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CIVIL PROCEDURE

*P Puneeth**

I INTRODUCTION

IN LEGAL ordering, procedural law also has significant role. Its importance has, at times, been appreciated by the courts. In the survey year, the apex court observed thus:[1]

> Procedural norms, technicalities and processual law evolve after years of empirical experience, and to ignore them or give them short shrift inevitably defeats justice… Laws of procedure have picturesquely been referred to as handmaidens to justice, but this does not mean that they can be wantonly ignored because, if so done, a miscarriage of justice inevitably and inexorably ensues. The substantive law and the processual law are two sides of the judicial drachma, each being the obverse of the other.

Nonetheless, it is true that the courts often deviate from the procedural requirements in order to meet, what they consider, the ends of justice. This approach is evident in several decisions rendered during the year. In *Sandeep Thapar*,[2] the apex court has even gone to the extent of stating that the provisions of procedural law are declaratory in nature and not mandatory.

Several provisions and issues relating to the civil procedure came up for consideration before the courts during year. The present survey briefly summarizes the judicial interpretation of those provisions and decisions on such issues.

II JURISDICTION

Several issues pertaining to jurisdiction have cropped – up before the apex court in the survey year. While addressing these issues, it has clarified and crystallized the legal position on the following aspects.

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1 *Sri Gangai Vinayagar Temple* v. *Meenakshi Ammal* (2015) 3 SCC 624, Para 27.

2 *Infra* note 26.

Nature of the question of jurisdiction

The question of jurisdiction is a pure question of law that needs to be adjudicated only on the basis of statutory provisions and not on considerations like quantum of filing of cases. As to the choice of forum, it is no justification for the party to state that the particular forum was chosen because less number of cases is filed therein and there exists a possibility of speedy disposal.[3]

Place of suing: Extent of choice available to the plaintiff

Section 20 of the Code of Civil Procedure, 1908 (hereinafter "CPC"), provides that a suit must be instituted in a court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain, *or* where the cause of action, wholly or in part, arises. In *Dashrath Rupsingh Rathod*,[4] the apex court summarized the judicial approach on the issue of jurisdiction under section 20 and stated the position thus:[5]

> A plain reading of Section 20 CPC arguably allows the plaintiff a multitude of choices in regard to where it may institute its *lis*, suit or action. Corporations and partnership firms, and even sole proprietorship concerns, could well be transacting business simultaneously in several cities. If clauses (*a*) and (*b*) of Section 20 are to be interpreted disjunctively from clause (*c*), as the use of the word "or" appears to permit the plaintiff to file the suit at any of the places where the cause of action may have arisen regardless of whether the defendant has even a subordinate office at that place. However, if the defendant's location is to form the fulcrum of jurisdiction, and it has an office also at the place where the cause of action has occurred, it has been held that the plaintiff is precluded from instituting the suit anywhere else. Obviously, this is also because every other place would constitute a *forum non conveniens.* This Court has harmonised the various hues of the conundrum of the place of suing in several cases and has gone to the extent of laying down that it should be courts' endeavour to locate the place where the cause of action has substantially arisen and reject others where it may have incidentally arisen… if the defendant corporation has a subordinate office in the place where the cause of action arises, litigation must be instituted at that place alone, regardless of the amplitude of options postulated in Section 20 CPC.

Cause of action and territorial jurisdiction of the high courts' under article 226

The 'cause of action' referred to in article 226 (2) of the Constitution, for all intent and purpose, must be assigned the same meaning as envisaged under section 20(*c*) of the CPC. On a plain reading of the amended provisions in clause (2) of

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3 *State of Maharashtra* v. *Atlanta Ltd.* (2014) 11 SCC 619.

4 *Dashrath Rupsingh Rathod* v. *State of Maharashtra* (2014) 9 SCC 129.

5 *Id*. para 12.

article 226, it is clear that now the high court can issue a writ when the person or the authority against whom the writ is issued is located outside its territorial jurisdiction, if the cause of action wholly or partially arises within the court's territorial jurisdiction. The question whether or not cause of action wholly or in part has arisen within the territorial limit of any high court has to be decided in the light of the nature and character of the proceedings under article 226 of the Constitution. In order to maintain a writ petition, the petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the territorial limit of the court's jurisdiction.[6]

Concurrent jurisdiction

In *Atlanta Ltd.*,[7] the apex court dealt with a question as to whether a challenge to an arbitration award (or arbitral agreement, or arbitral proceeding), wherein jurisdiction lies with more than one court, can be permitted to proceed simultaneously in two different courts?

It is pertinent to note that section 42 of the Arbitration and Conciliation Act, 1996 (herein after the Arbitration Act) was enacted to remedy a situation, where the jurisdiction for raising a challenge to the same arbitration agreement, arbitral proceeding or arbitral award could arise in more than one court simultaneously. It provides that the court, wherein the first application arising out of such a challenge is filed, shall alone have the jurisdiction to adjudicate upon the dispute(s), which are filed later in point of time. The above legislative intent, according to the court, implies that disputes arising out of the same arbitration agreement, arbitral proceeding or arbitral award would not be adjudicated upon by more than one court, even though jurisdiction to raise such disputes may legitimately lie before two or more courts.

Though, it might appear that the question mentioned above could have been resolved by the court relying on the provision contained in section 42, the factual matrix of the case did not allow the court to adopt such a course. In the present case, the State of Maharashtra had moved miscellaneous civil applications under section 34 of the Arbitration Act before the district judge, Thane, on the same day as Atlanta Ltd. had filed arbitration petition before the high court. Both the parties had approached different courts on the same day. It, thus, become imperative for the apex court to choose the jurisdiction of one of two courts i.e. either the "ordinary original civil jurisdiction" of the High Court of Bombay or the "Principal Civil Court of Original Jurisdiction" in the District of Thane.

