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

I INTRODUCTION

THE YEAR 2024 saw a critical case, *Abhimeet Sinha v. HC of Judicature at Patna*,¹ where the Supreme Court noted that there is no grievance redressal authority for judicial service aspirants. It highlighted the need for a dedicated authority that can oversee recruitment and establish clear guidelines. The rules for the interview, syllabus of exams, and schedules should be available to candidates well in advance. The apex court upheld the holding that the criteria of having a minimum mark to qualify for the judicial services exam do not violate the judgment of *the All India Judges case* (2002).

The apex court had accepted the recommendations of the Commission headed by Justice Shetty. It did not prescribe a minimum mark for the interview, so the candidates argued that it was against the above case. The court noted that it was necessary to prescribe minimum qualifying marks in the interview. It emphasised that the interview process assesses overall personality and also reflects overall talent. The bench opined:

This is a debatable issue since the high scores for the written test by itself do not determine the merit and suitability of an aspirant. The candidate's performance would also depend on their social, economic, and cultural capital. Access to resources such as coaching institutes, quality school education, financial stability, time and flexibility, networking opportunities, mentorship, and access to relevant study materials are vital factors that also manifestly contribute to the performance in the written test.

The Supreme Court recently ruled that a limited notice does not restrict jurisdiction. The court can address broader issues. Errors, procedural lapses, or flawed findings in the lower court's judgment can be examined beyond the initial scope of review. In the case of *Biswajit Das v. CBI*,² the accused was convicted under the erstwhile Indian Penal Code and the Prevention of Corruption Act (PC

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1 2024 INSC 381.

2 (2025) 85 AIR SC.

Act). The court had granted leave limited to two issues: the applicability of the PC Act and the quantum of sentence for other offences. However, the appellant's counsel sought to include a plea for acquittal, which was opposed as being beyond the scope of the limited notice. The court clarified that procedural limitations should not overshadow the pursuit of substantial justice. If a significant question of law warrants consideration, it should not be disregarded.

II JURISDICTION

The apex court ruled that jurisdictional facts are fundamental, regardless of whether the parties raise the issue or not. An erroneous assumption of jurisdiction leads to invalid decisions. The Supreme Court has the authority to review and rectify these lapses.³ The court clarified the judgments in *A. Kanthamani v. Nasreen Ahmed*⁴ and *I.S. Sikandar v. K. Subramani*.⁵

In *I.S. Sikandar*, it was decided that a decree of specific relief could not be granted unless a declaration of invalidity/validity of the cancellation of the agreement was sought.

In the *Kanthamani* case, reference was made to the decision in the case of *Shrisht Dhawan v. Shaw Bros.*⁶ It was clarified that maintainability issues are framed at the trial stage, and appropriate relief had not been asked for:

“Any failure or omission on the part of the trial court to frame an issue on maintainability of a suit touching jurisdictional fact by itself cannot trim the powers of the higher court to examine whether the jurisdictional fact did exist for grant of relief as claimed, provided no new facts were required to be pleaded and no new evidence led.”

In the above case, maintainability of the suit had been framed as an issue before the trial court, and the sellers did not appeal. It was said that it cannot reduce the powers of a higher court to examine, provided that no new facts or evidence are added.

The court also explained the Personal Obedience principle in the case of *Rohit Kochhar v. Vipul Infrastructure Developers Ltd.*⁷ The Supreme Court explained that if immovable property is transferred by way of a sale deed, a separate suit for possession is not required.

An argument was raised that since no separate relief for possession was claimed in the suit as per section 22 of the Specific Relief Act, section 16 of the Civil Code did not apply. Therefore, it was argued that since the suit was a personal action to execute an agreement, it had to be filed at the place of residence of the defendant, as per the proviso to section 16 of the CPC. The court referred to *Babu*

3 *R. Kandasamy v. T.R.K. Sarawathy*, 2024 INSC 884.

4 (2017) 4 SCC 654.

5 (2013) 15 SCC 27.

6 (1992) 1 SCC 534.

7 2024 LiveLaw (SC) 951.

*Lal v. Hazari Lal Kishori Lal*⁸. It stated that in a sale simpliciter, the plaintiff can obtain complete relief without specifically filing a separate suit for possession. The court reasoned that when ‘transfer of possession’ is implicit under section 55 of the Transfer of Property Act, 1882, it inherently involves elements that affect the property’s location, making it a “suit for land”.

