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CIVIL PROCEDURE CODE*Kanwal D.P. Singh**

I INTRODUCTION

THE YEAR 2023 started with a positive note of reducing pendency of cases. Supreme Court expressed serious concerns at the pendency of cases and issued a slew of directions to ensure the speedy disposal of cases.¹ It pointed out that efforts were collectively. The court felt that citizens specially litigating parties loose confidence due to inordinate delay. A total of eleven directions were issued to the high courts to monitor the cases pending for over five years.

- i. Ensure time bound issue of the summons as per Order V Rule (2) of CPC.
- ii. Ensure filing of written statement as per Order VIII Rule 1 and proviso.
- iii. After completion of pleadings are complete, recording of the admissions and denial should be done as per Order X and follow the settlement outside the court of section 89(1).
- iv. In case of failure of ADR the court need to frame issues within one week.
- v. Date of trial should be fixed in consultation and the trial should proceed on day-to-day basis.
- vi. Maintainence of the diary to avoid overcrowding of the cases.
- vii. The counsels should know the provisions of Order XI and Order XII and be taught preferably by virtual mode.
- viii. The trial courts need to meticulously follow provisions of Rule 1 of Order XVII.
- ix. The courts should deal with provisions for payment of cost and ensure no adjournment is sought.
- x. Oral arguments to be held continuously and decision should be given within the time stated under Order XX of CPC.
- xi. The statistics relating to the pendency beyond 5 years shall be forwarded by the principal district judge once in a month to the review committee of high courts which shall meet at least once in two months and monitor the old cases constantly.

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1 In the case *Yashpal Jain v. Sushila Devi* 2023 LiveLaw (SC) 916.

II JURISDICTION

State of Meghalaya filed Original Suit No. 1 of 2021, seeking a declaration that specific sections of the Lotteries (Regulation) Act, 1998, and certain rules are unconstitutional. The Union of India and several States contended that the suit is not maintainable, citing previous rulings that disallow challenges to the *vires* of a statute under article 131. Past judgments indicate a nuanced interpretation of “legal rights” and the context in which states may invoke this article. The suit raised important constitutional questions regarding the balance of powers between the Union and States in India, particularly in the realm of business regulation such as lotteries. The maintainability of the suit under article 131 is contested but appears to find support in earlier judicial interpretations that permit states to seek redress for alleged violations of their rights.

In this case² the Bench concluded that interim relief such as order of injunction does not have to await the outcome of the reference before the larger Bench. It noted:

“even if final determination of the question of maintainability in case the constitutional validity of the provisions is to be decided may depend upon decision of the larger bench, the supplemental proceedings in the present suit especially the ones relating to interim relief cannot be put on hold”

Recently³ the apex court held that a suit can be decided on merit under Order 17 Rule 3 CPC if there is some material for merit, even if it is not capable of being interpreted as evidence. The court cautioned that the provision ought to be applied sparingly as it has the potential to *restrict the remedy of unsuccessful party for redress*. Order 17 Rule 2 and 3, Order 9 CPC are discretions conferred on the courts. Supreme Court emphasized that dismissals due to procedural defaults do not bar subsequent suits on the same matter.

The Supreme Court in the case of *Jini Dhanrajgir v. Shibu Mathew*⁴ has held that Order XXI R 102, CPC expected the court to determine if transfer of immovable property which was made post dismissal of suit, was made after institution of appeal/further litigation or not in order to attract the principle of *lis pendens*. It also held that Section 47 of CPC confers exclusive jurisdiction on the court to prevent unnecessary litigation.

Rule 97 Order XXI of CPC gives the decree holder power to ask assistance of Court to execute a decree. Rule 98 Order XXI empowers the court to pass directions for the decree holder if possession is obstructed by third party. Rule 100 Order XXI of CPC, gives the court power to issue orders for possession. Rule 102 Order XXI of CPC renders Rules 98 and 100 inapplicable if property was transferred during pendency of the suit.

2 2023 LiveLaw (SC) 427.

3 *Prem Kishore v. Brahm Prakash*, 2023 LiveLaw (SC) 266.

4 2023 LiveLaw (SC) 450.

The Bench observed

What is intended by conferring exclusive jurisdiction on the executing court is to prevent needless and unnecessary litigation and to achieve speedy disposal of the questions arising for discussion in relation to the execution, discharge or satisfaction of the decree.

Further, if there is any impediment in the execution of a decree passed by a court of competent jurisdiction, then the Rules 97, 101 and 98 of Order XXI empower enable the court to adjudicate the *inter se* claims of the decree-holder and the third parties to avoid prolonged litigation as in the noteworthy judgment in case of *Mumtaz Yarud Dowla Wakf*⁵ in favour of whom the decree was already granted back in 2000. The court it called out the dilatory tactics of respondents restoring the order in favour of suit property owner. Court highlighted this unfortunate situation, “*that the difficulties of a litigant in India begin when he has obtained a Decree...*”

The court placed reliance upon the decisions in *Ramesh Gobindram (Dead) through LRs. v. Sugra Humayun Mirza Wakf*⁶ and *Rashid Wali Beg v. Farid Pindari*⁷ taking note of the Wakf (Amendment) Act, 2013. Court held that the amendment was procedural and has to be applied retrospectively in the context of change of forum and jurisdictional provisions. If one party seems to be gaining an unfair advantage, even when they had a chance to raise a plea of lack of jurisdiction earlier, they should not be allowed to bring said objection during the execution of proceedings. It was also observed in *Union of India v. N. Murugesan*,⁸ that circumstances have evolved since previous decisions Section 9 of CPC, provides that the presence of jurisdiction, *prima facie* has to be ascertained. This process will prevent subjecting the parties to undue uncertainty and difficulties.⁹

It said that Section 9 and 47 of CPC shall be determined by the court executing the decree and not by a separate suit. It also dealt with Section 6 (Disputes Regarding Wakfs), Section 7 (Power of Tribunal to Determine Disputes Regarding Wakfs) Section 83 (Constitution of Tribunals, etc.) and Section 85 (Bar of Jurisdiction of Civil Courts) of Wakf Act of 199

When a *lis* is entertained, the court has the responsibility to confirm the existence of jurisdiction, even if this matter has not been raised by the parties. If the court has not verified jurisdiction and a plea is raised after an adverse judgment, it is not deemed lack of jurisdiction but a procedural right and retrospective operation should be carried out to rectify a flaw.¹⁰ The principle governing the

5 *Mumtaz Yarud Dowla v. Badam Bala krishna* 2023 Live law (SC) 920.

6 (2010) 8 SCC726.

7 (2022) 4 SCC414.

8 (2022) 2 SCC 25.

9 *Vankamamidi Venkata Subba Rao v. Chatlapalli Seetharamaratna Ranganayakkama* (1997) 5 SCC 460.

10 *Madras Bar Association v. Union of India* 2022.

absence of jurisdiction in a specific forum might vary in situations where two or more forums are simultaneously addressing the same matter, including the rights and obligations of the involved parties.