The court relied upon section 2 (1) (e) of the Arbitration Act, which defines 'court', to resolve the issue. The court observed that the legislative intent emerging from section 2(1) (e) makes it abundantly clear that legislative choice is clearly in favour of the high court. Accordingly, it was held that the high court has the exclusive jurisdiction in the circumstances of the case. The court also ruled that the principle enshrined in section 15, CPC, which provides that every suit shall be instituted in the court of the lowest grade competent try it, cannot be invoked whilst interpreting section 2(1) (e) of the Arbitration Act.

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6 *Nawal Kishore Sharma* v. *Union of India* (2014) 9 SCC 329.

7 *Ibid.*

Mandatory reference to arbitration: Bar on jurisdiction to continue

Section 45 of the Arbitration Act mandates that a judicial authority, when seized of an action in a matter in respect of which the parties have made an agreement referred to in section 44, shall, at the request of one of the parties or any person claiming through or under him, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed. The language of section 45 is clear that the judicial authority has no option but to refer the parties to arbitration notwithstanding anything contained in the Arbitration Act or in the CPC. Thus, even if, under section 9 read with section 20 of the CPC, the high court had the jurisdiction to entertain the suit, once a request is made by one of the parties or any person claiming through or under him to refer the parties to arbitration, the high court is obliged to refer the parties to arbitration unless it found that the said agreement referred to in section 44 was null and void, inoperative or incapable of being performed. Section 45 does not even require a formal application to be made for the purpose. It refers to the *request* of one of the parties or any person claiming through or under him to refer the parties to arbitration.[8]

Eviction of tenant from wakf property: Civil court's jurisdiction

In *Faseela M.* v. *Munnerul Islam Madrasa Committee*,[9] the apex court ruled that the suit for eviction against the tenant relating to a wakf property is exclusively triable by the civil court as such suit is not covered by the disputes specified in sections 6 and 7 of the Wakf Act, 1995. The court relied upon the decision in *Ramesh Gobindram*,[10] to support its decision.

III RES JUDICATA

The scope of the doctrine of *res judicata* was in question in *Subramanian Swamy* v. *State of T.N.*[11] The apex court, at the outset, explained the doctrine in the following words:[12]

> The literal meaning of "res" is "everything that may form an object of rights and includes an object, subject-matter or status" and "res judicata" literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgments". *Res judicata pro veritate accipitur* is the full maxim which has, over the years, shrunk to mere "res judicata", which means that res judicata is accepted for truth. The doctrine contains the rule of conclusiveness of the judgment which is based partly on the maxim of Roman

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8 *World Sport Group (Mauritius) Ltd.* v. *MSM Satellite (Singapore) Pte. Ltd.* (2014) 11 SCC 639.

9 (2014) 16 SCC 38.

10 *Ramesh Gobindram* v. *Sugra Humayun Mirza Wakf* (2010) 8 SCC 726.

11 (2014) 5 SCC 75.

12 *Id*. para 39.

> jurisprudence *interest reipublicae ut sit finis litium* (it concerns the State that there be an end to law suits) and partly on the maxim *nemo debet bis vexari pro una et eadem causa* (no man should be vexed twice over for the same cause).

Relying on the earlier judicial decisions,[13] the court also stated that even an erroneous decision on a question of law attracts the doctrine of *res judicata* between the parties. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as *res judicata*. This position was reiterated in *R. Unnikrishnan* v. *V.K. Mahanudevan*[14] as well. In this case the court, further, clarified that:[15]

> "[t]he matter in issue if one purely of fact decided in the earlier proceedings by a competent court must in any subsequent litigation between the same parties be recorded as finally decided and cannot be reopened. That is true even in regard to mixed questions of law and fact determined in the earlier proceeding between the same parties which cannot be revised or reopened in a subsequent proceeding between the same parties. Having said that we must add that the only exception to the doctrine of res judicata is "*fraud*" that vitiates the decision and renders it a nullity. This Court has in more than one decision held that fraud renders any *judgment, decree or order a nullity and non est in the eye of the law.*

In *Union of India* v. *S.P. Sharma*,[16] the Supreme Court, on the other hand, observed that "fraud is not a term or ornament nor can it be presumed to exist on the basis of a mere inference on some alleged material that is stated to have been discovered later on."[17] In the opinion of the court, the discovery of a reinvestigated fact could have been a ground of review in the same proceedings, but the same cannot be made the basis for reopening the issue through a fresh round of litigation. A fresh writ petition or letters patent appeal which is in continuation of a writ petition cannot be filed collaterally to set aside the judgment of the same high court rendered in an earlier round of litigation. To establish fraud, it is the material available which may lead to the conclusion that the failure to produce the material was deliberate or suppressed or even otherwise occasioned a failure of justice. *This also can be attempted, if legally permissible, only in the said proceedings and not in a collateral challenge raised after the matter has been finally decided in the first round of litigation.* Thus, on facts, the court held that the high court has committed a manifest error by not lawfully defining the scope of the fresh round

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13 *Sha Shivraj Gopalji* v. *Edappakath Ayissa Bi,* AIR 1949 PC 302; *Mohanlal Goenka* v. *Benoy Kishna Mukherjee,* AIR 1953 SC 65.

14 (2014) 4 SCC 434.

15 *Id*., para 23.

16 (2014) 6 SCC 351.

17 *Id*., para 73.

of litigation on the principles of *res judicata* and doctrine of finality. The court unequivocally stated that:[18]

> A decision rendered by a competent court cannot be challenged in collateral proceedings for the reason that if it is permitted to do so there would be "confusion and chaos and the finality of proceedings would cease to have any meaning".