The bench relied on the judgment of *Babasaheb Dhondiba Kute v. Radhu Vithoba Barde*,⁹ and ruled that the conveyance is not complete till the time of registration. (Section 17 of the Registration Act, 1908.)

III RES JUDICATA

Section 11 of the CPC lays down the principle of *res judicata*, which provides that there should be no litigation on issues already adjudicated upon and settled. The case of *Govindammal v. Vaidyanathan*¹⁰ outlined three conditions for the above:

- i) Presence of a conflict of interest
- ii) The decision provides relief.
- iii) The decision should be final.

In the case of *Har Narayan Tewari v. Ramgarh Cantonment*,¹¹ the plaintiff staked a right over Cantonment property. The Board was also claiming rights over the Estate of Raja. The Supreme Court observed:

“The principle of res judicata would not be attracted as the issue in the present suit was neither directly nor indirectly in issue in the previous suit, and there was no conflict of interest between the co-defendants in the said previous suit, which, if any, never came to be adjudicated upon.”

Courts need to adopt a flexible approach in applying *res judicata* when disputes have far-reaching implications. *Government of National Capital Territory, Delhi v. BSK Realtors*¹² is a case about land acquisition under the Land Acquisition Act of 1894. Following the enactment of the Land Acquisition Act 2013, section 24 of the new Act rendered the earlier acquisition invalid. Section 24 of the LARR 2013 was interpreted differently in various decisions. In the *Pune Municipal Corporation* case,¹³ the proceedings were declared lapsed. BSK Realtors was one such affected party. These judgments were appealed before the Supreme Court, but they resulted in the dismissal of many civil appeals. The Constitution Bench in *Indore Development Authority v. Manoharlal*¹⁴ overruled the Patna municipal case. It was decided in the above case that proceedings will lapse only when there is non-payment of compensation or if the state does not take possession of acquired

8 (1982) 3 SCR 94.

9 2024 INSC122.

10 Civil appeal no 5279 of 2008.

11 2024 LiveLaw (SC) 446.

12 2024 LiveLaw (SC) 420.

13 Civil Appeal No. 877 of 2014 (Arising out of SLP(C) No. 30283 of 2008).

14 S.L.P. (C) Nos.9036-9038 of 2016.

land. The principle of *res judicata* was discussed. The court thought that the previous decision could not operate as ‘resjudicata’ to bar the next decision because there was no conflicting interest, and, looking at the public interest, appeals were allowed, and separate orders were passed. The court ruled that powers under Article 142 of the Constitution of India are an exception to “stare decisis”.

IV PLEADINGS

The Supreme Court in the case of *Manisha Mahendra Gala v. Shalini Bhagwan Avatramani*¹⁵ observed that no one is entitled to claim the “easementary right by necessity” if there is an alternative way to access. In the above case, the easementary right was based on the statement of power of attorney presented before the court. The respondents claimed that the power of attorney holders were unaware of the details and were therefore not suitable to be examined as witnesses. The case of *Janki Vashdeo Bhojwani v. IndusInd Bank Ltd.*,¹⁶ and *A.C Narayan v. State of Maharashtra*,¹⁷ was relied upon, and the court said:

“We do not find any basis to record that the Galas have acquired an easementary right over the disputed rasta in any manner, much less by prescription, necessity or under an agreement.”

In the case of *Srinivas Raghavendrarao Desai v. Kumar Vamanrao*,¹⁸ a partition occurred in 1965. The sale of the suit property was challenged. The apex court observed that divergence was not pleaded, and it was an error of the high court. The amendment application was rejected, and the validity of the sale deed was upheld.

“The Trial Court had rightly ignored the plea taken in the replication by the plaintiffs regarding the oral partition of 1965, as the amendment sought to that effect had already been declined. What was not permitted to be done directly cannot be permitted to be done indirectly.”, the court said.

The Supreme Court addressed this issue in *Dinesh Goyal v. Suman Agarwal* (Civil appeal No. 010812/ 2024).¹⁹ The above case pertained to the succession of the property by way of ‘Will’. ‘Genuineness of the Will’ was questioned by an amendment application and not in a partition suit. The high court had observed:

“The scope of the dispute before us is limited to a procedural aspect. In the larger scheme, this dispute pertains to succession. If there is a Will, it has to be honoured. If one of the parties, who will be affected by the Will coming into effect, challenges it on one ground or the other, the process of succession cannot go forward without the determination of the dispute regarding the Will.”

15 2024 LiveLaw (SC) 301.

16 2005(2) SCC 217.

