

29 *Id*., para 25.1, 25.2.
30 *Id*., para 25.4.
31 2021 SCC OnLine SC 764.
32 *Id*., para 15.
33 *Ibid*.
34 (2022) 4 SCC 138.
35 *Id*., para 20.

less) to initiate the process. A single financial creditor is not allowed to initiate the process. In *Manish Kumar* v. *Union of India*,[36] the said threshold requirements were challenged on the ground that they are arbitrary, cumbersome and unachievable. A three-judge bench of the Supreme Court, considering the overall scheme of the IBC, 2016, rejected the contention. The bench, in a way, indicated that a provision of a statute cannot be invalidated on the ground that it is not as fair as the similar provision contained in another statute. The bench observed:[37]

> As to whether the procedure contemplated in Order 1 Rule 8 is suitable, more appropriate and even more fair, is a matter, entirely in the realm of legislative choice and policy. Having regard to the scheme of the Code… there cannot be scintilla of doubt that what the petitioners are seeking to persuade us to hold, is to make a foray into the forbidden territory of legislative value judgment… We only need add that invalidating a law made by a competent legislature, on the basis of what the court may be induced to conclude, as a better arrangement or a more wise and even fairer system, is constitutionally impermissible. If, the impugned provisions are otherwise not infirm, they must pass muster.

VI APPEALS

In *V. Nagarajan* v. *SKS Ispat and Power Ltd*.,[38] the apex court highlighted the essential distinction between the right to file a suit and right to file an appeal. It reiterated that unlike the right to file a suit, which is inherent in terms of section 9 unless barred by statute, there is no inherent right to file an appeal. The right to file "an appeal is a creature of statute and must have a clear authority of law."[39] In other words, right to file a suit is inherent and exists unless barred whereas right to file an appeal needs to be explicitly provided.

Powers of appellate court

In *SatyaPrakashDwivedi* v. *Munna alias ChandrabhanYadav*,[40] the apex court delineated the powers of the court of appeal under order 41 rule 33, CPC. The question that arose for consideration before the court was whether the high court, in an appeal filed by the claimant seeking enhancement of compensation awarded by the Motor Accidents Claims Tribunal, reduce the compensation in the absence of cross-objection or appeal by the respondent. While answering the question in the negative, the apex court observed the even though the power of the court of appeal under the aforementioned provision is very wide, "the said power must be exercised with caution or circumspection"[41] particularly when there was no cross-objection or appeal. It further observed:[42]

36 (2021) 5 SCC 1.

37 *Id*., para 197.

38 (2022) 2 SCC 244.

39 *Id*., para 15.

40 2021 SCC OnLine SC 3435.

41 *Id*., para 13.

42 *Id*., para 14.

> The aforesaid Rule does not confer unrestricted rights to interfere with decrees which are not assailed merely because the appellate court does not agree with the opinion of the court appealed from. It is the duty of the appellate court to decide the appeal in accordance with law. The appellate court must apply its judicial mind to the evidence as a whole while deciding a case and a judgment on merits should not be lightly interfered with or reversed purely on technical grounds unless it has resulted in failure of justice.

In civil proceedings, appellate courts have the power to allow additional evidence, either documentary or oral, to be produced if and only if the conditions laid down under order 41 rule 27, CPC are satisfied. In exercising such power, the appellate court has to comply with the procedure prescribed under rules 28 and 29. The former prescribes mode of taking such evidence and the later requires the appellate court to specify the points to which such evidence shall be confined. In *H.S. Goutham* v. *Rama Murthy*,[43] a three-judge bench of the Supreme Court categorically stated that without compliance with the provisions of order 41, rules 27, 28 and 29, CPC, it is not permissible for the appellate court to either take additional evidence or direct the court from whose decree the appeal is preferred to take such evidence and send the report to it.

In the instant case, in an appeal before the high court, which was filed after considerable delay, a compromise decree was sought to be set aside on the ground that the same was obtained by fraud. The similar contention raised before the execution court was considered and overruled by it as fraud was only pleaded and no evidence was produced to prove it. As per the settled law, merely pleading fraud is not sufficient to have the compromise decree set aside. The same has to be established by producing legally admissible evidence. When that was not done, it is not permissible for the appellate court to give an opportunity to the judgment-debtor to fill in the gap without complying with order 41, rule 27 read with rules 28 and 29.

First appeal

Under the scheme envisaged in CPC, the first appellate court is virtually the final court as regards questions of fact and ordinary questions of law. Second appeal lies only when there is a substantial question of law involved. The first appellate court, having regard to virtual finality of its decision, must comply with the provision of order 41 rule 31, CPC while disposing of first appeal. In *K. Karuppuraj* v. *M. Ganesan*,[44] the apex court reiterated that the first appellate court must re-appreciate the entire evidence on record and re-consider the reasoning given by the court of first instance in support of its decision. Failure to do so amounts to failure to exercise the jurisdiction vested in it.

43 (2021) 5 SCC 241.

44 (2021) 10 SCC 777. Also see, *RasmitaBiswal* v. *National Insurance Co. Ltd*. (2022) 2 SCC 767.

In *Murthy* v. *C. Saradambal*,[45] the apex court, while recounting that the appellate court has wide jurisdiction to affirm, reverse or modify the judgment of the trial court, opined that appellate court needs to exercise more caution while reversing the decision of the trial court than while affirming it. In its view, while affirming the judgment, "the reasoning need not to be elaborate although reappreciation of the evidence and reconsideration of the judgment of the trial court are necessary concomitants."[46] But while reversing or modifying the judgment, "it is the duty of the appellate court to reflect in its judgment, conscious application of mind on the findings recorded supported by reasons, on all issues dealt with, as well as the contentions put forth, and pressed by the parties for decision of the appellate court."[47]

As regards production of additional evidence is concerned, the apex court in *Satish Chand Surana* v. *Raj Kumar Meshram*,[48] held that "[T]he First Appellate court, being the last court of facts and evidence, should permit the production of additional evidence where the explanation furnished by the party is satisfactory and the documents in question are vital to establish the case."[49] If the first appeal is dismissed without deciding the application seeking production of additional evidence, it would result in miscarriage of justice.