The principle of finality of litigation is based on a sound and firm principle of public policy. In the absence of such a principle great oppression might result under the colour and pretence of law inasmuch as there will be no end to litigation. The doctrine of *res judicata* has been evolved to prevent such anarchy.[19]

Principles of constructive *res judicata*

The principles of constructive *res judicata* are also a part of the doctrine of *res judicata*. Whereas the doctrine of *res judicata* applies to what is actually adjudicated or determined in a previous case, constructive *res judicata,* on the other hand, applies to every other matter which the parties might and ought to have litigated or which was incidental to or essentially connected with the subject – matter of the previous litigation. It is fairly well settled that those principles are applicable to writ proceedings as well.[20]

Suit under article 131 of the Constitution of India: Applicability of *res judicata*

In *State of T.N.* v. *State of Kerala*,[21] though the Supreme Court was of the opinion that the suit filed under article 131 of the Constitution of India is not to be governed by the provisions of CPC except in sofar as the Supreme Court Rules permits their application, it took a different view as far as the application of the doctrine of *res judicata* is concerned. The court unequivocally said that the said doctrine applies to the suit under article 131 as well. It observed thus:[22]

> The principles of res judicata… have been made applicable to cases which are tried by the courts of limited jurisdiction. The decisions of the courts of limited jurisdiction, insofar as such decisions are within the competence of the courts of limited jurisdiction, operate as res judicata in a subsequent suit, although, the court of limited jurisdiction that decided the previous suit may not be competent to try such subsequent suit or the suit in which such question is subsequently raised. If a decision of the court of limited jurisdiction, which was within its competence, operates as res judicata in a subsequent suit even when the subsequent suit is not triable by it, *a fortiori*, the decision of the highest court of the land in whatever jurisdiction given on an issue which was directly raised, considered

18 *Id*., para 76.

19 *Id*., para 81.

20 *Shiv Chander More* v. *Lt. Governor* (2014) 11 SCC 744.

21 *Infra* note 74.

22 *Id*., para 175.

> and decided must operate as res judicata in the subsequent suit triable exclusively by the highest court under Article 131 of the Constitution. Any other view in this regard will be inconsistent with the high public policy and rule of law. The judgment of this Court directly upon the point, is as a plea, a bar, or as evidence, conclusive between the same parties, upon the same matter, directly in question before this Court, though, label of jurisdiction is different.

Accordingly, the court ruled that since the claim of the State of Kerala that water level cannot be raised from its present level of 136 ft was expressly not accepted in the earlier proceeding, its objection, in the present case, to the water level in the Mullaperiyar Dam being raised to 142 ft on the ground of safety is untenable. The earlier judgment operates as *res judicata* in respect of the issue of safety of the Dam by increasing its water level from 136 ft to 142 ft.

Bar of subsequent suit: Conditions for invocation of order 2 rule 2

The bar of subsequent suit as envisaged under order 2 rule 2 comes into operation if the following conditions are fulfilled:[23]

(i) Where the cause of action on which the previous suit was filed forms the foundation of the subsequent suit;

(ii) When the plaintiff could have claimed the relief sought in the subsequent suit, in the earlier suit; and

(iii) Both the suits are between the same parties.

Furthermore, the court held,[24] the bar under order 2 rule 2 must be specifically pleaded by the defendant in the suit and the trial court should frame a specific issue in that regard wherein the pleading in the earlier suit must be examined and the plaintiff is given an opportunity to demonstrate that the cause of action in the subsequent suit is different. The court in order to determine whether a suit is barred under the said provisions must examine the cause of action pleaded by the plaintiff in his plaints filed in the relevant suits. Considering the technicality of the plea under order 2 rule 2, both the plaints must be read as a whole to identify the cause of action, which is necessary to establish a claim or necessary for the plaintiff to prove if traversed. Therefore, after identifying the cause of action if it is found that the cause of action pleaded in both the suits is identical and the relief claimed in the subsequent suit could have been pleaded in the earlier suit, then the subsequent suit is barred by order 2 rule 2.

IV PLEADINGS

Pleadings include both 'plaint' and 'written statement'. Certain issues relating to both came-up for consideration in the survey year.

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23 *Coffee Board* v. *Ramesh Exports (P) Ltd.* (2014) 6 SCC 424. See also, *Rathnavathi* v. *Kavita Ganashamdas* (2015) 5 SCC 223.

24 *Ibid.*

Plaint

It is a settled proposition of law that a party has to plead the case and produce sufficient evidence to substantiate his submissions made in the plaint and in case the pleadings are not complete, the court is under no obligation to entertain the pleas.[25]

Written statement: Permission to file after the expiry of prescribed period

In *Sandeep Thapar* v. *SME Technologies (P) Ltd.*,[26] the question as to whether the court can grant permission to file written statement after the expiry of the prescribed period under order 8 rule 1, CPC arose for consideration of the court. The apex court answered the question in the affirmative relying on the *ratio* laid down in *Kailash* v. *Nanhku*,[27] where it was held:[28]

> The purpose of providing the time schedule for filing the written statement under Order 8 Rule 1 CPC is to expedite and not to scuttle the hearing. The provision spells out a disability on the defendant. It does not impose an embargo on the power of the court to extend the time. Though, the language of the proviso to Rule 1 of Order 8 CPC is couched in negative form, it does not specify any penal consequences flowing from the non-compliance. The provision being in the domain of the procedural law, it has to be held directory and not mandatory. The power of the court to extend time for filing the written statement beyond the time schedule provided by Order 8 Rule 1 CPC is not completely taken away.

Amendment of pleadings

It is well settled that as a general rule the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.[29]

V PARTIES

In civil litigation, non–joinder of necessary parties has fatal consequences. Several decisions rendered during the year reaffirm this position.

Whether appointments can be quashed as sought in a petition without impleading the appointees was a question the Supreme Court dealt with in *Ranjan Kumar* v. *State of Bihar*.[30] Holding that no adverse orders can be passed against persons who were not parties to the litigation, the court answered the question in the negative and set aside the impugned order of the high court, which had quashed the appointments.