III RES JUDICATA

Res judicata is a doctrine that prevents the re-litigation of matters already adjudicated in previous legal proceeding. Supreme Court has in detail discussed the principle of *Res judicata* in details in three important cases in the year 2023. It held that an order to close the proceedings cannot be construed as decision on merits and cannot bar a subsequent suit. Apexcourt set aside a judgment and decree of the Court of Delhi High in case of *Prem Kishore v. Brahm Prakash*¹¹ of for being in violation of the principles of the *res judicata*. The division bench observed:

“The order did not purport to be a final disposal of the suit. It merely stopped the proceedings. It did nothing more. This is not final decision of the suit within the meaning of Order 9 Rule 8 and Order 17 Rule 3 of the CPC.

The general principle of *res judicata* under Section 11 of the CPC contain rules of conclusiveness of judgment. For *res judicata* to apply, the matter in issue in the subsequent suit must be the same matter which was directly and substantially an issue in the former suit. The suit should have been decided on merits and the decision should have attained finality. The Rule 3 of Order 17 of the CPC to decide the suit on the merits is a drastic power that restricts the remedy of the unsuccessful party for redress. It needs to be used only sparingly.

In the case of *Keshav Sood v. Kirti Sood* the question revolved around a dispute where the appellant had applied for the rejection of plaint under Rule 11 of Order VII of CPC invoking the contention of *res judicata*.¹² The Supreme Court said that the principle of *res judicata* cannot be invoked and clarified the scope and application of Rule 11(d) of CPC and its relationship with the doctrine of *res judicata*. The SC said that section 11 (d) provides for the *rejection of a plaint when “the suit appears from the statement in the plaint to be barred by any law.* The court further emphasized that the issue of *res judicata* entails a detailed examination of various elements, including the pleadings in the earlier suit, the judgment of the trial court, and the judgment of the Appellate Courts. This pronouncement echoes the findings made by DY Chandrachud J., in the 2021 case of *Srihari Hanumandas Totala v. Hemant Vithal Kamat*.¹³

The case of *State of Meghalaya v. Union of India*¹⁴ dealt *res judicata* specifically under the category of Res Subjudice: Stay of Suit. In the case of *State of Orissa v. Laxmi Narayan Das (dead) thr. Lrs.*,¹⁵ *Res Judicata* was dealt by

11 2023 LiveLaw SC 266.

12 *Keshav Sood v. Kirti Pradeep Sood* 2023 live law SC 799.

13 AIR 2021 Supreme Court 3802.

14 2023 SCC OnLine SC 613.

15 2023 SC OnLine SC825.

Supreme Court specifically under the category of Constructive Res Judicata) and other important provisions like injunction, transfer of cases, compromise decree, powers of Supreme Court, disobedience of injunction (specifically under the category of Withdrawal of Suit). The main issue was maintainability of writ petition when the civil suit filed for same relief was withdrawn without liberty to file fresh one and on the concealment of material facts from the court.

The apex court gave few key observations. It emphasized that there was a significant delay in filing the writ petition, which was filed 18 years after the order. The respondents did not avail the appropriate remedy against the final publication of record of rights in a timely manner. Therefore the respondents were denied any relief. The court noted that there was no official order from the government allotting land to the respondents. The respondents could not claim relief based solely on official notings. The principle of constructive res judicata was applied, which bars a party from raising an issue that could have been raised in a previous suit. The respondents previously withdrew a civil suit without liberty to file a writ petition on the same issue, yet they filed the writ petition without disclosing the prior civil suit and its withdrawal. The court held that a litigant could be denied relief for concealing material facts or mis-stating facts. The Supreme Court allowed the appeal, setting aside the high court's order in Writ Appeal No. 108/2009. Consequently, the writ petition filed by the respondents was dismissed. The court found merit in the appeal, emphasizing the principles of delay, *Constructive Res Judicata*, and the necessity for complete disclosure of facts by litigants.

IV PLEADINGS

The case of *Damodhar Narayan Sawale (D) through Lrs. v. Tejrao Bajirao Mhaske*¹⁶ deals with the quiet possession of the purchaser's property being disturbed by the former owner of the suit land and the validity of the registered sale deed between the defendants and the plaintiff.

The case dealt with importance and content of pleadings before tribunals and quasi-judicial bodies, rejection of plaint specifically under the category of counter claim in a suit. The bench held that the high court decision that deemed the sale transaction void as per the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 was not sustainable. The court noticed that Section 9 of the Civil Procedure Code grants the civil courts the authority to determine disputes of a civil nature unless barred by a statute. Section 36A of the above stated Fragmentation Act provides that the civil courts cannot settle, decide or deal with any question under the said Act. This question must be settled by the state government or any officer/authority. Moreover, any suit filed under this Act must be referred to the competent authority as per section 36B. Thus, the court concluded that the trial court had no jurisdiction to decide the present matter. The court observed that a defendant could not raise a counter-claim against a co-defendant according to Order VIII Rule 6A, CPC. In this case, the Supreme Court reiterated that even though the powers under article 136 must be used

¹⁶ 2023 SCC OnLine SC 566 Civil Appeal No. 930 of 2023.

sparingly and in extraordinary circumstances where the substantial question of law is brought up, it doesn't prohibit the courts from reversing an order from the lower courts that result in grave injustice.

The case of *Essemm logistics v. Darcl Logistics*¹⁷ involves the rejection of a counter-claim filed by ESSEMM Logistics against DARCL Logistics Limited. Section 16 of the Carriage by Road Act, 2007, mandates notice only for claims related to loss or damage to consignments. The counter-claim by ESSEMM Logistics pertained to losses unrelated to consignments, such as business opportunity, reputation, and idle resources. The Supreme Court held that Section 16 of the Carriage by Road Act, 2007, requires notice only for claims concerning loss or damage to consignments. Since ESSEMM Logistics' counter-claim did not pertain to consignment loss but to other types of losses, the mandatory notice requirement was inapplicable. Therefore, the rejection of the counter-claim under Order VII Rule 11 CPC was erroneous.

Similarly in case of *G. Nagaraj v. B.P. Mruthunjayanna*¹⁸ Rule 11 of Order VII of CPC mandates only looking at the plaint and the documents filed with it. It is well settled that for deciding an application under Rule 11 of Order VII, CPC, only the plaint and the accompanying documents should be considered.

The court noted that inconsistent averments in the plaint do not automatically lead to the conclusion that no cause of action is disclosed. The primary concern should be whether any cause of action is disclosed, not whether the appellants will ultimately succeed. The court restored Original Suit No. 4252 of 2016 to the file of the city civil court, directing that the suit be decided according to law. The Supreme Court clarified that its observations were solely for determining whether the plaint disclosed a cause of action and did not touch upon the merits of the case.

Order VII Rule 11 of the Civil Procedure Code, 1908 provides for the rejection of a plaint under certain circumstances, such as non-disclosure of a cause of action, the relief claimed being undervalued, or the suit being barred by any law. The primary grievance of the respondent in case of *Sajjan Singh v. Jasvir Kaur*¹⁹ was that the appellant had not sought an appropriate prayer to declare the sale deeds as illegal, null, and void, and no court fee was paid in this regard. The court observed that the appellant had valued the prayer made in the suit and paid the court fee. The Supreme Court opined that an appropriate prayer should have been sought is a matter to be decided in the suit itself and not at the stage of deciding an application under Order VII Rule 11 of CPC.