In *V. Prabhakara* v. *Basavaraj K.*,[50] the apex court, however, expected the first appellate court to be cautious in exercising its wide powers. It said even though the first appellate court has the power to "re-do the exercise of the trial court",[51] it should do that very sparingly and with caution because of the reason that:[52]

> …[t]he trial court alone has the pleasure of seeing the demeanour of the witness. Therefore, it has got its own advantage in assessing the statement of the witnesses which may not be available to the appellate court. In exercising such a power, the appellate court has to keep in mind the views of the trial court. If it finds that the trial court is wrong, its decision should be on the reasoning given. A mere substitution of views, without discussing the findings of the trial court, by the appellate court is not permissible. If two views are possible, it would only be appropriate to go with the view expressed by the trial court. While adopting reasoning in support of its findings, the appellate court is not expected to go on moral grounds alone.

It further stated that "though the first appellate court is the final court of fact and law, it has to fall in line with the scope and ambit of Section 96 of the Code."[53]

45 (2022) 3 SCC 209.
46 *Id*., para 60.
47 *Idbi*.
48 2021 SCC OnLine SC 3446.
49 *Id*., para 8.
50 *Surpa* note 22.
51 *Id*., para 22.
52 *Idbi*.
53 *Id*., para 24.

Second appeal

It is clear as crystal that under section 100, CPC second appeal lies only to the high court and only on a substantial question of law. In the survey year, the apex court in *Maharashtra State Electricity Distribution Co. Ltd*. v. *Maharashtra Electricity Regulatory Commission*,[54] once again explained what substantial question of law is. Relying on *SBI*[55] and *Nazir Mohamed*,[56] it reiterated that "to be 'substantial', a question of law must be debatable, not previously settled by the law of the land or any binding precedent, and must have a material bearing on the decision of the case and/or the rights of the parties before it, if answered either way."[57] It also pointed out that "[A] question of law which arises incidentally or collaterally and has no bearing on the final outcome will not be a substantial question of law."[58] It also added that the enormity of the stakes involved in the case is entirely irrelevant in determining whether the question is a substantial question of law.

If no substantial question of law is involved in a case, high court cannot entertain the second appeal. It does not, however, mean that the high court has no power to determine questions of fact in a second appeal at all. In *K.N. Nagarajappa* v. *H. Narasimha Reddy*,[59] the apex court stated the cases in which the high court can interfere with questions of fact:[60]

> Undoubtedly, the jurisdiction which a High Court derives under Section 100 is based upon its framing of a substantial question of law. As a matter of law, it is axiomatic that the findings of the first appellate court are final. However, the rule that *sans* a substantial question of law, the High Courts cannot interfere with findings of the lower Court or concurrent findings of fact, is subject to two important caveats. The first is that, if the findings of fact are palpably perverse or outrage the conscience of the court; in other words, it flies on the face of logic that given the facts on the record, interference would be justified. The other is where the findings of fact may call for examination and be upset, in the limited circumstances spelt out in Section 103 CPC.

Under section 103, CPC, the high court, after adjudicating upon the substantial question of law(s) involved in an appeal, can proceed to determine the issue(s) of fact if the evidence on record is sufficient and determination of such isse(s) is necessary for the disposal of the appeal in two cases:

(i) When the issue(s) of fact was not determined by the first appellate court or both by the court of first instance and the first appellate court, or

54 (2022) 4 SCC 657.

55 *SBI* v. *S.N. Goyal* (2008) 8 SCC 92.

56 *Nazir Mohamed* v. *J. Kamala* (2020) 19 SCC 57.

57 *Supra* note 54, para151.

58 *Id*., para 150.

59 2021 SCC OnLine SC 694. Also see *Narayan SitaramjiBadwaik (Dead) Through Lrs*. v. *Bisaram*2021 SCC OnLine SC 319; *AzgarBarid* v. *Mazambi* (2022) 5 SCC 334.

60 *Id*., para 14.

(ii) When such issue(s) of fact was wrongly determined by reason of a decision on substantial question of law involved in an appeal.

Further, in *Balasubramanian* v. *M. Arockiasamy*,[61] a three judge bench of the apex court, while reiterating that the high court cannot reappreciate evidence in second appeal except when the findings of the courts below are perverse, held that in case of contradictory findings by the courts below it is within the jurisdiction of the high court "to determine whether the reading of the evidence on record by one of the courts below was perverse."[62] For that purpose it is open for it "to take note of the case pleaded, evidence tendered, as also the findings rendered by the two courts which was at variance with each other."[63]

In *Ramdas Waydhan Gadlinge (Since Deceased) ThrLrs.Vatsalabai Ramdas Gadlinge* v. *Gyanchand NanuramKriplani (Dead) ThrLrs. Dhrupadabai,*[64] the apex court held that once the high court admits a second appeal after formulating substantial question of law, it is not open to the high court to dispose it of summarily. The appeal is required to be heard in accordance with provisions contained in order 42, CPC.