17 (2014) 11SCC790.

18 Civil Appeals (no) 7293-94 of 2010, 2024 LiveLaw (SC) 194.

19 2024 LiveLaw (SC) 739.

The apex court allowed the amendment application on the ground that partition cannot be done without ascertaining the genuineness

In the case of *LIC v. Sanjeev Builders*,²⁰ certain principles were laid:

i) Amendments should be necessary for determining the real question, and should not cause injustice

ii) Amendments should be allowed to avoid multiplicity, but they should not cause injustice to the other party.

iii) The Amendment should be disallowed if it raises a time-barred claim, if it changes the nature of the suit, if it is malicious, or if other parties lose a valid defence.

iv) The court should ordinarily be liberal and avoid technicality.

v) An amendment may be allowed if there are essential changes in the plaint.

The assembly election in the Sonai constituency of Assam was challenged in 2021 in the case of *Karimuddin v. Aminul H. Laskar*.²¹ The petition was rejected under Order 7 Rule 11 of CPC 1908 and section 83(1)(a) of the RP Act 1951. The Act provides that an election petition should reflect that the candidate had indulged in “Corrupt practice”, interfering with electoral rights. The judgment referred to the case of *Azhar Hussain v. Rajiv Gandhi*,²² and stated:

“All the facts which are essential to clothe the petition with complete cause of action must be pleaded, and omission of even a single material fact would amount to disobedience of the mandate of section 83(1)(a) of the Act, and an Election petition can be and must be dismissed, if it suffers from any such vice”

In this case, the respondent had not raised objections at the time of scrutiny, and the court decided that it should not affect the election result either.

In the case of Civil Appeal No.8935 of 2011,²³ the apex court has decided that the defendant must reply to all allegations raised by the plaintiff. Failure to respond to any allegation would result in admission. In this case, the trial court decided in favour of the respondent, and the appellate court decided in favour of the defendant. The second appeal to the High Court resulted in the affirmation of the trial court’s findings. This led to an appeal before the Hon’ble SC.

The apex court opined that Order 8, Rules 3 and 5 of the CPC 1908 provide for specific admission and denial. The earlier judgment of *Badat and Co. v. East India Trading Co.*²⁴ was upheld. It was stated that Order 8, Rules 3 to 5 of the CPC are integrated. The court also referred to the decision in *Lohia Properties v. Atmaram Kumar* and dismissed the appeal.

20 AIR 2022 SC 4256.

21 [2024] 4 S.C.R. 523.

22 1986 AIR 1253.

23 *Thangam v. Navammal* 2024 LiveLaw (SC) 188.

24 AIR1964 SC 538.

V PARTIES

The highest court has held that a compromise deed should be signed in writing by the parties. In the case of *Amro Devi v. Julfi Ram*:²⁵

“For a valid compromise in a suit, there has to be a lawful agreement or compromise in writing and signed by the parties, which would then require it to be proved to the satisfaction of the Court.”

Order 23, Rule 3 of the Code of Civil Procedure, 1908, provides that a compromise decree can only be passed by the court when a lawful agreement is signed in writing. The plaintiff in the above case filed a fresh suit for possession and a temporary injunction. They contended that they were the owners of a half-share of the land, as stipulated in the previous settlement. The defendant argued that the compromise decree was invalid due to non-compliance with Order 23, Rule 3, of the Code of Civil Procedure, 1908. In the case of *Navratan Lal Sharma v. Radha Mohan Sharma*,²⁶ it was stated that the validity and legality of a compromise agreement can be challenged even after a decree has been passed. The restoration application was a statutory right under the CPC, and it was clarified that restoration was the sole remedy available to the aggrieved party. It was observed that CPC explicitly prohibits filing an appeal or a fresh suit to challenge a compromise decree.

“No other remedy is available to the party who is aggrieved by the compromise decree, as an appeal and fresh suit are not maintainable under the CPC.”

The SC also added that, as a matter of public policy, the courts should exercise restraint in curtailing the statutory remedies available to the parties. This was reiterated in the case of *Yogesh Goyanka v. Govind*.²⁷

VI APPEALS

First appeal/power of the appellate court

The Supreme Court, in Civil Appeal No. 3500/2024²⁸, held that a new case cannot be created at an appellate stage, and no new issues could be framed. It is incumbent upon appellate courts to address the additional issues raised by Order 41 of the Code of Civil Procedure, 1908.