The jurisprudence related to the rejection of plaint emphasizes that such rejection should be based on the contents of the plaint itself and not on any external evidence or grounds. The plaint should only be rejected if it clearly fails to

17 (2023) 9 SCC 753 Civil Appeal No. 3229 of 2023.

18 2023 SCC OnLine SC 1270 Civil Appeal No. 2737 of 2023.

19 2023 SCC OnLine SC 1282 Civil Appeal No. 4221 of 2023.

disclose a cause of action or if it falls within the other specified grounds under Order VII Rule 11. It also entails the proper valuation of the suit and the corresponding payment of court fee based on the relief sought. The Supreme Court clarified that the contentions raised by the respondents regarding the absence of an appropriate prayer and the non-payment of court fee should be addressed in the written statement and during the framing of issues in the trial.

Further in the case of *Geethav Nanjundaswamy*²⁰ Supreme Court dealt with the principles underlying the rejection of plaints under Order 7 Rule 11 and whether a plaint can be legally rejected in part under Order 7 Rule 11, CPC. The court emphasized that for an application under Order 7 Rule 11 to succeed, the plaint must be read meaningfully and as a whole. If the plaint, as read, discloses a cause of action, the application must fail. The averments made by the plaintiffs indicated a cause of action that warranted a trial, rather than summary rejection. This principle has been consistently followed, as noted in precedents such as the 1936 decision in *Maqsd Ahmad v. Mathra Datt and Co.*,²¹ and more recent cases like *Sejal Glass Ltd. v. Navilan Merchants (P) Ltd.*²² and *Madhav Prasad Aggarwal v. Axis Bank Ltd.*²³ The court said that the application of Order 7 Rule 11 is to prevent frivolous litigation from wasting judicial time. However, this drastic power must be exercised cautiously and only when the plaint clearly does not disclose any cause of action or is barred by law.

The Supreme Court emphasized that the cause of action for possession and the cause of action for damages for use and occupation are distinct. In the case of *Bharat Petroleum Corporation Ltd v. Atm Constructions Pvt. Ltd.*²⁴ the first suit was filed in 2006 for possession of the property, while the subsequent suit filed in 2020 was for damages arising from the appellants' continued occupation after the lease expired.

The court noted that Order II Rule 2 CPC allows for the joining of claims for *mesne profits* with a suit for recovery of immovable property. However, it also acknowledged jurisprudence indicating that separate suits for possession and for mesne profits can be maintained if they arise from different causes of action. The Supreme Court concluded that the subsequent suit filed by the respondent-plaintiff for damages for use and occupation of the property was maintainable, even though such damages were not claimed in the earlier suit for possession. The causes of action for possession and for damages for use and occupation are distinct and can be the subject of separate suits. The Supreme Court's decision affirms the differentiation between causes of action and supports the maintainability of separate suits under appropriate circumstances.

20 2023 SCC OnLine SC 1407 Civil Appeal No. 7413 of 2023.

21 AIR 1936 Lah 1021 (A).

22 2018 (11) SCC 780.

23 AIR OnLine 2019 SC 1084.

24 2023 SccOnLine Sc 1614 Civil Appeal No...of 2023 (Arising Out Of S.L.P. (C) No. 8292 Of 2021).

“However, on considering the averments in the plaint as they are, we are of the opinion that the plaint is ought to have been rejected being vexatious, illusory cause of action and barred by limitation and it is a clear case of clever drafting.”, the court observed in the case of *Ramisetty Venkatanna v. Nasyam Jamal Saheb*²⁵ while allowing the appeal.

In *Eldeco Housing and Industries Limited v. Ashok Vidyarthi*²⁶ court observed:

The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

However, the court refused to accept this argument, observing that “no amount of evidence or merits of the controversy can be examined at the stage of the decision of the application under Order VII Rule 11 C.P.C.” Therefore in the above case while setting aside the impugned order, SC directed the trial court to proceed with the suit.

In the case of *Mohammed Abdul Wahid v. Nilofer*²⁷ the High Court of Bombay had held that parties cannot be confronted with a fresh document during cross-examination. Holding the high court’s views unsustainable, the Supreme Court stated that no distinction can be drawn between a party to a suit and a witness in this context and held that a document can produced during cross-examination in a civil trial to confront a party to the suit or a witness.

V PARTIES

In the case of *YP Lele v. Maharashtra State Electricity Distribution Company Ltd.*,²⁸ Supreme Court observed:

“Under Order XVII Rule 2, the court would proceed to pass orders with respect to any of the parties being absent or both the parties being absent. Whereas the explanation is confined to record the presence of that party and that party alone, which has led evidence or substantial evidence and has thereafter failed to appear.”

Order XVII Rule 2 CPC provides that if the parties or any one of them failed to appear on a day to which the hearing of the suit is adjourned, the court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it deems fit.

In the above case the defendants did not appear and the counsel had withdrawn his Vakalatnama by a written request before the trial court. The trial court proceeded under Order XVII Rule 2 against the defendants. Later an *ex*

25 2023 LiveLaw(SC)372.

26 Special Leave Petition (C) No. 19465 Of 2021.

27 2023 LiveLaw (SC) 1061.

28 2023 LiveLaw (SC) 653.

parte decree was passed and application filed by the defendants was set aside. High Court OF also maintained the *ex parte* decree. The court noted that the defendant had not led any evidence at all and thus the explanation could not be invoked as against the defendant/appellant.

The dispute in the case of *Mohammed Abdul Wahid v. Nilofer*²⁹ looked into question of law whether a plaintiff or defendant can be treated as a witness in their own case and present any documents during cross-examination. This issue arose from conflicting decisions in the previous cases (*Vinayak M. Dessai v. Ulhas N. Naik*³⁰ and *Purushottam v. Gajanan*³¹). This case challenges a high court judgment that questioned the production of documents during cross-examination and whether procedural rules should allow a party to introduce new evidence at this stage without causing unfair surprise to the other party.

The Supreme Court ruled that there is no legal distinction between a party to a suit and a witness called by that party for the purposes of adducing evidence. It held that a party can indeed appear as a witness in their own cause and their testimony should be treated the same as any other witness's testimony. The court clarified that documents can be introduced during cross-examination to aid in the effective examination of witnesses, thereby ensuring a fair trial.

This ruling reinforces the principle of equal treatment of parties and witnesses in the context of presenting evidence. It emphasizes the objective of a trial, which is to ascertain the truth and ensure fair administration of justice, rather than adhering to procedural technicalities that may impede justice. The judgment clarifies that procedural rules should be interpreted in a manner that facilitates the truth-seeking function of trials and does not unduly disadvantage any party.

Case of *Ganesh Prasad v. Rajeshwar Prasad*³² discussed Order VI Rule 17, and Order IX Rule 9 Code of Civil Procedure, 1908. Apex court upheld the amendment to the plaint, emphasizing that the right to redemption is recurring and not extinguished by the dismissal of the previous suit. The court clarified that Order IX Rule 9 of the CPC did not bar the fresh suit as the cause of action for redemption is a continuing one until it is either barred by time or extinguished by redemption.

These decisions ensured that the procedural rules should not obstruct the substantial rights of the parties, particularly in matters of recurring rights like redemption so that justice is served without unnecessary delays.