Cross-objection in appeals

A question as to when can a decree holder raise arguments against adverse findings in the decree appealed against by the judgment debtor without filing memorandum of cross-objection arose for consideration in *Saurav Jain* v. *A.B.P. Design*.[65]

The apex court relying on the amended provisions of order 41 rule 22, CPC and its earlier rulings in *Banarsi*[66] and *S. Nazeer Ahmed*,[67]has succinctly stated when filing of memorandum of cross-objection is necessary and when arguments can be raised against certain adverse findings without filing such cross-objection. It observed:[68]

> …[t]hat there are two changes that were brought by the 1976 amendment. *First*, the scope of filing of a cross-objection was enhanced substantively to include objections against 'findings' of the lower court; *second*, different forms of raising cross-objections were recognised. The amendment sought to introduce different forms of cross-objection for assailing the findings and decrees since the amendment separates the phrase "*but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour*" from "*may also take any cross-objection to the decree*" with a semi colon. Therefore, the two parts of the sentence must be read disjunctively. Only when a part of the decree has been assailed by the respondent, should a memorandum of cross-objection be filed. Otherwise, it is

61 (2021) 12 SCC 529. Also see, *State of Haryana* v. *Harnam Singh* (2022) 2 SCC 238.

62 *Id*., para 16.

63 *Id*., para 15.

64 2021 SCC OnLine SC 1035.

65 2021 SCC OnLine SC 552

66 *Banarsi* v. *Ram Phal*(2003) 9 SCC 606.

67 *S. Nazeer Ahmed* v. *State Bank of Mysore* (2007) 11 SCC 75.

sufficient to raise a challenge to an adverse finding of the court of first instance before the appellate court without a cross objection.

Further, the court also reiterated that even though the aforestated order 41 rule 22, CPC is not applicable to proceedings before the apex court under article 136 of the Constitution, the principle envisaged therein, since it aims at furthering the cause of justice, may be relied upon to entertain arguments against adverse findings in such proceedings.[69]

Contents of the appellate court's judgment

Order 41 rule 31, CPC explicitly enumerates what the appellate court's judgment shall contain. As per the provision, the appellate court's judgment shall state the points for determination, decisions on such points and the reasons for such decisions. Further, since the appellate court has the power to reverse or revise the decision of the court below, in case where it reverses or varies the decision of the court below, it shall also state the relief to which the appellant is entitled. Under CPC, the first appellate court, in particular, has the jurisdiction to rehear appeals both on questions of law as well as on questions of facts. It cannot simply dismiss the appeal by passing a cryptic order without examining all the points of law and/or facts raised for determination. In *Manjula* v. *Shyamsundar*,[70] the apex court categorically held that appellant court's judgment should reflect the conscious application of mind. While writing the judgment, non-compliance with the requirements of order 41 rule 31 leads to its infirmity. The apex court accordingly set aside the decision and referred the case back to the first appellate court to rehear the matter.

Appeal to National Commission under the CP Act, 2019

Section 51 of the Consumer Protection Act, 2019 prescribes a pre-deposit requirement for filing an appeal against order passed by the state commission. As per the provision, depositing fifty percent of the amount awarded by the state commission is a pre-condition for entertaining the appeal by the national commission. In *Manohar Infrastructure and Constructions(P) Ltd*. v. *Sanjeev Kumar Sharma*,[71] while holding that the pre-deposit is mandatory, the apex court held that this statutory pre-deposit requirement "does not take away the jurisdiction of the National Commission to order to deposit the entire amount and/or any amount higher than 50% of the amount while considering the stay application to stay the order passed by the State Commission".[72]

VII REVISION

In *K.P. Natarajan* v. *Muthalammal*,[73] the question as to whether the high court, in a revision petition filed under section 115, CPC, challenging the trial court's order refusing to condone delay in seeking to set aside an *ex parte* decree, use its power under article 227 of the Constitution to set aside the *ex parte* decree itself had come

68 *Supra* note 65, para 29.
69 *Id*., para 32.
70 (2022) 3 SCC 90.
71 (2022) 8 SCC 474.
72 *Id*., para 11.

up for consideration before the Supreme Court. In this case, the high court, after finding that the *ex parte*decree was passed against a minor who was not represented by a guardian duly appointed as per the provisions of order 32 rule 3, CPC, chose to exercise its power under article 227 to declare it a nullity. In an appeal challenging the order of the high court, the apex court rejected the argument that the high court committed a jurisdictional error in invoking article 227 in the instant case. The court also reiterated that "[I]t is too well settled that the powers of the High Court under Article 227 are in addition to and wider than the powers under Section 115 of the Code."[74]

In *NHAI* v. *M. Hakeem*,[75]the apex court held that the power of the court under section 34 of the Arbitration and Conciliation Act, 1996 cannot be equated with that of the revisional power of the high court under section 115, CPC.

In *Telangana State Wakf Board* v. *Mohd.Muzafar*,[76] the apex court commented on the scope of revisional powers of the high court under section 83 of the Wakf Act, 1995. It said that unlike in appeals, the court in exercise of the revisional jurisdiction cannot reappreciate the evidence on record. The court observed that:[77]

> In a revision petition the scope of consideration is limited and the judgment/order under challenge can be interfered only in the event of there being perversity seen on the face of the order and if the conclusion reached cannot be acceptable to any reasonable person.

VIII EXECUTION

Execution proceedings: Directions to tackle constant abuse of procedural provisions

In the survey year the apex court came across a case, which is a classic example of abuse of procedural provisions to delay and obstruct execution of a decree. Noting that it has become a trend and recalling what the privy council had once remarked that the "actual difficulties of a litigant in India begin when he has obtained a decree",[78] a three judge bench of the apex court, in *Rahul S. Shah* v. *Jinendra Kumar Gandhi*,[79]had issuedslew of directions to arrest the trend.

In order to address the problems arising out of third party claims raised during the execution proceedings, the apex court urged the trial court to play an active role and decide all issues relating to such claims while adjudicating the suit itself and pass "a clear, unambiguous, and executable decree".[80] It suggested the following measures:

(i) In cases involving delivery of property or any rights relating to property, the trial court shall order the parties, in exercise of its power under order

73 2021 SCC OnLine SC 467.