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25 *Rajasthan SRTC* v. *Bajrang Lal* (2014) 4 SCC 693.

26 (2014) 2 SCC 302.

27 (2005) 4 SCC 480.

28 *Id*., para 46 (iv).

29 *Voltas Ltd.* v. *Rolta India Ltd.* (2014) 4 SCC 516. The court relied upon *Revajeetu Builders and Developers* v. *Narayanaswamy* (2009) 10 SCC 84.

30 (2014) 16 SCC 187.

In *T.N. Public Service Commission* v. *A.B. Natarajan*,[31] the apex court rightly took a different stand owing to the differences in the facts of the case. In this case, appointments were challenged before the high court on the ground, *inter alia*, of irregularities and malpractices committed by the candidates, while writing examination. Instructions given to the candidates were also grossly violated and indications or markings were also made by certain candidates in the answer scripts. The high court set aside the selection of candidates who had committed such irregularities. The decision of the high court was challenged, *inter alia*, on the ground that the selected candidates had not been joined as respondents and even the State of Tamil Nadu had not been joined as a respondent initially. In this case, since initially only one petition had been filed when the result had not been declared, it was not possible for the petitioners to join all selected candidates. Subsequently, an advertisement had been given in the newspapers giving indication about the pendency of the petition so as to enable the selected candidates to appear before the court. Moreover, the appointment letters gave an indication of the fact that a litigation challenging their appointment was pending in the high court. The apex court said that in spite of the aforesaid fact being stated in the appointment order and the advertisement, if selected candidates did not bother to appear before the court, by no stretch of imagination, can it be said that the selected candidates were not given an opportunity to represent their case. Accordingly, it rejected the contention with regard to non-joinder of selected candidates or even the State of Tamil Nadu as having no substance.

In *Chaman Lal* v. *State of Punjab*,[32] it was held that if the relief is sought against the state, it is necessary for the plaintiff to implead the state and in absence thereof the suit itself would not be maintainable. It is a settled legal proposition that in view of the provisions of section 79 read with order 1 rules 9 and 27, CPC and article 300 of the Constitution of India, if a relief is sought against the state or the Union of India, the state or Union of India must be impleaded as a party. In case it is not so impleaded, the suit is not maintainable for want of necessary party.

VI APPEAL

Power of the first appellate court

It has long been settled that the first appellate court has ample jurisdiction under section 96, CPC to appreciate the evidence independent to that of the appreciation done by the trial court and come to its own conclusion. The apex court reiterated this position in *Karedla Parthasaradhi*.[33]

Production of additional evidence in appellate court

In *Lekhraj Bansal* v. *State of Rajasthan*,[34] the case of the appellant was that his date of birth has wrongly been recorded in his service book as 20-5-1943, whereas his correct date of birth is 28-8-1945 and he sought for a declaratory

31 (2014) 14 SCC 95.

32 (2014) 15 SCC 715.

33 *Karedla Parthasaradhi* v. *Gangula Ramanamma* (2014) 15 SCC 789.

34 (2014) 15 SCC 686.

relief to the said effect. He had, however, not stated his actual date of birth in his oral testimony before the court of first instance. He also failed to produce any document to prove his correct date of birth, which resulted in the dismissal of the suit by the trial court. During the pendency of the appeal, he filed an application under order 41 rule 27 CPC for taking on record the date of birth certificate issued by the Municipal Council. The lower appellate court dismissed the appeal along with the application on ground that he has not satisfied any of the conditions stipulated under order 41 rule 27 and hence is not entitled to produce additional evidence. The said order came to be upheld by the high court as well. While dismissing the appeal against the said order of the high court, the apex court reiterated that the parties to an appeal shall not be entitled to produce additional evidence in the appellate court unless the conditions stipulated under order 41 rule 27 CPC are satisfied.[35]

The issue of production of additional evidence in the appellate court once again cropped up before the apex court in *Surjit Singh* v. *Gurwant Kaur*.[36]In this case, during the pendency of the suit, an application under section 151, CPC was filed by the respondent – plaintiff seeking permission to produce certain documents as additional evidence and the same was dismissed by the trial court. The high court in revision, after examining the order of the trial court, refused to interfere therewith. Thereafter, the suit was dismissed by the trial court. During the pendency of the appeal against the dismissal of the suit, an application was filed under order 41 rule 27 for filing the very same documents as additional evidence. The first appellate court allowed the said application and the high court also opined that the order of the lower appellate court does not suffer from any legal infirmity. While allowing appeal against the said order of the high court, the apex court observed thus:[37]

> At this juncture, it is necessary to clarify that sub-rule (1) (*a*) of Rule 27 of Order 41 is not attracted to the case at hand inasmuch as the documents were not taken on record by the trial court and error, if any, in the said order does not survive for reconsideration after the High Court has given the stamp of approval to the same in civil revision. Similarly, sub-rule (1) (*aa*) would not be applicable as the party seeking to produce an additional evidence on the foundation that despite exercise of due diligence, such evidence was not within his knowledge or could not, after exercise of due diligence, be produced by him at the time when the decree appealed against was passed does not arise, for the documents were sought to be produced before the trial court. Cases may arise under sub-rule (1)(*b*) where the appellate court may require any document to be produced or any witness to be examined to enable it to pronounce judgment, or

35 *Id*., para 6.

36 (2015) 1 SCC 665.

37 *Id*., para 21.

> for any other substantial cause. However, exercise of the said power is circumscribed by the limitations specified in the language of the Rule. It is the duty of the court to come to a definite conclusion that it is really necessary to accept the documents as additional evidence to enable it to pronounce the judgment. The true test is… whether the appellate court was able to pronounce the judgment from the materials before it without taking into consideration the additional evidence sought to be adduced.