In the appeal above, the high court framed additional substantial questions of law that had not been raised before the trial court. The apex court deplored this practice, and the case was remanded to the High Court for further consideration. In *Vaibhav Jain v. Hindustan Motors Ltd*,²⁹ the court did not hold a car dealer liable to pay compensation under the Motor Vehicles Act, 1988, for the death of persons caused by an accident. The driver of the car and the manufacturer were

25 2024 LiveLaw (SC) 482.

26 [2024] SCC OnLine SC 3720.

27 [2024] 7 S.C.R. 668.

28 *Rama Barman v. Mahim Ali* 2024 INSC 644.

29 2024 LiveLaw (SC) 649.

held liable to pay compensation jointly and severally by the tribunal. However, the dealer challenged the liability because, although a dealership agreement existed to transfer vehicle ownership, no sale had occurred at the time of the accident.

The Court explored various judgments, construing the definition of ‘owner’ and found that there was no evidence to suggest that Vaibhav Motors was in constructive possession of the vehicle. The award that made Hindustan Motors liable jointly and severally had also been challenged. The court examined the challenge and recourse to Order 41, Rule 33, without filing cross-objections or a separate appeal. The court stated:

“It has been consistently followed, it is clear that for exercise of the power under Rule 33 of Order 41 CPC the overriding consideration is achieving the ends of justice; and one of the limitations on exercise of the power is that that part of the decree which essentially ought to have been appealed against, or objected to, by a party and which that party has permitted to achieve a finality cannot be reversed to the advantage of such party.”

The Hon’ble court said that an omission to frame points of determination by the first appellate court would not prove fatal if it had dealt with all the issues that arise for deliberation. This had been earlier laid down in the case of *Indravadan Mehta v. Ahmedabad Municipal Corporation*.³⁰

VII REVISION

In Civil Appeal No. 10193 of 2024, the apex court reiterated that an application under section 28 of the Specific Relief Act, 1963, can be filed before the trial court even if the appellate court has passed a decree for specific performance. Referring to the precedents laid in *Ramankutty Guptan v. Avara*³¹ and *V.S. Palanichamy Chettiar v. C. Alagappan*,³² the court said that it has the power to grant an extension of time stipulated by the appellate court for a property buyer to pay the amount.

The court, upon interpreting section 28 of SRA, observed that in the normal course, the application seeking rescission or extension of time lies in the original suit. The court also held that the decision to extend the time limit should not interfere with the exercise of jurisdiction under article 136 of the Constitution. It opined:

“For the purpose of doing complete justice to the parties, the Court may not interfere with the order even if it suffers from some legal error.”

The case of *State of Telangana v. Mohd. Abdul Qasim*³³ relates to the declaration of reserved forest land as private land, which was exercised through the review jurisdiction of the high court. There was an earlier order where the title of private persons was not proved. The Supreme Court imposed a cost of Rs. 5 Lakhs on the State of Telangana and allowed it to recover the price from the erring

30 2024 LiveLaw (SC) 369.

31 (1994)2SCC 642.

32 (1999) 4SCC 702.

33 2024 SCC OnLine SC 548.

officials. The apex court pulled up the State of Telangana for taking a contradictory stand in the suit. It first declared it a reserved forest area, but later constituted a committee that excluded the forest land to favour private people. The court held that the state had not discharged its duty to protect and preserve the forests, and it also questioned the high court's interference in declaring forest land as private land.

In the special leave petition filed in the case of *S. Tirupathi Rao v. M. Lingamaiah*, the bench held that contempt proceedings must be filed within a year of the alleged contempt. In this case, a contempt petition was filed in 2014 for non-compliance with the 2009 high court order. The Supreme Court observed that the order of the high court was wilfully not complied with because the party intended to take an exemption from the law of limitation as per Order VII Rule 6. The court held that this benefit of exemption cannot be granted on the grounds of hardship or equitable consideration. The Supreme Court opined that if the surplus land is vested with the government, it would come under the concept of compulsory acquisition. Non-payment of compensation would violate Article 31-A of the Constitution of India. The decision in *Bhagat Ram v. State of Punjab* stipulated that the surplus land should be allocated to the proprietor and the income from the land should be distributed to the panchayat. The Court reiterated this in *Karnail Singh v. State of Haryana*.³⁴ The ruling in *Bhikhchand v. Shamabai Dhanraj*³⁵ is significant based on the principle of 'restitution' as laid out in section 144 of the CPC 1908. The court ruled that in an auction sale, if the entire property is purchased and, upon examination, it is found that a partial sale could satisfy the decree, the sale would be deemed illegal. The *Bhikhchand* ruling drew its strength from the decision in the case of *Chinnamal v. Arumugham*.³⁶ The court opined that each case should be unique and that the matter should be decided based on knowledge of pending litigation, even to a stranger.