74 *Id*., para 22.

75 (2021) 9 SCC 1.

76 (2021) 9 SCC 179.

77 *Id*., para 16.

78 *General Manager of the Raj Durbhunga* v. *CoomarRamaput Sing*, 1872 SCC OnLine PC 16.

79 (2021) 6 SCC 418.

80 *Id*., para 35.

11 rule 4, CPC, to produce documents upon oath making declaration regarding existence of rights or interests of any third party in the suit property either created by them or in their knowledge. It would enable the court to implead all the necessary parties at an early stage and adjudicate all their claims.[81]

(ii) The trial court, while adjudicating the suit, shall also determine the status of the property and who is in possession of it and in what part. For that purpose, it may take recourse to the following actions:

- Issue commission to make local investigations under order 26 rule 9 to exactly demarcate the property and to describe its nature and occupation.[82]
- Appoint receiver under order 40 rule 1 to secure the status of the property.[83]
- Issue public notice inviting claims over the suit scheduled property particularly stating that "if the objections are not raised at this stage, no party shall be allowed to raise any objection in respect of any claim he/she may have subsequently."[84]Such notice shall also specify the suit number, the court in which it is pending and other necessary details.[85]
- Affix such notice on the suit property[86] and also publish on the official website of the court.[87]

The court was of the opinion that if the aforestated measures are taken and if no claims were raised by anyone, then the execution court shall not ordinarily entertain any objections filed under order 21 rule 97 or rule 99 as the case may be.[88]

Further and most importantly, the court, after taking into account the overall scenario as regards pendency of execution proceedings, has issued certain directions in exercise of its power under article 142 read with articles 141 and 144. It was of the opinion that such directions are necessary "in larger public interest to subserve the process of justice"[89] All courts dealing with suits and execution proceedings were expected to mandatorily follow those directions, which have been reproduced verbatim hereunder.[90]

(i) In suits relating to delivery of possession, the court must examine the parties to the suit under Order 10 in relation to third-party interest and further exercise the power under Order 11 Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third-party interest in such properties.[91]

81 *Id*., para 37.
82 *Id*., para 37.1
83 *Ibid*.
84 *Id*., para 37.2.
85 *Id*., para 37.4.
86 *Id*., para 37.3.
87 *Id*., para 37.4.
88 *Id*., para 39.
89 *Id*., para 41.
90 *Id*., para 42.

(ii) In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the court, the court may appoint Commissioner to assess the accurate description and status of the property.[92]

(iii) After examination of parties under Order 10 or production of documents under Order 11 or receipt of Commission report, the court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.[93]

(iv) Under Order 40 Rule 1 CPC, a Court Receiver can be appointed to monitor the status of the property in question as custodialegis for proper adjudication of the matter.[94]

(v) The court must, before passing the decree, pertaining to delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.[95]

(vi) In a money suit, the court must invariably resort to Order 21 Rule 11, ensuring immediate execution of decree for payment of money on oral application.[96]

(vii) In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.[97]

(viii) The court exercising jurisdiction under Section 47 or under Order 21 CPC, must not issue notice on an application of third party claiming rights in a mechanical manner. Further, the court should refrain from entertaining any such application(s) that has already been considered by the court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.[98]

(ix) The court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like

91 *Id*., para 42.1.
92 *Id*., para 42.2.
93 *Id*., para 42.3.
94 *Id*., para 42.4.
95 *Id*., para 42.5.
96 *Id*., para 42.6.
97 *Id*., para 42.7.
98 *Id*., para 42.8.

appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.[99]

(x) The court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to sub-rule (2) of Rule 98 of Order 21 as well as grant compensatory costs in accordance with Section 35-A.[100]

(xi) Under Section 60 CPC the term "… in name of the judgment-debtor or by another person in trust for him or on his behalf" should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.[101]

(xii) The executing court must dispose of the execution proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.[102]

(xiii) The executing court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the police station concerned to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the court, the same must be dealt with stringently in accordance with law.[103]

(xiv) The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the executing courts.[104]

The apex court further directed all the high courts to amend the Rules relating to execution of decrees made in exercise of their powers under article 227 of the Constitution and section 122, CPC to bring them in conformity with the aforestated directions. One year deadline was also fixed for the purpose. Even in the meantime all the courts were expected to follow those directions as they are, since issued article 142 read with articles 141 and 144 of the Constitution, binding on them.

Execution of a decree by an intending transferee

The apex court, in *Vaishno Devi Construction* v. *Union of India*,[105] dealt with a question as to whether a party who is an intending transferee in an agreement to transfer a decree that may be passed in future is entitled to such decree under section 146, CPC.

99 *Id*., para 42.9.
100 *Id*., para 42.10.
101 *Id*., para 42.11.
102 *Id*., para 42.12.
103 *Id*., para 42.13.
104 *Id*., para 42.14.
105 (2022) 2 SCC 290.

While answering the question in the affirmative, the apex court held that even though such intending transferee is not entitled to seek execution under order 21 rule 16 as it contemplates actual transfer of a decree after it has been passed, such intending transferee can seek execution under section 146. The explanation added to the aforementioned rule in 1976 to the effect that "[N]othing in this rule shall affect the provisions of section 146…" makes it abundantly clear. The court observed:[106]

> [t]he objective of amending Order 21 Rule 16 CPC by adding the Explanation was to deal with the scenario as exists in the present case, to avoid separate suit proceedings being filed therefrom and to that extent removing the distinction between an assignment pre the decree and an assignment post the decree.

It is, thus, clarified that an intending transferee can approach the court under section 146, CPC and seek enforcement of the decree after it has been passed even though the agreement between him/her and the decree holder was entered into before passing of the decree.