VIAPPEALS

Power of appellate court

In the civil appeal no 1491 of 2023 *Sirajudheen v. Zeenath*³³ the court dealt with power of appellate court, cross objection in appeals, and contents of appellate

29 (2024) 2 SCC 144 Civil Appeal No. 8146 of 2023.

30 2017 SCC OnLine Bom 8515 .

31 2012 SCC OnLine Bom 1176.

32 2023 SCC OnLine SC 256 SLP (C) NO. 28377 OF 2018.

33 2023 SCC OnLine SC 196.

court judgement. The court held that the scope of remand in terms of Rule 23 of Order XLI CPC is extremely limited. The court further observed that *de novo* trial cannot be ordered merely because a particular evidence has not been produced. If one party has not produced evidence, then adverse inference can be drawn against them, but that is not a ground to remand the matter for fresh trial.

It set aside an order of High Court of Kerala, whereby it had remanded a matter for trial *de novo* without adverting to the findings of the trial court and without specifying how the findings were unjustified. Referring to the Rule 23 of Order XLI CPC empowering an appellate court to pass an order of remand, it noted that the same could not be applied to the present case as the suit has not been disposed of on a preliminary point.

First Appeal

In the case of *Seethamal v. Narayanasamy*³⁴ Supreme Court has made it clear that a first appeal and a second appeal arising out of two proceedings cannot be clubbed and disposed of by a common judgment even though the parties are essentially the same and the property in dispute is common. It observed that considerations to be made in case of a first appeal under Section 96 of the Civil Procedure Code, 1908 (CPC) and that of a second appeal under Section 100 CPC are entirely different. For instance, the re-appreciation of evidence would only arise while deciding the first appeal and not the second appeal.

In the *Seethamal* case in 1996, a suit was filed for declaration and injunction based on the contention that the plaintiffs were the absolute owners of the property. The suit was dismissed in 1998. A regular first appeal was filed against the order, which was disallowed in 1999. A second appeal was filed challenging the same.

In 2001, another suit was filed seeking partition and separate possession of properties, which included the property involved in the 1996 suit. The suit for partition was allowed. Subsequently, a regular first appeal was filed. As the parties in both the proceedings were the same, the High Court of Madras clubbed and considered the appeals. The apex court noted that in a normal circumstance the high court would have been justified in considering the matters together in order to avoid contradicting decrees. However, in the present case one was a regular first appeal while the other was a second appeal. The considerations to be made in these two appeals are entirely different. Refusing to decide the matter on merit at this stage, the apex court noted that the high court ought to take into consideration the facts arising in the first appeal and decide the same, thereafter the second appeal would arise for an independent consideration. It was made abundantly clear that the two appeals being remanded to the high court ought to be de-linked and considered independently.

Considering the nature of litigation and the time already spent in litigating, the apex court requested the high court to first refer the matters to mediation and decide the matter as expeditiously as possible.

34 2023 LiveLaw SC 342 | Civil Appeal No. 6300-6301 of 2016.

Second appeal

In the case of *Gurbachan Singh (D) v. Gurcharan Singh(D)*³⁵ the bench observed that the restraint in interfering with questions of fact under the jurisdiction of second appeal, is not an absolute rule. In the above case, the High Court of Punjab and Haryana, while allowing a second appeal had set aside the concurrent findings of the lower courts .

In appeal, the bench noted that the case arises out of a dispute in Punjab. Thus it observed that the single judge sitting in second appellate jurisdiction cannot be faulted for not having framed substantial questions of law under section 100, CPC. Referring to the Constitution Bench judgment in *Pankajakshi (Dead) through LRs v. Chandrika*³⁶ the court dismissed the appeal and said:

Therefore, the rigors of section 100 do not apply. It has been held by this court that in appeals arising out of the State of Punjab or the State of Haryana, courts are not required to frame substantial questions of law as per section 100 of CPC.

The court added that ordinarily, in second appeal, the court must not disturb facts established by the lower court or the first appellate court.

However, it is also equally well recognised that this rule is not an absolute one or in other words, it is not a rule set in stone...Where the court is of the view that the conclusions drawn by the court below do not have a basis in the evidence led or it is of the view that the appreciation of evidence “suffers from material irregularity” the court will be justified in interfering with such finding.

The apex court has also held that the Section 100 of CPC clearly indicates that first appellate court is the final court on questions of facts but only if there is any substantial question of law, a second appeal could be considered and raised by the high court and such substantial question(s) of law ought to be answered.³⁷ In the case of *Bhagyashree Anant Gaonkar v. Narendra Holkar* ³⁸ the question of law was whether second appeal could be disposed of under Section 100 of the Civil Procedure Code (CPC) as if it were a first appeal. The Supreme Court noted that Section 100 of the CPC mandates that a second appeal can only be entertained if it involves a substantial question of law. The high court must formulate and hear the appeal on the question(s) so formulated. It opined that the high court can reframe or frame fresh substantial questions of law during the hearing. To quote:

It is trite that the exclusive jurisdiction of the High Court to deal with a regular second appeal is stipulated in Section 100 of the CPC,

35 2023 INSC 639.

36 2016) 6 SCC 157.

37 *Bhagyashree Anant Gaonkar v. Narendra@ Nagesh Bharm Holkar*, SLP (C) No.12163 of 2023.

38 2023 SCC OnLine SC 1236.

which grants power to the High Court to consider a regular Second Appeal only on a substantial question of law.

In the case of *Appaiya v. Andimuthu*³⁹ Section 100 of CPC and Order 41 was discussed in detail. Supreme Court observed that the judgement of the high court was legally unsustainable. The provisions of the Evidence Act and the Registration Act were improperly applied leading to an incorrect conclusion about the admissibility of exhibits. The interference of high court with the concurrent findings of the lower courts was held unjustified under section 100. The Supreme Court allowed the appeal, and restored the judgments of the lower court.

Cross objections

In the case of *Dheeraj Singh v. Greater Noida Industrial Development Authority*⁴⁰ Supreme Court observed that the cross objections are just like regular appeal and must be considered in full by the court adjudicating upon the same. In this case, the appellants contended that the issues raised by them in their cross objections were not considered by the High Court of Delhi. While the high court had given a detailed analysis of all other issues raised in the appeal and the lower court orders, the cross objections found no discussion or mention. While allowing the appeal, the apex court observed that the high court was under an obligation to consider the cross objections and the bench noted the following regarding Order 41 Rule 22 :

- i. Where the decree passed by the court of first instance is in favor of the respondent no right to appeal can be vested onto a party, which is successful. However, where the decree is partly in favour of the respondent there are two remedies within Order 41 Rule 22 (i) To file their cross objections (ii) To support the decree (iii) right to file a cross appeal.
- ii. In cases where the opposing party files a first appeal against part of the original decree, and the respondent in the said first appeal, due to part or whole of the decree being in their favour, abstains from filing an appeal in such cases, to ensure that the respondent is also given a fair chance to be heard, he is given the right to file cross objections within the appeal
- iii. If party in the first instance has preferred an appeal, apart from cross objections, the respondent can also file a cross appeal within the limitation period which in essence is a separate appeal in itself.
- iv. While cross objections are filed within an already existing appeal, however, as per Order 41 Rule 22 of the CPC, they must be considered in full by the court adjudicating upon the same.