VII EXECUTION

The case of *Joginder Singh v. Virinderjit Singh Gill*.³⁷ Relates to the ascertainment of the right in a suit property where the first partition suit recognised the right of the appellant in a suit. Furthermore, a second partition suit was filed by the defendant, recognising the defendant's right to the suit property. The dispute was related to the second partition suit, where the decree was passed in favour of the respondent, recognising his right, which the appellant objected to by applying section 47 and Order XXI, Rules 58 and 97 of the Civil Procedure Code. The HC refused to allow the civil revision. The high court reasoned that an application objecting to the decree cannot be entertained on the grounds of misapplication of the law. Observing that procedural irregularity cannot defeat substantive rights, the Supreme Court provided relief to the decree objector whose objection plea was

34 (2009) 8 SCC 539.

35 2024 LiveLaw (SC)375.

36 AIR 1990 SC 1828.

37 2024 SCC OnLine SC 3024.

refused by the high court on the grounds of misapplication in filing his objections towards execution of the decree.

The court observed that the party in whose favour a substantial right has been generated cannot be denied the enjoyment of the right because of some mistake or negligence. It stated that when the appellant's right in the suit property has attained finality in the first partition suit, then the decree passed in the second partition suit recognising the respondent's right must necessarily exclude the portions that already stand decreed per the first partition suit. In the above case, it was unclear from the record that the portion of Khasra No. 2259 was the same piece of land granted to the appellants. The court therefore referred the matter back so that the decision could be taken on the merits.

In the civil appeal in the case of *Renjith K.G. v. Sheeba*,³⁸ the Supreme Court observed that a *pendente lite* transferee can also file under Order 21, Rule 99 of the CPC 1908 against dispossession from the suit property. The bench was examining the respondent's dispossession from the property, despite the respondent not being a party to the suit. The execution of the decree was passed, despite the predecessor of the respondents not being a party to the suit, yet they were still dispossessed of the property. This decision relied on the judgment in *Sriram Housing Finance and Investment v. Omesh Mishra Charitable Trust*.³⁹ The court upheld the right to apply for Order 21 Rule 99 CPC 1908, observing:

“he who is purported to be a stranger to the decree can very well adjudicate his claim of independent right, title and interest in the decretal property as per Order XXI Rule 99 CPC.”

It is to be noted that Order 21 Rule 97 CPC 1908 allows a decree-holder application to the court if there is an obstruction in obtaining possession of a property. It will enable even a stranger to the suit to approach the civil court against the dispossession resulting from the execution of the decree. Moreover, Order 21 Rule 101, CPC 1908 states that the Court, while deciding an application under Order 21 Rules 97 or 99 CPC 1908, must determine all relevant questions between the parties and no separate suit ought to be filed under Rule 101 for the determination of rights, title, or interest in the suit property.

VIII LIMITATION

In the case of *Choudappa v. Choudappa, SLP (Civil) No. 3056 of 2023*,⁴⁰ the trial court passed a decree in 1973 for the recovery of possession and correction of mutation entries. The decree holder applied for Order 20, Rule 12 of the CPC in 2014 to determine *mesne profits*. The appellant contended that the application had been filed decades after the decree, and it was liable to be dismissed on the grounds of limitation. The court held that the filing of a reminder application cannot be barred by the passage of time.

38 2024 LiveLaw (SC) 798.

39 Civil Appeal No. 4649 of 2022.

40 2024 LiveLaw (SC) 671.

In this regard, the Court drew reference to the case of *Kattukandi Edathil Krishnan v. Kattukandi Edathil Valsan*⁴¹ and highlighted the difference between the preliminary decree and final decree. The court ruled that proceedings for a final decree can be initiated at any point without limitation. The SC permitted the decreeholder to apply after almost 26 years, considering it a continuation of the suit, not barred by limitation.