Power of the appellate court to mould relief taking into account subsequent events

Ordinarily, the rights of parties are crystallized on the date the suit is instituted and only the same set of facts must be considered. Relying on the said rule, a decision of the high court made in appeal under section 96, CPC was challenged in *Gaiv Dinshaw Irani* v. *Tehmtan Irani*.[38] In the impugned decision, the high court had moulded the relief by taking into account subsequent events. Relying on the long line of judicial decisions, the apex court upheld the order of the high court. It held that in the interest of justice, a court, including a court of appeal under section 96 is not precluded from taking note of developments subsequent to the commencement of the litigation, when such events have a direct bearing on the relief claimed by a party or on the entire purpose of the suit. The courts taking note of the same should mould the relief accordingly.

Second appeal

Right to prefer second appeal in civil matters is a substantive statutory right regulated by law contained in section 100, CPC.[39] From a bare reading of the aforesaid provision it is clear that an appeal shall lie to the high court from an appellate decree only if the high court is satisfied that the case involves a substantial question of law. It further mandates that the memorandum of appeal precisely states the substantial question of law involved in the appeal. If such an appeal is filed, the high court while admitting or entertaining the appeal must record its satisfaction and formulate the substantial question of law involved in the appeal. The appeal shall then be heard on the questions so formulated and the respondent shall be allowed to argue only on those substantial questions of law. However, proviso to this section empowers the court to hear on any substantial question of law not formulated after recording reasons.[40]

The position, which is well settled by a long line of decisions is that jurisdiction of the high court to entertain a second appeal is confined only to such appeals which involves substantial question of law. Section 100 mandates the high court to first formulate substantial question of law at the time of admission of the appeal. If the same has not been done, the judgment passed by the high court is vitiated in law.[41]

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38 (2014) 8 SCC 294.

39 *Shantabai* v. *Nanibai* (2014) 2 Mah LJ 873 (Bom).

40 *Biswanath Ghosh* v. *Gobinda Ghosh* (2014) 11 SCC 605.

41 *Ibid.*

In *Amar Nath* v. *Kewla Devi*,[42] the apex court, while dealing with the question as to whether the high court was correct in deciding the appeal without formulating substantial questions of law, observed:[43]

> In our considered viewpoint, the High Court has committed a grave error in procedure by not framing substantial question of law and setting aside the judgment and decree of the first appellate court. The findings of fact recorded by the first appellate court on the contentious issues was based on reappreciation of the pleadings and evidence on record and careful perusal of the law and the High Court has failed to discharge its duty by not framing the mandatory substantial questions of law in order to examine the correctness of the judgment and decree passed by the first appellate court. In the interest of justice, the judgment and decree of the High Court has to be set aside as it has omitted to frame substantial questions of law and answer the same and thus has failed to discharge its duty under Section 100 CPC.

In *Balwinder Singh* v. *National Fertilizers Ltd.*,[44] the apex court reiterated its stand and said "[A]s the second appellate court has no jurisdiction to admit or decide the second appeal without formulating a substantial question of law at the initial stage which is a sine qua non for exercising jurisdiction under Section 100 CPC, we have no other option but to set aside the impugned common judgment."[45]

In *Arsad Sheikh* v. *Bani Prosanna Kundu*,[46] a judgment[47] passed by the high court in second appeal was challenged on the ground, *inter alia*, that it suffers from patent error in law in as much as the high court did not frame the substantial question of law at the time of admission of the second appeal but formulated a question only in the impugned judgment after the arguments had been concluded. The apex court rejected the argument holding that "[I]n light of the well-accepted principle that rules of procedure is a handmaiden of justice, the omission of the court in formulating the "substantial question of law" (while admitting the appeal) does not preclude the same from being heard as litigants should not be penalised for an omission of the court." The court also ruled that, in second appeal, substantial question of law can be formulated at the initial stage and in some exceptional cases, at a later point of time. Even at the stage of argument, such substantial question of law can be formulated provided the opposite party is put on notice and given a fair or proper opportunity to meet out the point. Furthermore, the judgment of the high court should only be set aside on the ground of non-compliance with sub-section (4) of section 100 if some prejudice has been caused to the appellants by not formulating such a substantial question of law.

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42 (2014) 11 SCC 273.

43 *Id*., para 12.

44 (2014) 13 SCC 277.

45 *Id*., para 19.

46 (2014) 15 SCC 405.

47 *Bani Prasanna Kundu* v. *Jaiten Nessa* (2009) 1 CHN 220.

The decision in *Arsad Sheikh*,[48] does not seem to be in conformity with the letter and spirit of section 100. The provision that requires formulation of substantial question of law as *sine qua non* for entertaining the second appeal aims at limiting the number of appeals. As far as the question of fact and ordinary questions of law are concerned, the decision of the first appellate court shall be final. The rule of limiting the second appeal to substantial question of law is based on the sound public policy. It may, however, be noted that this rule already has certain exceptions, which are supported by a long line of judicial decisions.

It is well settled that the high court, in the second appeal, can interfere with a concurrent finding of fact if it is perverse.[49] In *Rajasthan SRTC*,[50] the apex court held that the high court can entertain the second appeal, in exceptional circumstances, on pure questions of fact. In the opinion of the court, there is no prohibition for the high court to do so where factual findings are found to be perverse. Even in *Easwari* v. *Parvathi*,[51] the apex court had taken the similar stand. The court said that though a plain reading of section 100 conveys that a second appeal be allowed only when there is a "substantial question of law" involved, it is settled law that the high court can interfere in second appeal when finding of the first appellate court is not properly supported by evidence. Even when both the trial court and the lower court have given concurrent findings, there is no absolute ban on the high court in second appeal to interfere with the facts. This exception apparently does not have any basis in the text of section 100.