The bench therefore remanded the case to the high court for fresh adjudication on the grounds raised in the cross objections during appeal by the appellants.

39 2023 SCC OnLine SC 1183 Civil appeal no 14630 of 2015.

40 2023 LiveLaw (SC) 493 SLP(C) 26491 of 2018.

Contents of appellate court judgement

Supreme Court established in the case of *Shivashankara v. HP Vedavyasa Char*⁴¹ that in a suit for possession, prior possession becomes relevant when both parties fail to establish title. Supreme Court also held that the party who proves prior possession will succeed. The court applied the maxim “*Possessio contra omnes valet praetereur cui ius sit possessionis*” (he that hath possession hath right against all but him that hath the very right)” and held that right of the person who has prior possession will hold good against the whole world except the person who has the title over the property

The bench observed that in a suit for possession, the defendant’s claim that a third party has title over the property is not sustainable. However, in a suit against trespass, such a plea is not maintainable. It also held that a suit will not abate for not impleading all legal representatives of the deceased defendant, if the estate of the deceased was otherwise substantially represented by other defendants on record following the principle laid in Order XXII Rule 2 .

In this regard, the bench referred to the precedents in *Bhurey Khan v. Yaseen Khan (Dead) By LRs*.⁴² and *State of Andhra Pradesh through Principal Secretary v. Pratap Karan*.⁴³ As per these decisions, the suit will not abate for the reason of non-substitution of all the legal representatives of the deceased defendant, if the estate is otherwise substantially represented.

The apex court deliberated that as per Order XLI Rule 23 of CPC the court to which the case is remanded has to comply with the order of remand and an order of remand has to be followed in its true spirit. CPC Order VI Rule 17 deals with amendment of the pleadings which should not be granted on the mere request through an application at the appellate stage

Supreme Court’s reinforces the principle that amendments and additional evidence should not be allowed to defeat the cause of justice and delay proceedings. The court emphasized the importance of upholding trial court findings when supported by evidence and maintaining procedural integrity in appellate review.

*Prasanta Kumar Sahoo v. Charulata Sahu*⁴⁴ was a significant case in 2023 as it addressed the retrospective application of the 2005 amendment to the Hindu Succession Act, which granted equal coparcenary rights to daughters, and highlights the importance of consent from all parties in settlement agreements during partition suits. Supreme Court judgement in the case of *Vineeta Sharma v. Rakesh Sharma*⁴⁵ was relied upon wherein it was held that the amended section 6 of the Hindu Succession Act, 2005 which gave coparcenary rights to a female child was retrospective. The court further noted that if a case is pending in a court and

41 2023 LiveLaw (SC) 261 civil appeal no 10215 of 2011.

42 1995 Supp. (3) SCC 331.

43 (2016) 2 SCC 82.

44 2023 SCC OnLine SC 641 Civil appeal no 2913-15 of 2018.

45 [2020] 10 S.C.R. 135.

the law governing the parties is amended by way of legislation, then such parties can claim the benefit of the amended law. The court also observed that for a settlement deed to attain legality it is a must that all the parties concerning the matter gave their consent in writing as per Order 23 Rule 3 of the Civil Procedure Code, 1908. If consent was not given by any of the parties, the deed would not be maintainable. Accordingly, the appeal was dismissed.

Supreme Court of India held that if a final decree has not been passed and the case is still pending, then the parties to that case can get the benefit of the amended law. In other words, a preliminary decree in a suit for partition can be modified later if the law governing the parties to the case has been amended. A division bench held that in a partition suit, all the parties must give their consent for the settlement to attain legality. Consent from only a few parties is not maintainable.

VII TITLE AGAINST THIRD PARTY

*Trinity Infraventures Ltd. v. M.S. Murthy*⁴⁶ Civil Appeal Nos. 4049-4053 of 2023 dealt with whether Orders passed under Order 21 Rules 97, 98, 99, 100 and 101 are considered decrees and are subject to first and second appeals. It also looked into scope of the enquiry under Order XXI Rules 97-101, CPC

Addressing an appeal against the division bench's judgment, the Supreme Court declared that the appellants' claim of the property being matrilineal and inherited by the legal heirs had failed. Thus, the execution of a decree was unnecessary.

Further, the court observed that an application under Order XXI Rule 97 Civil Procedure Code, 1908 is to be filed by the decree-holder (or purchaser in execution of the decree). In contrast, an application under Order XXI Rule 99 is to be filed by the person dispossessed of immovable property, by the holder of a decree for possession. In the case on hand, the obstructionists do not claim title under any one of the parties to the litigation. They set up independent titles in themselves.

The court further held that any finding relating to title to a property, recorded in a simple suit for partition, cannot be binding on third parties. It ruled that no party to a suit for partition, even by way of compromise, can acquire any title to any specific item of property or any particular portion of a specific property, if such a compromise is struck only with a few parties to the suit.

VIII SUIT FOR DECLARATION

This case of *P Kishore Kumar v. Vittak K patkar*⁴⁷ Supreme Court reiterated that revenue records are not documents of title, and held that mere mutation of revenue records would not divest the real title-owners of a land of their right, title and interest in the land.

46 2023 SCC OnLine SC 738.

47 2023 LiveLaw SC 999.

Court observed that, *“mutation in revenue records neither creates nor extinguishes title, nor does it have any presumptive value on title. All it does is entitle the person in whose favour mutation is done to pay the land revenue in question”*.

Mutation entry does not confer any right, title or interest in favour of the person and the mutation entry in the revenue record is only for the fiscal purpose. The court explained that having instituted the suit for declaration, the burden of proof rested on the shoulders of the party, who filed the suit, to reasonably establish the probability of better title. Court also expressed its dissatisfaction with the high court judgment wherein it interpreted the Commissioner’s order within the framework of the revenue records. The court explained:

An attempt ought to have been made by the High Court to harmoniously read the Commissioner’s order with the provisions of the Act and to interpret the same so as to render it in consonance with the law, the failure of which leads to the inescapable conclusion that the same is indefensible.

The case underscores the importance of proper interpretation of administrative orders, the limited evidentiary value of revenue records in title disputes, and the need for appellate courts to adhere to the prescribed scope of their jurisdiction under the Civil Procedure Code

IX DELAY IN FILING APPEAL

In the case of *Ajay Dabra v. Pyare Ram*⁴⁸ the apex court observed that being short of sufficient funds to pay court fee is not a reason to condone delay in filing appeal. In such a scenario, an appeal can be filed in terms of Section 149 CPC and thereafter the defects can be removed by paying deficit court fees.

In this case, the high court had dismissed the delay condonation applications filed under Section 5 of the Limitation Act, 1963, declining to condone a delay of 254 days to file First Appeal, on the ground that the reasons assigned for the condonation were not sufficient for condonation. The only reason assigned for the delay was that he was not having sufficient funds to pay the court fee.

While upholding the high court order, the bench made the following observations, *“It is true that the courts should not be pedantic in their approach while condoning the delay, and explanation of each day’s delay should not be taken literally, but the fact remains that there must be a reasonable explanation for the delay.”*

Condonation of delay

Section 125 mandates that an appeal to the Supreme Court must be filed within sixty days from the date of communication of the decision or order of the appellate tribunal. The proviso allows the Supreme Court to permit filing within a further period not exceeding sixty days if the appellant was prevented by sufficient cause from filing the appeal within the initial sixty days.