In the case of *Rajesh Mitra v. Karnani Properties (Civil Appeal Nos. 3593-3594 of 2024)*, the landlord sought eviction of the tenant pursuant to the *West Bengal Tenancy Premises Act, 1997*, hereinafter referred to as the “New Act”. However, the tenant resisted the eviction because they had inherited the tenancy rights under the *West Bengal Premises Tenancy Act, 1956*, hereinafter referred to as the “Old Act”. The landlord referred to the testimony rendered in ‘another case’ to prove that only the mother of the appellant was the tenant and the appellants could occupy the premises as tenants for five years after their mother’s demise. Additionally, the landlord contended that since the New Act had repealed the Old Act, the appellant could not claim the benefit of the Old Act to inherit tenancy rights. The trial court delivered judgment in accordance with Order XII, Rule 6 of the CPC against the appellant, and the high court affirmed this.

The Supreme Court has also observed that Order XII Rule 6 did not envisage reliance on an ambiguous admission. The court further reasoned that even when acts are repealed, rights accrued under the repealed act cannot be taken away unless specified in the New Act. The entire issue revolved around the interpretation of the phrase “for a period not exceeding five years from the date of death of such tenant or from the date of coming into force of this Act, whichever is later”. The New Tenancy Act retrospectively applied section 2(g), limiting the enjoyment of the tenancy to five years. The court construed it as a literal interpretation of the phrase, which led to an absurd result, such as rendering the tenancy under the Old Tenancy Act redundant by the retrospective effect of the New Tenancy Act.

IX HEARING

Order XVIII Rule 1 of CPC 1908 provides that the plaintiff has the right to begin. However, if the defendant admits the facts alleged by the plaintiff, then the defendant gets the right to begin. The bench in the case of *Jami Venkata Suryaprabha v. Tarini Prasad Nayak*⁴² explained the circumstances under which a defendant is entitled to initiate proceedings. The court was hearing an appeal by the plaintiff, who sought to hold the defendant in contempt because he had admitted to the existence of the agreement. The trial and the high court both rejected the argument. They held that the defendant, though he acknowledged the deal, took the plea that it was a sham transaction. Hence, the courts were of the view that it could not be construed as an admission. In this case, the Supreme Court expounded:

41 2022 SCC OnLine SC 737.

42 2024 INSC 1001.

“Where the defendant admits the facts alleged by the plaintiff but contends that the plaintiff is not entitled to any part of the relief which he seeks, it is the defendant who gets the right to begin.”

The court observed that Order 18 CPC refers to the ‘hearing’ of a suit, not the ‘trial of a suit’, and hearing is part of the trial process. The Court further explained that no party can insist that the other party must initiate and conclude the appeal.

X MISCELLANEOUS

The trial court in the case of *Ramakant Ambalal Choksi v. Harish Ambalal Choksi*⁴³ granted an interim injunction (Order 39, Rules 1 and 2 of the CPC) restraining the defendants from alienating the property pending adjudication of the suit. However, the High Court allowed the defendants’ appeal under Order 43 of the CPC and vacated the injunction order. Following this, an appeal was preferred before the Supreme Court. Setting aside the high court’s order, the court observed that the high court committed an error in failing to point out any perversity in the trial court before vacating the interlocutory order.

The court directed the respondents to maintain the status quo as of the date of the suit regarding the suit property and shall not create any further encumbrances over the same in any manner. Accordingly, the appeal was allowed. The Supreme Court emphasised the importance of seeking an interim injunction in a suit for specific performance, observing that although section 52 of the TPA addresses *pendente lite* transfers, it may not be sufficient in providing comprehensive care for the plaintiff.

The court clarified that in a suit seeking specific performance of a sale agreement, if the defendant is not prohibited from transferring the property to a third party, equity would favour the third party. Consequently, the plaintiff would lose the right to demand specific performance of the contract. The court reasoned that Section 52 TPA would have addressed the *pendente lite* transfers; therefore, the legislature would not have provided for an interim injunction restraining the transfer of suit property in favour of the third party in Order 39, Rule 1 CPC.

The Supreme Court cautioned appellate courts against interfering with well-reasoned interlocutory orders, stating that discretion should only be exercised if the interlocutory order was arbitrary. The apex court also said that an appellate court must examine whether discretion has been correctly exercised and adjudicate on facts, even in discretionary orders.