SLP against the order passed in second appeal in trivial matters

In *Haryana Dairy Development Coop. Federation Ltd.* v. *Jagdish Lal*,[52] the apex court castigated the practice of filing special leave petition seeking leave to appeal against the order passed in second appeal in trivial matters. In the instant case, an amount of Rs. 8724 is to be paid to the respondent employee as reimbursement of his medical claim and the petitioner came up to the Supreme Court to deny the said claim. While dismissing the SLP, the court observed:[53]

> In spite of the fact that Parliament has amended the Code of Civil Procedure, 1908 altering the provisions of Section 102 CPC providing that money recovery suit involving less than Rs 25,000 shall not be entertained in the second appeal, we are being burdened with cases where the litigation cost may be hundred times more than the amount involved. It has become the definite attitude of the officials not to take any responsibility even for petty issues and would waste public money approaching this Court. The government departments would spend any amount on litigation instead of paying a petty amount to the other party.

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48 *Surpa* note 46.

49 *Keshar Bai* v. *Chhunulal* (2014) 11 SCC 438.

50 *Rajasthan SRTC* v. *Bajrang Lal* (2014) 4 SCC 693.

51 (2014) 15 SCC 255.

52 (2014) 3 SCC 156.

53 *Id*., para 1.

In order to discourage indecisiveness of the officials, the court directed that the expenses of the litigation shall be paid by the Managing Director personally who has signed affidavit in support of the petition and it shall not be taken from the Federation.

Consequence of non-appearance of parties

It is clear from order 41 rule 17 that an appeal can be heard on merits if the respondent does not appear, but in case the appellant fails to appear the appeal may be dismissed in default. The explanation to sub-rule (1) of rule 17 makes it clear that, in the later situation, the court is not empowered to dismiss the appeal on the merits of the case. Thus, non appearance of the appellant and the respondent would lead to different consequences. It may also be noted that corresponding provisions contained in rule 19 and rule 21 are also differently worded. Rule 19 deals with readmission of appeal "dismissed for default", where the appellant does not appear at the time of hearing and rule 21 talks of "rehearing of the appeal" when the matter is heard in the absence of the respondent and *ex parte* decree made. The court has categorically said that, in the event of appellant's failure to appear, it is not permissible for the appellate court to dismiss the appeal on merits.[54]

Appeal to the Supreme Court under section 125 of the Electricity Act, 2003

Under section 125 of the Electricity Act, 2003, any person aggrieved by any decision or order of the appellate tribunal may file an appeal to the Supreme Court on any one or more of the grounds specified in section 100, CPC. In view of the said provision, the apex court said that unless it is satisfied that the findings of fact recorded by the forum below are perverse, irrational and based on no evidence, it would not interfere.[55]

VII REVIEW AND REVISION

Appellate and revisional jurisdictions: Distinctions

Conceptually, revisional jurisdiction is a part of appellate jurisdiction but it is not *vice versa*. Both, appellate jurisdiction and revisional jurisdiction are creatures of statutes. It is a well settled law that no party to the proceeding has an inherent right of appeal or revision.[56]

An appeal is continuation of suit or original proceeding, as the case may be. The power of the appellate court is coextensive with that of the trial court. Ordinarily, appellate jurisdiction involves rehearing on facts and law but such jurisdiction may be limited by the statute itself that provides for the appellate jurisdiction. On the other hand, revisional jurisdiction, though, is a part of appellate jurisdiction; it cannot ordinarily be equated with that of a full-fledged appeal. In other words, revision is not continuation of suit or of original proceeding. When the revisional jurisdiction of a court is invoked, it can interfere within the

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54 *Harbans Pershad Jaiswal* v. *Urmila Devi Jaiswal* (2014) 5 SCC 723.

55 *T.N. Generation & Distribution Corpn. Ltd.* v. *PPN Power Generating Co. (P) Ltd.* (2014) 11 SCC 53.

56 *Hindustan Petroleum Corpn. Ltd.* v. *Dilbahar Singh* (2014) 9 SCC 78.

permissible parameters provided in the statute. It goes without saying that if a revision is provided against an order passed by the tribunal/appellate authority, the decision of the revisional court is the operative decision in law.[57]

However, notwithstanding the general distinctions that exist between the two, the extent of appellate or revisional jurisdiction conferred under different statutes would basically depend on the language employed by the statute conferring appellate jurisdiction and revisional jurisdiction.[58] Having regard to this position, the apex court ruled, in *Hindustan Petroleum Corpn. Ltd.*,[59] that though the rent control laws of Haryana,[60] Tamil Nadu[61] and Kerala[62] confer on the revisional authority powers that are wider than the power conferred under section 115 of the CPC, none of them confer power as wide as that of the appellate court.

Scope of review powers of the Supreme Court and high courts

The high court or the Supreme Court, in exercise of their powers of review, can reopen the case and rehear the entire matter. But whilst exercising such power, the court cannot be oblivious of the provisions contained in order 47 rule 1 CPC as well as the rules framed by the high courts or, as the case may be, the Supreme Court. The limits within which the courts can exercise the powers of review have been well settled.[63]

High court's interference with concurrent findings in revision

It is well settled that the high court, in exercise of its revisional jurisdiction, is not entitled to interfere with the findings of the appellate court, until and unless it is found that such findings are perverse and arbitrary.[64] In, *S.F. Engineer* v. *Metal Box India Ltd.*,[65] an interference of the high court, in exercise of its civil revisional jurisdiction, with the concurrent findings on the facts by the courts below was questioned. The apex court, without disputing the correctness of the proposition of the law stated above, has ruled that the high court has not committed any illegality in the case. It relied upon the rule that drawing inference from the facts established is not purely a question of fact. In fact, it is always considered to be a point of law insofar as it relates to inferences to be drawn from finding of fact. The court observed that when inferences drawn do not clearly flow from facts and are not legally legitimate, any conclusion arrived at on that basis becomes absolutely legally fallible. Therefore, it cannot be said that the high court has erred in exercise of its revisional jurisdiction by substituting the finding of fact which has been arrived at by the courts below.