48 2023 LiveLaw (SC) 69 SLP (C) No.15793 OF 2019.

Rule 94 of the Appellate Tribunal for Electricity (Procedure, Form, Fee, and Record of Proceedings) Rules, 2007, states that the date for pronouncement of order, if reserved, shall be notified in the cause list and deemed as valid notice of intimation of pronouncement. Rule 98 pertains to procedural compliance post-pronouncement and is not relevant for determining the trigger point for computing the limitation period.

The Supreme Court in *Central Electricity Regulatory Commission v. Techno Electric And Engineering Company Ltd.*⁴⁹ reaffirmed that the limitation period for filing an appeal under Section 125 of the Electricity Act, 2003, begins from the date of pronouncement notification in the cause list, not from the date of actual receipt of the order by the parties. The procedural rules post-pronouncement does not affect this computation. The adherence to a strict timeline emphasizes the need for expeditious resolution of disputes within the framework of the Electricity Act, reinforcing the principles of timely justice and the efficacy of specialized tribunals.

X REVISION

In the case of *Ganesh Prasad v. Rajeshwar Prasad*.⁵⁰ Apex court had upheld the amendment to the plaint, emphasizing that the right to redemption is recurring and not extinguished by the dismissal of the previous suit.

In the case of *Masjid Varanasi v. Rakhi Singh*⁵¹ petitioners challenged the order of district court under Section 115 CPC, 1908 (revisionary jurisdiction of high court) questioning its legality or propriety. The apex court decided to stay the order reflecting a consideration for the need of the petitioner to seek judicial review and address their concerns about the immediate execution of the order. It facilitated access to judicial remedies while ensuring that the order does not proceed until the high court has an opportunity to review the matter. This case highlights the balance between ensuring prompt judicial intervention and respecting procedural timelines, as well as the role of higher courts in overseeing the actions of lower courts and providing remedies to affected parties.

The case of *Rahimal Bathu v. Ashiyal Beevi*⁵² dealt with maintainability of Section 115 of CPC and the Supreme Court observed that a revision under Section 115 CPC is not maintainable against an order rejecting a review of an appealable decree on merits. However, if the revisional court (high court) modifies the order, the apex court observed.

“..if the revisional court does the same, as has been done by the High Court while passing the impugned order, an anomalous situation would arise. The decree passed by the trial court would stand modified by the High Court. Therefore, if the defendant(s) against whom the

49 2023 SCC OnLine SC 1953.

50 2023 SCC OnLine SC 256 in SLP (C) NO. 28377 OF 2018.

51 2023 SCC OnLine SC 880.

52 2023 SCC OnLine SC 1226 Civil Appeal No. of 2023 (Arising out of SLP (C) No. 8428 of 2018).

decree is passed were to challenge the same, they would be at a disadvantage on account of the merger”,

The apex court stated that in a case where review is allowed and the decree is reversed/modified, the decree so vacated/reversed/modified is the subject for further appeal. On the other hand if the review petition is dismissed, the aggrieved party will have to challenge the same within the time stipulated for the original decree.

The court highlighted that the proper remedy for the party aggrieved by the rejection of a review application is to file an appeal against the original decree, not a revision. The Supreme Court also noted that if the time to file an appeal is barred, the time spent diligently pursuing the review application can be condoned. The court emphasized adherence to procedural laws and established precedents which restrict revisions in cases where an appeal is the appropriate remedy. This decision reinforces the procedural principle that revisions are not substitutes for appeals and upholds the integrity of procedural requirements under the CPC

In the case of *Koushik Mutually aided Cooperative Housing society v. Ameena begum*⁵³ Supreme Court held that a Civil Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (CPC) is not maintainable against the dismissal of an application filed under Order IX Rule 13 of the CPC to set aside an *ex-parte* decree

“When there is an express provision available under the CPC or any statute under which an appeal is maintainable, by-passing the same, a Revision Petition cannot be filed. It is needless to observe that in the absence of an appellate remedy, a revision may be maintainable”

The Supreme Court noted that an order rejecting an application under Order IX Rule 13 CPC is an appealable order under Order 43 Rule 1(d) CPC, and hence an appeal is the procedure rather than a Civil Revision Petition under Section 115 CPC. It was emphasized that a defendant has three remedies against an *ex-parte* decree: an application under Order 9 Rule 13 CPC, an appeal under Section 96(2) CPC, and a review petition. The court observed that when an alternative and effective appellate remedy is available, a revision petition under Section 115 CPC is not appropriate. The court granted liberty to the first respondent in this case to file an appeal under Order 43 Rule 1(d) CPC directing that the issue of limitation should not be raised by the high court. This decision underscores the importance of following the correct procedural route and the principle that revision petitions should not bypass available appellate remedies.

XI EXECUTION

In the case of *Gas Point Petroleum India Ltd v. Rajendra Marothi*⁵⁴ a decree was not executed and decree-holder filed execution proceedings. This involved Order 21, Rules 64, 84, 85 and 90. The case looked into whether the auction sale

53 2023 SCC OnLine SC 1662 Civil Appeal No. of 2023 (@ SLP (C) No. 5489 of 2021).

54 (2023) 6 SCC 391 Civil Appeals No. 619 of 2023.

was vitiated due to non compliance with Order 21 Rule 84 and 85. It was observed that the appellant had purchased a property prior to its auction by the court to recover a debt from the previous owner. It was noted that the property was not part of the lawsuit, and an injunction against transferring the firm did not apply to the property. However, the high court considered the injunction against the appellant, and the executing court overruled the objections of the appellant against the auction. The impugned judgement and order passed by the high court and consequently the order passed by the executing court overruling the objections raised by the appellant was also quashed and set aside. The order passed by the lower appellate court was restored. It was left open for respondent to get back the amount deposited with the executing court.

The case of *Jini Dhanrajgir v. Shibu Mathew*⁵⁵ highlights the complexities involved in executing decrees and the rights of third parties to raise objections during execution proceedings. The apex court discussed whether order of executing court could be looked into without being challenged in the high court first. The Supreme Court emphasized that Section 47 and Order XXI Rules 97-103 of CPC form a complete code for dealing with resistance or obstruction to execution of decrees. The court noted that executing courts have the power and duty to adjudicate claims raised by third parties during execution proceedings. The court observed that while Rule 102 of Order XXI excludes application of Rules 98 and 100 to transfers made after institution of the suit, the peculiar facts of Shibu Mathew case warrant an inquiry into when the transfers were made. The Bench observed, “*What is intended by conferring exclusive jurisdiction on the executing court is to prevent needless and unnecessary litigation and to achieve speedy disposal of the questions arising for discussion in relation to the execution, discharge or satisfaction of the decree*”.

Executing courts have the jurisdiction and duty to adjudicate claims raised by third parties during execution proceedings, even if they claim rights independent of the judgment-debtor. The application of the doctrine of *lis pendens* and Order XXI Rule 102 requires a factual inquiry into the timing of transfers, especially when there was a period during which the suit was not pending. It was felt that Supreme Court should not ordinarily entertain appeals directly against orders of executing courts, bypassing the high court, unless substantial questions of general importance are involved. The court in the above case directed the executing court to proceed with the inquiry into the objections on merits, emphasizing the need for a speedy resolution of the long-pending dispute. The decision attempted to balance the rights of decree holders with those of third parties claiming interests, and the role of executing courts in adjudicating such disputes.