IX LIMITATION

Limitation Act, 1963: Distinction between section 5 and section 14

In *Kalpraj Dharamshi* v. *Kotak Investment Advisors Ltd*.,[107] a three judge bench of the Supreme Court highlighted the distinction between section 5 and section 14 of the Limitation Act, 1963. Whereas section 5 confers discretionary power on the court to condone delay and grant extension of time, section 14 provides for exclusion of time while calculating period of limitation and it is mandatory if requisite conditions are satisfied. According to the bench, "when a certain period is excluded by applying the principles contained in Section 14, there is no delay to be attributed to the appellant and the limitation period provided by the statute concerned, continues to be the stated period and not more than the stated period."[108]

Section 14 of the Limitation Act, 1963 provides for exclusion of time spent prosecuting another civil proceedings in wrong forum while calculating the period of limitation. The apex court, in *SeshNath Singh* v. *BaidyabatiSheoraphuli Coop. Bank Ltd.*,[109] while holding that the said provision is applicable, if the conditions laid down are satisfied, to applications filed under section 7 of the Insolvency and Bankruptcy Code, 2016 as well, has enumerated those conditions in clear terms.[110]

> The conditions for exclusion are that the earlier proceedings should have been for the same relief, the proceedings should have been prosecuted diligently and in good faith and the proceedings should

106 *Id*., para 27.

107 (2021) 10 SCC 401.

108 *Id*., para 67.

109 (2021) 7 SCC 313. On the question of applicability of provisions of the Limitation Act, 1963 to proceedings under IBC, 2016, also see *Asset Reconstruction Co. (India) Ltd.* v. *BishalJaiswal* (2021) 6 SCC 366.

110 *Id*., para 68.

have been prosecuted in a forum which, from defect of jurisdiction or other cause of a like nature, was unable to entertain it.

The period of limitation prescribed under special laws

Section 29 of the Limitation Act, 1963 provides overriding effect to the period of limitations prescribed under any special or local laws. In *V. Nagarajan* v. *SKS Ispat& Power Ltd.*,[111]the apex court stated that in cases where a period of limitation prescribed under any special law or local law vary from the period prescribed in the Limitation Act, it is the period of limitation prescribed under such special or local law that is applicable. Such period is deemed to be a period of limitation for the purpose of section 3 of the Limitation Act.

Condonation of delay in filing appeal in matrimonial matters

In *Arunoday Singh* v. *Lee Anne Elton*,[112] the court dealt with a question as to whether the power under section 5 of the Limitation Act, 1963 can be used to condone the delay in filing an appeal against a decree passed by a family court under the Special Marriage Act, 1954.

After considering the implications of section 29 (3) of the Limitation Act, 1963, sections 19 (3) and 20 of the Family Courts Act, 1984, and sections 39 (4) and 40 of the Special Marriage Act, 1954, the apex court answered the question in the affirmative.

Relying on the decisions of the Kerala High Court[113] and the Calcutta High Court,[114] the words "suits and other proceedings" under section 29 (3) of the Limitation Act, 1963 shall be interpreted by applying the rule of *noscitur a sociis*to include only suits and other original proceedings and not appeals. Accordingly, it held that by virtue of section 29 (3), the Limitation Act, 1963 is inapplicable only to original proceedings relating to marriage or divorce and not to appeals. Delay in filing appeals can be condoned under section 5.

Applications under section 7, IBC, 2016: Limitation

The provisions of the Limitation Act, 1963 applies to initiation of proceedings under the Insolvency and Bankruptcy Code, 2016 as well. As per section 137 of the former Act, if there is no specific period of limitation prescribed in the schedule to file any application, such applications can be filed within three years from the date of accrual of the right to apply. Since the schedule to the Limitation Act, 1963 does not explicitly specify any limitation for filing applications under section 7 of the IBC, 2017, such applications are required to be filed within three years.

In *Dena Bank* v. *C. Shivakumar Reddy*,[115] an interesting question as to whether application under section 7 of the IBC, 2016 is barred after the expiry of three years from the date of declaration of loan account of the corporate debtor as non-performing asset notwithstanding the acknowledgement of its loan liability by the corporate debtor

111 *Supra* note 38.

112 2021 SCC OnLine SC 3285.

113 *KunnarathYesoda* v. *Manathanath Narayanan,* AIR 1985 Ker 220.

114 *Smt. SipraDey* v. *Ajit Kumar Dey,* AIR 1988 Cal 28.

115 (2021) 10 SCC 330.

to the bank before the expiry of such period. Answering the question in the negative, the apex court observed:[116]

> [i]n our considered opinion an application under Section 7 IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the corporate debtor as NPA, if there were an acknowledgment of the debt by the corporate debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years.

The court further observed that if any court or tribunal passes a decree for money or issues a certificate of recovery in favour of the financial creditor, same would give rise to a fresh cause of action. In such cases insolvency proceedings under section 7 IBC may be initiated within three years from the date of the decree or issuance of recovery certificate as the case may be.

X HEARING

Framing of preliminary issues

In *Santosh Kumar* v. *Ashok Chand*,[117] the apex court held that when some of the issues raised in a suit relate to its maintainability, they can be framed and decided by the trial court as preliminary issues if they do not involves questions of facts or mixed questions of law and fact, which requires adducing of evidence. Such approach of framing certain questions as preliminary questions does not cause any prejudice to the plaintiffs.

Closure of cross examination

In *Ishwarlal Mali Rathod* v. *Gopal*,[118] a defendant who failed to cross examine the plaintiff's witness, even though the court granted him several adjournments to do so, had approached the apex court challenging the order closing cross-examination passed by the trial court, which was also confirmed by high court. While upholding the order closing cross-examination, the apex court observed:[119]

> [t]he present is a classic example of misuse of adjournments granted by the court… Law and professional ethics do not permit such practice. Repeated adjournments on one or the other pretext and adopting the dilatory tactics is an insult to justice and concept of speedy disposal of cases. The petitioner-defendant acted in a manner to cause colossal insult to justice and to concept of speedy disposal of civil litigation.