The Supreme Court, in the case of *Bloomberg Television Production Services v. Zee Entertainment*, ruled that trial courts must be cautious in granting pre-trial injunctions in defamation suits. The bench made significant observations, setting aside an interim injunction order, and laid down a three-fold test for the grant of interim relief - (i) a prima facie case, (ii) balance of convenience and (iii) irreparable loss. It stated that in suits concerning defamation by media platforms, there should be a balance between the Fundamental Right of ‘free Speech’ and the ‘Right to

Privacy'. An *ex parte* injunction should not be granted without establishing the content as 'malicious' or 'palpably false'. The court then discussed the concept of 'SLAPP Suits' that are strategic litigation against public participation. It refers to litigation initiated by economically powerful individuals against members of the media or civil society to prevent the public from learning about affairs of public interest. Grant of an interim injunction is a discretionary power and must not be exercised perversely. The Supreme Court pointed out the high court's failure to examine the trial court's order.

XII CONCLUSION

Power to award interest

In the case of *M. D. Khosla and Co.v. UOI*,⁴⁴ it was decided that the arbitration tribunal was not empowered to grant interest upon interest, as the Arbitration Act, 1940, does not explicitly provide for the grant of interest on interest.

"In the light of the above legal provisions and the case law on the subject, it is evident that ordinarily courts are not supposed to grant interest on interest except where it has been specifically provided under the statute or where there is a specific stipulation to that effect under the terms and conditions of the contract. There is no dispute as to the power of the courts to award interest on interest or compound interest in a given case, subject to the power conferred under the statutes or under the terms and conditions of the contract. Still, where no such power is conferred, ordinarily, the courts do not award interest on interest."

In the present case, the arbitrator had awarded two kinds of interest: (i) 12% per annum till the date of the award, (ii) 15% pa till the date of its payment or the date of the decree, whichever is earlier. The petitioner claimed 15% on the amount awarded, including the 12% interest component, i.e., the pre-award interest. SC perused the wording in the award and the Arbitration Act and held that there was no provision to that effect under the relevant statutes or the contract. It referred to the cases of *UHL Power Company v. State of Himachal Pradesh*⁴⁵ and *Hyder Consulting (UK) v. Governor, State of Orissa*.⁴⁶ The Court explained section 31(7) of the Arbitration and Conciliation Act, 1996. It stated that the phrase 'sum directed to be paid by award' referred to post-award interest. It was therefore decided that S 31(7) should include both pre-award and post-award interest.

Framing of the suit

In the case of *Uniworld Logistics v. Indev Logistics*,⁴⁷ the defendant objected to the filing of two suits, one for possession and the other for arrears of rent and damages. The second suit was apparently barred by Order 2, Rule 2, but the apex court adjudicated that there is no bar to filing a separate suit for arrears of rent and damages after a suit for possession. It stated that the objective of Order 2, Rule 2,

44 Special Leave Petition (Civil) No.812 Of 2014 2024 LiveLaw (SC) 558.

45 2022 SCC OnLine SC 19.

46 (2015)2 SCC 189.

47 2024 LiveLaw (SC) 469.

is to avoid fragmented litigation. Although the plaintiff is required to include the total claim in one suit, if any part is omitted, it can be added with the court's permission.

Original side rules

The issue of lapse of original side rules was examined in the case of *Trois Corporation v. National Ventures*,⁴⁸ in the matter of recovering Rs 3.42 crore. The high court registered the plaint, but the Registry issued a formal summons in accordance with the Original Side Rules (OS Rules) of the high court.

This resulted in an *ex parte* decree, and the appellant received notice of execution proceedings in Hong Kong. An appeal was filed under Order XIV, Rule 8 of the OS Rules and Order IX, Rule 13 of the CPC. The single judge set aside the decree. The division bench dismissed the appellant's appeal, and it ultimately came before the apex court.

The Supreme Court observed it as a critical lapse and also the order to deposit 75% of the suit claim to be disproportionate. It imposed a cost of Rs two lakhs payable to the respondent. The appellant was directed not to default on the condition, and the suit was reinstated; the written statement was then taken on record.

Written statement

In the case of *Departmentals v. Sreeleathers*,⁴⁹ the high court's website reflected that the case was disposed of. It was suddenly listed after 17 years. The court permitted the filing of a written submission because the delay could not be attributed to the respondent, as it was the fault of the High Court Registry. The appeal was dismissed.

SC in *Kaushik Narsinhbhai Patel v. S.J.R. Prime Corporation*⁵⁰ based on the verdict in *Nalini Sunder v. GV Sunder*.⁵¹ Decided that if the right to file a written statement has been forfeited, the party can only participate in the proceedings and cross-examine the complainant. The court also stated that Order 6, Rule 7 of the CPC provides that only claims consistent with earlier pleadings can be brought.