The case of *K.L. Suneja v. Manjeet Kaur Monga (D) through Lrs.*,⁵⁶ involves appeals by both a home buyer complainant and a developer against a common order of the National Company Law Appellate Tribunal (NCLAT) regarding a

55 2023 SCC OnLine SC 643 Civil Appeal Nos. 3758-3796 of 2023.

56 2023 6 SCC 722.

dispute over a flat in a group housing scheme. The main issues revolve around the payment of compensation and interest on the amount paid by the complainant for the flat.

The case was transferred to the Competition Appellate Tribunal (COMPAT) after the MRTP Act was repealed. COMPAT found the developer guilty of unfair trade practices and directed payment of compound interest at 15% per annum on the deposited amount. Both parties appealed to the Supreme Court, against the NCLAT order on issue if interest payment the court noted that the provisions of Order XXI of CPC, while not directly applicable, embody a sound policy principle regarding the cessation of interest liability once an amount is deposited or paid.

When a debtor tenders payment through a bank instrument (such as a Pay Order), and the creditor is aware of such tender but fails to take appropriate steps to protect their interests, the debtor cannot be held liable for further interest on the amount. Courts and tribunals should frame guidelines for mandatory deposit of amounts in interest-bearing accounts to avoid situations like the present case.

Order 21 of CPC deals with the execution of decrees and orders, particularly focusing on resistance to possession (Rules 97 to 101). It provides a comprehensive code for addressing disputes during execution, including claims by third parties. The Supreme Court in case of *Ved Kumari (Dead) through Lrs v. Municipal Corporation of Delhi*⁵⁷ concluded that the executing court erred in dismissing the execution petition on the grounds that the encroachers were not parties to the suit. The court allowing appeals directed that decree-holder was entitled to physical vacant possession of the suit land, and the executing court must address any resistance by third parties through procedures outlined in Order 21 of the CPC.

After a prolonged litigation, the Supreme Court, in a noteworthy judgment *Mumtaz Yarud Dowla Wakf v. Badam Balakrishna Hotel Pvt. Ltd.*⁵⁸ finally granted relief to the owner of a suit property (Mumtaz Yarud Dowla Wakf) in favour of whom the decree was already granted back in 2002. The judgment called out the dilatory tactics adopted by respondents while setting aside the impugned order and restoring the order passed by the executing court in favour of appellant/ suit property owner.

Section 9 CPC establishes that the courts shall have jurisdiction to try all suits of a civil nature unless they are expressly or impliedly barred by any statute. Section 47 stipulates that all questions arising between the parties to the suit in which the decree was passed, shall be determined by the court executing the decree and not by a separate suit.

Section 6 of the The Wakf Act 1995 deals with disputes relating to the existence or extent of wakf property. Section 7 empowers the Wakf Tribunal to determine questions related to a wakf or wakf property. Section 83 mandates the

⁵⁷ 2023 SCC OnLine SC 1065.

⁵⁸ 2023 SCC OnLine SC 1378 Civil Appeal No. of 2023 and Arising out of SLP (C) No. 3543 of 2019.

establishment of Wakf Tribunals for the determination of disputes, questions, or other matters relating to wakfs or wakf property. Section 85 bars the jurisdiction of civil courts to entertain any suit or proceeding in relation to any dispute, question, or other matter that is required by the Act to be determined by the tribunal. It was settled that an executing court cannot go beyond the decree, subject to the rigor of section 47 read with Order 21 of the CPC. Any intervention, even in cases related to jurisdiction, should be carried out sparingly and only in exceptional circumstances.

The behaviour of a party was also held to be crucial. If one party seems to be gaining an unfair advantage, even when they had a chance to raise a plea of lack of jurisdiction earlier, they should not be allowed to bring said objection during the execution of proceedings.

The case of *New India Insurance Co. Ltd. v. Smt. Shanti Misra*,⁵⁹ 1975 was relied upon. A party to a *lis* does not have any vested right of forum as against action. Court must ascertain the presence of jurisdiction, *prima facie*. This process will prevent subjecting the parties to undue uncertainty and difficulties as observed in the case of *Vankamamidi Venkata Subba Rao v. Chatlapalli Seetharamaratna Ranganayakkama*, 1997.⁶⁰ When a *lis* is entertained and the Court has neglected to verify its jurisdiction and a plea is raised subsequently, after an adverse judgment has been delivered, the forum should not be deemed lacking jurisdiction, especially when there is no apparent injury to the rights established under a specific statute.

“On a proper analysis of the said decision, we have no hesitation in holding that the Wakf Tribunal has got sufficient jurisdiction to try every suit pertaining to either a Wakf or a Wakf property, notwithstanding the nature of relief concerned, except as mandated under the statute.” held the bench.

The principle governing the absence of jurisdiction in a specific forum might vary in situations where two or more forums are simultaneously addressing the same matter, including the rights and obligations of the involved parties. The Court noted that in the above case respondents had obstructed the course of justice by prolonging the legal proceedings which allowed them to retain possession for more than twenty years and restored the order passed by the executing court.

In case of *Pradeep Mehra v. Harijivan J. Jethwa thr. Lrs*⁶¹ the Supreme Court observed that the execution proceedings were significantly delayed and abused by the judgment debtors, highlighting the longstanding issue of prolonged execution phases in civil litigation. The court reiterated the Privy Council’s observation from 1872 that litigants face persisting problems after obtaining a decree.

As long back as in 1872 (when the CPC of 1859 was in operation), it was observed by the Privy Council that, “the difficulties of a litigant in India begin

59 AIR 1976 SC 237.

60 (1997) 5 SCC. 460.

61 2023 SCC OnLine SC 1395 Civil Appeal No. 6375 of 2023.

when he has obtained a decree". The situation, we are afraid, is no better even today." the bench observed

The debtors challenged the execution under Section 47 CPC which was considered an attempt to reopen the case. It was decided that Section 47 CPC does not permit the court to go behind the decree or re-examine its validity unless the original order was without jurisdiction. The court set aside the orders of the appellate court and the high court, and emphasized the need to expedite the execution process and directed the executing court to complete the execution within six months. This case reflected importance of ensuring timely enforcement of decrees.

XII LIMITATION

Case of Ajay Dabra v. Pyare Ram arising out of *Ajay Dabra v Sunder Singh*⁶² discussed interplay between Limitation Act Section 5 and 14. The court noted that insufficient funds are not a sufficient ground for condonation of delay, particularly when the appellant had the means to eventually pay the court fee.

The case highlights the importance of adhering to procedural requirements like timely filing of appeals and fulfilling statutory conditions for specific performance suits. The judiciary emphasized that lack of funds is not a justifiable reason for delay, especially when provisions exist to file appeals with deficiencies that can be corrected later. The ruling reinforces the strict interpretation of limitation laws and the necessity of compliance with statutory mandates for property transactions.