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57 *Ibid.*

58 *Ibid.*

59 *Ibid.*

60 Haryana Urban (Control of Rent and Eviction) Act, 1973.

61 T.N. Building (Lease and Rent Control) Act, 1960.

62 Kerala (Lease and Rent Control) Act, 1965.

63 *Usha Bharti* v. *State of U.P.* (2014) 7 SCC 663.

64 *Renuka Das* v. *Maya Ganguly* (2009) 9 SCC 413.

65 (2014) 6 SCC 780.

VIII JUDGMENT, DECREE AND ORDERS

Section 152 of the CPC authorizes the court, on its own motion or on the application of any of the parties, to correct, at any time, any clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission.

The powers under section 152 are neither to be equated with the power of review nor can be said to be akin to review. The corrections contemplated under the section are of correcting only accidental omissions or mistakes and not all omissions and mistakes. The omission sought to be corrected which goes to the merits of the case is beyond the scope of section 152. It can be invoked for the limited purpose of correcting clerical errors or arithmetical mistakes in judgments or accidental omissions. For deciding whether the court has acted within the purview of section 152, one has to see what were the pleadings of the parties, what was the decree passed, and what correction was made in it.[66]

IX EXECUTION

Execution of *ex parte* decree for specific performance

The decree passed under order 8 rule 10, CPC does not cease to have the force of the decree merely because it is an *ex parte* decree. It is a valid decree for all purposes. Once such a decree attained finality, the parties, who have failed to file the written statement, cannot, thereafter, turn around and make weak and lame contentions regarding the executability of the decree. If there is any ambiguity in the decree, it is for the executing court to construe the decree if necessary after referring to the judgment. If sufficient guidance is not available even from the judgment, the court is even free to refer to the pleadings so as to construe the true import of the decree.[67]

Execution of money decree: Rule of appropriation

The question of method of appropriation of the amount deposited by the judgment – debtor, when it falls short of the decretal amount, is longer *res integra*. It is settled by a long line of judicial decisions that the amount, unless the decree contains a specific provision, has to be appropriated as contemplated under order 21 rule 1. Accordingly, if there is a shortfall in deposit, the amount has to be adjusted towards interest and costs, and then it has to be adjusted towards principal amount. In *V. Kala Bharathi* v. *Oriental Insurance Co. Ltd.*,[68] the apex court dealt with the doubts expressed by the High Court of Andra Pradesh[69] on the correctness of the above proposition of law. The high court was of the view that the above proposition is based on the pre-amended provisions of order 21 rule 1 and that is not a correct law in view of sub-rule (4) and (5), which were inserted pursuant to

66 *Srihari* v. *Syed Maqdoom Shah* (2015) 1 SCC 607.

67 *Rajendra Kumar* v. *Kuldeep Singh* (2014) 15 SCC 529.

68 (2014) 5 SCC 577.

69 *Oriental Insurance Co. Ltd.* v. *V. Kala Bharathi*, AIR 2006 AP 31.

the amendment to CPC made in 1976. The apex court was of the opinion that there is not much difference in the provisions prior to or subsequent to the amendment. It observed thus:[70]

> We may add that the High Court proceeded on the assumption as if sub-rules (4) and (5) of Rule 1, which were inserted pursuant to the amendment to CPC in 1976, there is change in procedural law and the tenor of sub-rule (1) thereof. But, sub-rules (4) and (5) do not have any relevance with regard to appropriation, except stating when interest ceases to run. Thus, it is in no way guide for appropriation of amount as contemplated under Order 21 Rule 1 CPC. In *Industrial Credit and Development Syndicate Ltd.* [(1999) 3 SCC 80] which is subsequent to the amendment to the provision, this Court has categorically observed the procedure to be followed and which squarely applies to the case, but the High Court has given its own interpretation to the judgment and failed to consider the law laid down by this Court in its proper perspective.

The apex court, accordingly, ruled, more particularly keeping in view the *ratio* of the constitution bench judgment in *Gurpreet Singh*,[71] that if the amount deposited by the judgment-debtor falls short of the decretal amount, the decree-holder is entitled to apply the rule of appropriation by appropriating the amount first towards interest, then towards costs and subsequently towards principal amount due under the decree.

Application to set aside sale in execution: Period of limitation

Order 21 rule 89, CPC provides that any person claiming an interest in the immovable property sold in execution of a decree may apply to have the sale set aside on depositing the amount specified. The said rule does not prescribe any period either for making the application or the required deposit. Article 127 of the Limitation Act prescribes sixty days as the period within which such an application should be made. On the combined reading of both the provisions, the apex court held that in the absence of any separate period prescribed for making the deposit, the time to make such deposit is same as the time limit prescribed to make an application to have the sale set aside. The court said that a careful perusal of the provisions in rules 89 and 92 of order 21, CPC and article 127 of the Limitation Act leaves no manner of doubt whatsoever.[72]

Power of the executing court to entertain an application filed by a stranger complaining dispossession from immovable property

The apex court on perusal of the provisions contained in order 21 rules 97 to 103 and previous judicial decisions observed:[73]

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70 *Supra* note 68, para 24.

71 *Gurpreet Singh* v. *Union of India* (2006) 8 SCC 457.

72 *Annapurna* v. *Mallikarjun* (2014) 6 SCC 397.

73 *Sameer Singh* v. *Abdul Rab* (2015) 1 SCC 379, para 26.