XI MISCELLANEOUS

Grant of interim anti-suit injunction

In *Madhavendra L. Bhatnagar* v. *BhavnaLall*,[120] a three-judge bench of the Supreme Court held that it is permissible for the trial court in India to grant an interim

116 *Ib*., para 140.
117 (2021) 3 SCC 385.
118 (2021) 12 SCC 612.
119 *Id*., para 7.
120 (2021) 2 SCC 775.

anti-suit *ex parte* injunction against the defendant to restrain her from initiating or proceeding further with any proceedings in India or outside. In the instant case, during the pendency of the suit before the trail court in Bhopal, India, an application was filed by the plaintiff seeking the aforesaid injunction against the defendant, who had initiated proceedings for divorce in the superior court of Arizona, USA. The trial court rejected it on the ground that the Arizona court was not subordinate to it. This was upheld by the high court. The Supreme Court, while granting the injunction, observed that "[T]his view noted by the trial court is completely erroneous and ill-advised. For, the relief claimed by the appellant was for grant of interim anti-suit injunction against the respondent and not against the Superior Court of Arizona, as such."[121]

Transfer of cases: Primacy of probate proceedings

A question as to whether a probate proceedings initiated later in point of time would have precedence over partition suit filed earlier arose before a single judge bench of the Supreme Court in a transfer petition. In *Ravinder Nath Agarwal*v. *Yogender Nath Agarwal*,[122]a transfer petition was filed seeking transfer of a partition suit filed in Delhi to a court in Uttarkhand, where probate proceedings were initiated many years after the initiation of partition suit in Delhi. It was contended before the court that probate proceedings are proceedings in *rem* and, thus, such proceedings should have primacy. In support of the argument, the petitioner relied upon *Balbir Singh Wasu*.[123] The contention was, however, not countenanced by the single judge, who also opined that *Balbir Singh Wasu* was not decided correctly as the court, in the said case, did not distinguish between cases where a will can be produced in judicial proceedings without probate and where it cannot be produced without first obtaining the probate/letters of administration. In the opinion of the bench, primacy can be accorded to the probate proceedings only in cases where there is a bar for production of the will in a judicial proceedings without obtaining probate and not in all cases.

Section 89: Modes of settlement of disputes outside the court

Section 89, CPC specifies four alternative modes of settlement of disputes outside the court: (i) arbitration, (ii) conciliation, (iii) judicial settlement including settlement through Lok Adalat, or (iv) mediation. Wherever settlement of disputes between the parties is appears to be possible, the court has the power to refer the dispute to be settled through any of the modes. In the State of Tamil Nadu, section 69-A of the Tamil Nadu Court Fees and Suit Valuation Act, 1955 provides that when the dispute is referred for settlement according to section 89, CPC, the court fee paid shall be refunded at the time of reference without waiting for settlement to happen.

In *High Court of Madras* v. *M.C. Subramaniam*,[124]during the pendency of the appeal, parties entered into a private out-of-court settlement and filed a memo seeking

121 *Id*., para 7.

122 2021 SCC OnLine SC 86.

123 *Balbir Singh Wasu* v. *Lakhbir Singh* (2005) 12 SCC 503.

124 (2021) 3 SCC 560.

permission to withdraw the appeal and for refund of the court fee. The high court granted the permission to withdraw and also issued direction for refund of court fee. The Registry of the high court, however, declined to refund the fee on the ground that such re-fund was not authorized by relevant rules. The respondent, left with no choice, filed civil miscellaneous petition under section 151, CPC before the high court seeking direction to re-fund. The high court, after careful consideration of the scheme of section 89, CPC and section 69-A of the aforementioned Tamil Nadu Act, observed that denial of re-fund on the ground that private settlement is not covered under section 89 would amount to discrimination between those who have their dispute settled on a reference by the court through any one of the modes mentioned in section 89 and those who settled their dispute privately on their own. These are similarly situated persons and discrimination between them would violate article 14 of the Constitution. It further opined that given the beneficial intent of the provisions, "they must be interpreted liberally in a manner that would serve their object and purpose."[125] So interpreted, these provisions shall "cover all methods of out-of court dispute settlement between parties that the court subsequently finds to have been legally arrived at."[126] It accordingly directed the registry to re-fund the court fee. The Registry approached the Supreme Court challenging the direction. The two-judge bench of the apex court, while taking into account the context of section 89, CPC, upheld the impugned judgment. It opined that the provision "must be understood in the backdrop of the longstanding proliferation of litigation in the civil courts, which has placed undue burden on the judicial system, forcing speedy justice to become a casualty."[127] The object was to lighten the overcrowded docket of the courts. The purpose of section 89, CPC also informs section 69-A of the Tamil Nadu Act, which encourages outside court settlement by providing for refund of court fee. In the opinion of the bench, if these provisions are interpreted literally, not only that their purpose will be defeated, it would also results in injustice by denying the benefit of refund to those who are even more deserving of it by settling their dispute privately even without the intervention of the court. Thus, the bench categorically stated that literal interpretation, under the circumstances, should be departed from in favour of purposive interpretation. Accordingly, it confirmed the conclusions of the high court.