In case of *Y.P. Lele v. Maharashtra State Electricity Distribution Company Ltd.*,⁶³ court provided specific directions regarding the handling of the deposited amount, ensuring a balanced approach while maintaining the deposit to some extent pending the outcome of the suit. This case reiterated the significance of procedural adherence and the inclination of judiciary to decide cases on their substantive merits rather than procedural technicalities.

In case of *Central Electricity Regulatory Commission v. Techno Electric and Engineering Company Ltd.*⁶⁴ the Supreme Court referred to the case of *Chhattisgarh State Electricity Board v. Central Electricity Regulatory Commission*,⁶⁵ where it was held that the outer limit for filing an appeal under Section 125 is 120 days and Section 5 of the Limitation Act cannot be invoked to extend this period. It emphasized that once the date of pronouncement is notified in the cause list, it constitutes valid communication, and the period of limitation commences from that date. The Supreme Court also acknowledged that in *DSR Steel (Private) Ltd. v. State of Rajasthan*⁶⁶, doubts were cast on the view expressed in *Chhattisgarh*

62 2023 SCC OnLine SC 92.

63 2023 SCC OnLine SC 997 Civil Appeal No. of 2023 and Arising out of SLP (C) No. 3543 of 2019.

64 2023 SCC OnLine SC 1953.

65 [2010] 3 S.C.R. 609.

66 AIR 2012 SC 1602.

State Electricity Board. The Supreme Court concurred with the Chhattisgarh State Electricity Board ruling, affirming that the appeals were not filed within the limitation period and were hence dismissed.

XIII HEARING

The case of *Arvind Kumar Jaiswal v. Devendra prasad Jaiswal Varun*⁶⁷ dealt with Section 33, Order XX, Rules 4(2) and 5, and Order XLI, Rules 23, 23A, 24, and 25, Civil Procedure Code, 1908. In this case Supreme Court explained the scope of power to remand of appellate court. It looked into justification of an order of remand when evidence has already been recorded. The decision emphasizes the limited circumstances under which remand orders should be issued to avoid unnecessary prolongation of litigation. It underscores the responsibility of appellate courts to decide cases based on the evidence already on record whenever possible. The ruling highlights the importance of adhering to procedural guidelines while ensuring efficient and timely adjudication of cases.

XIV MISCELLANEOUS

Case of *Shah Newaz Khan v. State of Nagaland* dealt with Miscellaneous provisions like injunction, transfer of cases, compromise decree, powers of Supreme Court, disobedience of injunction *etc.* The main question dealt was the power of Supreme Court under Section 25 of the CPC to direct the transfer of a suit from one State to another. It also discussed the power of common high court to transfer a suit from a civil court in one State to another under section 24 CPC. Supreme Court clarified that when general law cannot override the provisions of a special law where they conflict an effort must be made to reconcile the two through harmonious construction.

In case of *State of Orissa v. Laxmi Narayan Das (Dead) Thr. Lrs*⁶⁸ Supreme Court emphasized that there was a significant delay in filing the writ petition, which was filed 18 years after the order. The respondents did not avail the appropriate remedy against the final publication of record of rights in a timely manner.

The principle of constructive res judicata was applied, which bars a party from raising an issue that could have been raised in a previous suit. The respondents filed the writ petition without disclosing the prior civil suit and its withdrawal. The court held that a litigant could be denied relief for concealing material facts or mis-stating facts. Since the respondents did not disclose complete facts, they were not entitled to any relief. The court found merit in the appeal, emphasizing the principles of delay, constructive res judicata, and the necessity for complete disclosure of facts by litigants.

The case of *Pramod Sinha v. Suresh Singh Chauhan*,⁶⁹ discussed whether the location of the accident (Siliguri, Darjeeling) necessitates the transfer of the

67 2023 SCC OnLine SC 146 SLP (C) No. 9172 of 2020.

68 2023 SCC OnLine SC 825 Civil Appeal No. 8072 of 2010.

69 2023 SCC OnLine SC 924 Transfer Petition(s) (Civil) No. 1792/2023, IA No. 141704/2023 and IA No. 141705/2023.

claim petition to Darjeeling and if language barriers can be treated as ground for transfer. The court noted that the section 166(2) provides claimants the option to file the claim petition within the local limits of the jurisdiction where they reside, carry on business, or where the defendant resides. The transfer petition was dismissed by the court. The court found no valid grounds to transfer the claim petition from MACT, Farrukhabad to MACT, Darjeeling. The court affirmed that the claimants are within their legal rights to choose the forum, and the petitioner's concerns regarding the location of the accident and language barriers do not warrant a transfer. The decision emphasizes the flexibility provided to claimants under Section 166(2) of the Motor Vehicles Act, 1988, and upholds the principle that the choice of forum by claimants should not be easily disturbed unless substantial reasons are demonstrated.

XV CONCLUSION

In case of *Re: Interplay Between Arbitration Agreements Under The Arbitration and Conciliation Act, 1996 and The Indian Stamp Act, 1899*⁷⁰ the decision addresses the interplay between the Arbitration and Conciliation Act 1996 (Section 8 and 11), the Indian Stamp Act 1899 (Section 35), and the Indian Contract Act 1872 (Section 2(j)). The court emphasized the need for harmonizing these statutes. The court discussed whether the arbitration clause within an agreement needs separate stamping or if the underlying agreement's stamping suffices. It was concluded that both the arbitration agreement and the underlying contract should be adequately stamped.

In the survey year 2023 the above case dealt with the following issues in the noteworthy judgement

- (i) Are sufficiently stamped arbitration agreements prerequisite for court proceedings?
- (ii) Are unstamped agreements *void ab initio* or the defect can be cured?
- (iii) Who amongst court or arbitral tribunal has the jurisdiction to deal the issues related to the stamping of agreements?

This judgement overruled the decision in the *N.N. Global*⁷¹ case, which held that unstamped arbitration agreements are void and unenforceable. It also clarified the position from the *SMS Tea Estates*⁷² and *Garware Wall Ropes*⁷³ cases, which had held that such agreements cannot be acted upon.

It said that issues related to stamping do not fall under the scope of Sections 8 and 11 of the Arbitration and Conciliation Act. The arbitral tribunal, not the court, is the appropriate forum to decide on the sufficiency of stamping once the prima facie existence of the arbitration agreement is established by the court.

70 2023 SCC OnLine SC 1666 Curative Petition (C) No. 44 of 2023; Review Petition (C) No. 704 of 2021; Civil Appeal No. 1599 of 2020.

71 2023 SCC OnLine SC 495.

72 (2011) 14 SCC 66.

73 (2019) 9 SCC 209.

The Supreme Court's ruling in this case is a landmark decision that clarifies the stance on the admissibility and enforceability of unstamped arbitration agreements in India. By holding that such agreements are not void ab initio and that the defect of insufficient stamping is curable, the court has harmonized the interaction between the Arbitration and Conciliation Act 1996 and the Indian Stamp Act 1899. This decision is expected to have a significant positive impact on the arbitration ecosystem in India, promoting it as a viable and attractive international arbitration hub. It reduces the supervisory role of courts in arbitration matters, thereby supporting the objective of minimizing court interference in arbitration proceedings. This historic judgement not only resolves long-standing legal ambiguities but also reinforces the presumption in favour of the enforceability of arbitration agreements, enhancing the efficiency and reliability of arbitration as a dispute resolution mechanism in India.