In the case of *Ranjit Singh v. State of Uttarakhand* an *ex parte* order was passed due to the failure to record an appearance. The defendant contended that the unavailability of the presiding officer gave him the impression that the court would not be held. It was ruled that the defendant's right to file a statement stands extinguished, but he can lead evidence based on the plaint and cross-examine.

Deciding the case of *Asma Lateef v. Shabbir Ahmad*.⁵² The apex court has said that it is the duty of the trial court to prima facie check the maintainability of

48 SLP (C) Nos 4012-4013 of 2024, 2024 LiveLaw (SC) 217.

49 [2024] 7 S.C.R. 1409.

50 Civil Appeal no 8176 of 2022, 2024 LiveLaw (SC) 497.

51 AIR 2003 Kar 86.

52 2024 INSC 36.

the suit. If the suit is barred by law or not maintainable, still, preliminary issues need to be framed. Then, interim relief can only be refused. Even after the defendant fails to file the written statement, it is still incumbent upon the plaintiff to prove. The Court explained two alternatives under Order 8, Rule 10 of the CPC. - The first alternative is to pass judgment when there is a default to file a written statement, or secondly, to pass other fit orders. In the above judgment, the passing of judgment merely because one of the defendants did not file the written statement gave rise to complications.

Election petition

The case of *Sheikh Hassan v. Indrajit Singh*⁵³ concerned the filing of a replication by the election petitioner against the returned candidate. It was claimed that replication is barred due to the 45-day time limit for filing an election petition under the RP Act. The high court was treated as an election tribunal under Order VIII, Rule 97 of the CPC. The court dismissed the appeal, saying:

“The replication does not seek to incorporate any new material facts or a new cause of action to question the election. It only seeks to explain the averments made in the written statement. Thus, in our view, leave to file replication was justified and well within the discretionary jurisdiction of the High Court.”

Auction sale

In the case of *Al-Can Export v. Prestige H.M. Polycontainers*,⁵⁴ the properties were sold in an auction sale by the Tehsildar in contravention of the mandatory provisions of the Maharashtra Land Revenue Code, 1966. The Court observed that the Tehsildar had committed the illegality, and requiring the respondent to prove the illegality (Order 21, Rule 90 CPC) would be an injustice. The court restrained the appellant from transferring possession of the suit property and ordered the appellant to deposit a sum of Rs. 4,00,00,000/-. The Court ruled that failure to deposit the amount would result in the land being taken over and put up *fora* fresh auction process. Order 21, Rule 90 of the CPC outlines the remedy for challenging the auction of property if two conditions are met: fraud and injury suffered as a result of the scam. The court relied on section 141 of CPC and on the case of *Chilankurti Bala Subrahmanyam v. Samanthapudi Vijaya Lakshmi*.⁵⁵ It also made the judgment inapplicable under article 226 of the Constitution.

Suit by an indigent person

An indigent person is someone who lacks the financial means to pay the Court fee and proceed with the suit. In the case of *Alifiya Husenbhai Keshariya v. Siddiq Ismail Sindhi*,⁵⁶ a disability claim was filed under the Motor Accident Claims Tribunal for compensation. Permission was sought from the high court to file an appeal as an indigent person, as compensation had not been received. The matter was denied, so it came before the Supreme Court.

53 2024 INSC 391.

54 2024 LiveLaw (SC) 453.

55 (2017)6SCC770.

56 2024 LiveLaw (SC) 414.

The court relied on the verdict of *Union Bank of India v. Khader International Construction*. It opined that the High Court was incorrect in dismissing the application, despite having recorded that the compensation had not been received. The Bench referred to Order 38 & 44 of the CPC, 1908 and observed:

“exemplify the cherished principle that lack of monetary capability does not preclude a person from knocking on the doors of the Court to seek vindication of his rights.”

The court allowed the appellant to file the appeal as an indigent person and instructed the HC to decide the appeal within a period of six months.

The year 2024 concluded with the dismissal of miscellaneous applications from Adani Power, which had requested a late payment surcharge (LPS) from Rajasthan Discoms, arguing that the matter had already been disposed of. The Bench said that a post-disposal miscellaneous application should be allowed only in rare circumstances. The court relied on its judgment of *Supertech Limited*.⁵⁷

The application was treated as an abuse of process because it was filed as miscellaneous instead of a review, and therefore, it was not a proper legal recourse. The application was dismissed, imposing a cost of Rs. 50,000 on Adani Power to be deposited with the Supreme Court Legal Aid Committee.

57 (2021)10 SCC1.