Compromise decree

Ordinarily consent decrees are not subject to modifications or alterations. They create estoppel and put an end to further litigation between the parties over the same subject matter. If any revision is required, courts ordinarily seek revised consent of the parties. But this rule has exceptions. The courts can interfere with the consent decrees, if they find that the compromise was vitiated by fraud, misrepresentation or mistake. While reiterating the position, the apex court, in *Compack Enterprises India (P) Ltd.* v. *Beant Singh*,[128] also added that the "[C]ourt in the exercise of its inherent

125 *Id*., para 9.
126 *Ibid*.
127 *Id*., para 13.
128 (2021) 3 SCC 702.

powers may also unilaterally rectify a consent decree suffering from clerical or arithmetical errors, so as to make it conform with the terms of the compromise."[129]

Further, it is well known that under certain circumstances a compromise decree can also be set aside. A question as to whether a separate suit can be filed seeking setting aside of a compromise decree came up for consideration in *R. Janakiammal* v. *S.K. Kumarasamy*.[130] The said question is no longer *res integra*. Relying on the long line of judicial precedents rendered in terms of order 23 rule 3-A, CPC, which clearly bars such suits, the apex court answered the question in the negative. It reiterated that the proper forum for questioning the compromise decree on the ground that the same was not lawful is the court which recorded the compromise and passed decree in terms of it. A separate suit is not maintainable.

Supreme Court: Powers of a single-judge

In a transfer petition pending before a single-judge, a joint application was filed by the parties, in terms of the settlement reached by them through mediation, seeking annulment of their marriage by the Supreme Court in exercise of its power under article 142 of the Constitution of India. In this context, a question as to whether a single-judge of the Supreme Court can exercise its power under article 142 to annual the marriage was considered in *AnushaShrivastava* v. *Vikash Nigam*.[131] The single-judge, after considering articles 142 and 145 of the Constitution and the relevant provisions of the Supreme Court of India Rules, 2013 opined that even though a single judge can exercise powers under article 142 of the Constitution, s/he can do so only in four categories of cases specified in the proviso to rule (1) of order VI of the aforesaid Supreme Court Rules. He held that "[A] decree for annulment of marriage in exercise of jurisdiction under Article 142 of the Constitution of India cannot be said to be relatable or ancillary to a transfer petition seeking transfer of proceedings arising out of a matrimonial dispute from a Court of one State to a Court in another State."[132] He accordingly directed the matter to be placed before the Chief Justice stating that joint application seeking annulment of marriage ought to be decided by a bench comprising of at least two judges.

The matter was subsequently placed before a two judge bench and it got finallyresolved.[133]

Disobedience of injunction order

Order 39 rule 2-A, CPC specifies consequence of disobedience or breach of injunction order granted by a court. As per the provision, the court can order attachment of property and/or detention in civil prison for such disobedience or breach. In 2019, two different benches of the apex court headed by the same judge opined that since the sanctions contemplated in the provision are in the nature of criminal liability,

129 *Id*., para 20.

130 (2021) 9 SCC 114.

131 2021 SCC OnLine SC 620.

132 *Id*., para 9.

133 *AnushaShrivastava*v. *Vikash Singh*, 2021 SCC OnLine SC 594.

there has to be 'willful' disobedience. Mere disobedience is not sufficient to attract the provision.[134]The correctness of reading the word 'willful' into the provision that too without assigning any reasons in support was doubted in the annual survey of 2019.[135] A two-judge bench of the apex court in the current survey year, in *Amazon.Com NV Investment Holdings LLC* v. *Future Retail Ltd.*,[136] has raised similar doubts:[137]

> It is one thing to say that the power exercised by a court under Order 39 Rule 2-A is punitive in nature and akin to the power to punish for civil contempt under the Contempt of Courts Act, 1971. It is quite another thing to say that Order 39 Rule 2-A requires not "mere disobedience" but "wilful disobedience". We are prima facie of the view that the latter judgment in adding the word "wilful" into Order 39 Rule 2-A is not quite correct and may require to be reviewed by a larger Bench.

While referring the matter to be placed before a larger bench, the court also pointed out the difference between orders passed in contempt of court cases and orders passed under order 39 rule 2-A. In contempt of court cases, orders are made primarily to punish the contemnor whereas orders under order 39 rule 2-A are made primarily to enforce interim injunctions. Their objectives are different and they cannot be equated.

Effect of non-compliance with procedures

In certain cases in the survey year, the apex court dealt with the questions relating to non-compliance with the procedural provisions enshrined in different legislations.

In *Subodh Kumar* v. *Shamim Ahmed*,[138] the apex court dealt with the effect of non-copliance with section 17 of the Provincial Small Cause Courts Act, 1887, The said provision mandates the small causes courts to follow the procedure laid down in CPC in all suits except in cases where otherwise is prescribed. The proviso to the said section, however, requires applicant, who has applied for setting aside the *ex parte* decree, to deposit the amount due from him under the decree or give security for compliance of the same.

In this case, an application was filed under order 9 rule 13, CPC for setting aside an *ex parte* decree without complying with the condition precedent laid down in the aforesaid proviso. The apex court said that such an application is not maintainable. The court was of the opinion that it is not a case of mere breach of procedure it is clear case of non-compliance with the condition precedent. The court succinctly explained the rationale behind the provision:[139]

> Proviso to Section 17 has been engrafted with the object that unscrupulous tenants who do not appear in the Court in the suit proceedings should not be

134 See *Ramasamy* v. *Venkatachalapathi*(2019) 3 SCC 544; *U.C. Surendranath* v. *Mambally's Bakery* (2019) 20 SCC 666

135 See P. Puneeth, "Civil Procedure" LV *Annual Survey of Indian Law* 25 – 79 (ILI, 2021).

136 (2022) 1 SCC 209.

137 *Id*., para 61.

138 2021 SCC OnLine SC 164.

139 *Id*., para 24.

allowed to file the application to recall ex-parte decree unless they deposit the entire amount or give security to the Court for compliance of the decree. The proviso is to take care of those tenants who deliberately do not appear in the suit necessitating the Court to pass ex-parte decree. The object is to protect the landlord and to ensure that the decree passed is satisfied by the tenant, in event, the application under Order 9 Rule 13 is ultimately rejected.

The court further added that mere compliance with the proviso to section 17 does not entitle the applicant to have the *ex parte* decree set aside. Compliance with the proviso is only a precondition for maintaining the application under order 9 rule 13, CPC and the same can be allowed "only when sufficient cause is made out to set aside the ex-parte decree."[140]

In *Aman Lohia* v. *Kiran Lohia*,[141] a three judge bench of the apex court castigated a family court for flouting mandatory procedure prescribed by law. While noting that the "nature of enquiry before the Family Court is, indeed, adjudicatory,"[142] the bench opined that:[143]

> Indubitably, the Family Court is obliged to inquire into the matter as per the procedure prescribed by law. It does not have plenary powers to do away with the mandatory procedural requirements in particular, which guarantee fairness and transparency in the process to be followed and for adjudication of claims of both sides.

Further, elaborating the same, the bench observed:[144]

> [t]he Family Court is expected to follow procedure known to law, which means insist for a formal pleading to be filed by both sides, then frame issues for determination, record evidence of the parties to prove the facts asserted by the party concerned and only thereafter, to enter upon determination and render decision thereon by recording reasons for such decision. For doing this, the Family Court is expected to give notice to the respective parties and provide them sufficient time and opportunity to present their claim in the form of pleadings and evidence before determination of the dispute.

The bench also rejected the argument based on the observations made in *Sangram Singh*[145] that non-compliance with the procedure is not to be taken too seriously. The bench said that the observations made in *Sangram Singh* were contextual and they have no application to the case in which the court has not followed any semblance of procedure.

140 *Id*., para 49.
141 (2021) 5 SCC 489.
142 *Id*., para 36.
143 *Ibid*.
144 *Id*., para 39.
145 *Sangram Singh* v. *Election Tribunal*, AIR 1955 SC 425.

In *A. Manju* v. *Prajwal Revanna*,[146] a similar question arose in the context of the Representation of the People Act, 1951. Section 83 (1) of the Act provides that where the election petition challenges the election on the ground of 'corrupt practice', the petition shall be accompanied by an affidavit in support of the allegation in the prescribed format. In this case, the apex court considered the question as to whether the election petition is liable to be dismissed if such an affidavit is not filed along with the petition.

The apex court, relying on *Murarka Radhey Shyam Ram Kumar*,[147] *Ponnala Lakshmaiah*,[148] and *G.M. Siddeshwar*,[149] had answered the question in the negative. It held that "while the requirements to be met in the election petition may be technical in nature, [but] they are not hyper technical,"[150] the court hearing the election petition shall "permit the petitioner to cure this defect by filing an affidavit in the prescribed form."[151]In the opinion of the apex court, such an opportunity to cure the defect can be provided not only when the defective affidavit is filed but also when no affidavit was filed in the first place.

XII CONCLUSION

The two most significant contribution of the apex court in the realm of civil procedure in the survey year are, *one*, slew of directions issued to tackle constant abuse of procedural provisions to delay and obstruct execution of decrees, and, *second*, providing greater clarity on the question of exclusion of jurisdiction of civil courts under the Wakf Act, 1995. Both were rendered by three judge benches. It is expected that the directions issued to arrest the trend of abusing procedural provisions to delay and derail execution of decrees would go a long way, if followed strictly by all courts dealing with suits or execution proceedings, in changing the existing scenario, which was very aptly and succinctly described by the Privy Council way back in 1872 – "actual difficulties of a litigant in India begin when he has obtained a decree." Even today, the scenario largely remains the same and needs to be changed.

Provisions relating to exclusion of jurisdiction of civil courts in the Wakf Act, 1995 were wrongly construed in the past. A three judge bench of the apex court in *Rashid Wali Beg*,[152] has pointed out the mistake and clearly enunciated the position. It also identified provisions that are responsible for creating confusionas regards the scope of section 85 of the Act. The Parliament is expected to duly take note of and do what is necessary to remove the confusion.

In addition, some of the other decisions rendered by different benches of the apex court are also noteworthy. In *Saurav Jain*,[153] the apex court has very succinctly

146 (2022) 3 SCC 269.

147 *MurarkaRadheyShyam Ram Kumar* v. *Roop Singh Rathore* (1964) 3 SCR 573.

148 *PonnalaLakshmaiah* v. *KommuriPratap Reddy* (2012) 7 SCC 788.

149 G.*M. Siddeshwar* v. *Prasanna Kumar* (2013) 4 SCC 776.

150 *Supra* note 146, para 22.

15 1*Id*., para 26.

152 *Supra* note 6.

153 *Supra* note 65.

restated the position regarding filing of memorandum of cross-objection in an appeal – when it is necessary and when arguments against adverse findings can be raised without filing such memorandum. This restatement has brought in much needed clarity on the question. Adoption of purposive interpretation to interpret section 69-A of the Tamil Nadu Court Fee and Suit Evaluation Act, 1955 in *M. C. Subramaniam*[154] was another important decision in the direction of promoting settlement of disputes outside the court. Literal interpretation of the provision would have defeated the purpose. The court rightly chose purposive interpretation.

In the survey year, a question regarding interpretation of order 39 rule 2-A has been rightly referred to a larger bench. In two earlier decisions rendered in 2019, the word 'disobedience' was interpreted to mean 'willful disobedience'. The correctness of the interpretation was doubted in *Amazon.Com NV Investment Holdings LLC,*[155] and the question was, thus, referred to be clarified by a larger bench. It is important that the question is answered authoritatively sooner.

154 *Supra* note 124.
155 *Supra* note 136.