> The aforesaid authorities clearly spell out that the court has the authority to adjudicate all the questions pertaining to right, title or interest in the property arising between the parties. It also includes the claim of a stranger who apprehends dispossession or has already been dispossessed from the immovable property. The self-contained code, as has been emphasised by this Court, enjoins the executing court to adjudicate the lis and the purpose is to avoid multiplicity of proceedings. It is also so because prior to 1976 amendment the grievance was required to be agitated by filing a suit but after the amendment the entire enquiry has to be conducted by the executing court. Order 21 Rule 101 provides for the determination of necessary issues. Rule 103 clearly stipulates that when an application is adjudicated upon under Rule 98 or Rule 100 the said order shall have the same force as if it were a decree. Thus, it is a deemed decree. If a court declines to adjudicate on the ground that it does not have jurisdiction, the said order cannot earn the status of a decree. If an executing court only expresses its inability to adjudicate by stating that it lacks jurisdiction, then the status of the order has to be different.

X MISCELLANEOUS

Suit under article 131 of the Constitution of India: Applicability of CPC

The suit under article 131 of the Constitution of India cannot and ought not to be decided with very technical approach insofar as pleadings and procedure are concerned. A suit filed invoking the original jurisdiction of the Supreme Court is not governed by the procedure prescribed in the CPC save and except the procedure which has been expressly made applicable by the Supreme Court Rules. The conflicts between the states are to be settled in the large and ample way that alone suits the dignity of litigants concerned. [74]

Applicability of CPC to arbitral proceedings and meaning of "government" under order 27 rules 8-A and 8-B

In *Kanpur Jal Sansthan* v. *Bapu Constructgions*,[75] the apex court categorically held that the provisions of CPC are applicable to appeals filed under section 37 of the Arbitration and Conciliation Act, 1996. In the present case, in an appeal against rejection of application challenging the arbitral award, the division bench of the high court passed an interim order directing the appellant to deposit the entire award amount for maintaining appeal and for grant of stay. The said order was challenged before the apex court on the ground that the high court has fallen into error by directing deposit of entire award amount as security by applying the principle of order 41 rule 5, CPC though the said principle is not applicable to the appellant which is an extended wing of the State. Rule 8-A of order 27 was invoked

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74 *State of T.N.* v. *State of Kerala* (2014) 12 SCC 696.

75 (2015) 5 SCC 267.

to claim exemption. It provides that no security as is mentioned in rules 5 and 6 of order 41 shall be required from "government". The apex court rejected the argument holding that:[76]

> [t]he legislature has used the word "Government" in Order 27 Rule 8-A and defined the same in Order 27 Rule 8-B. The intention is absolutely clear and unambiguous. It means the "Government" in exclusivity. The submission of the learned counsel for the appellants that the appellant being a Jal Sansthan it would come within the extended wing of the Government does not commend acceptation.

The court drawn the distinction between the concept of "state" under article 12 of the Constitution and "government" as is used in order 27 rules 8-A and 8-B, CPC and said that when the legislature has deliberately used a restrictive definition under rule 8-B, its scope cannot be extended to cover an agency or instrumentality of the state by interpretative process.

Manner of adjudication of alternative pleas

Long line of judicial decisions rendered by the apex court has settled the general rule regarding the permissibility of raising inconsistent pleas in the alternative. In *G. Nagamma*,[77] the court held that plaintiffs was entitled to plead even inconsistent pleas especially when, they are seeking alternative reliefs. The question that came for the consideration of the apex court in the survey year, in *Praful Manohar Rele* v. *Krishnabai Narayan Ghosalkar*,[78] was whether in a suit for possession based on plea that defendants, being licensees whose license stood terminated, were liable to vacate premises, is it permissible, if the defendants take the plea that they are tenants and not licensees, for the plaintiff to take an alternative plea that even under the Rent control Act defendants are liable to be evicted?

This case involved a question of fact as to whether the relationship between the parties was of licensor and licensee or landlord and tenant. The trial court dismissed the suit on the ground that plaintiff has failed to prove that defendants were licensees. The first appellant court, on the other hand, on reappreciation of totality of evidence, recorded a finding that defendants were licensees and accordingly decreed the suit.

In the second appeal, while setting aside the order of the first appellate court and restoring the trial court order, the high court has taken the view that while the plaintiff could indeed seek relief in the alternative, the contentions raised by him were not in the alternative but contradictory, hence, could not be allowed to be urged. In appeal, relying on the long line of judicial decisions, in particular, tests laid down in *J.J. Lal (P) Ltd.* v. *M. R. Murali*,[79] the apex court said that such alternative plea did not fall foul. It accorded the following reasons:[80]

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76 *Id*., para 23.

77 *G. Nagamma* v. *Siromanamma* (1996) 2 SCC 25.

78 (2014) 11 SCC 316.

79 (2002) 3 SCC 98.

80 *Supra* note 78, para 24.

(i) The written statement filed by the defendant contained an express admission of the fact that the property belonged to the plaintiff and that the defendants were in occupation thereof as tenants.

(ii) At the trial court also the question whether the defendants were in occupation as licensee or as tenants had been specifically put in issue thereby giving the fullest opportunity to the parties to prove their respective cases. There was no question of the defendants being taken by surprise by the alternative case pleaded by the plaintiff nor could any injustice result from the alternative plea being allowed and tried by the court. As a matter of fact the trial court had without any demurrer gone into the merits of the alternative plea and dismissed the suit on the ground that the plaintiff had not been able to prove a case for eviction of the defendants. There was thus not only a proper trial on all those grounds urged by the plaintiff but also a judgment in favour of the respondent-defendants.

(iii) Even if the alternative plea had not been allowed to be raised in the suit filed by the appellant, he would have been certainly entitled to raise that plea and seek eviction in a separate suit filed on the very same grounds. The only difference may have been that the suit may have then been filed before the court of small causes but no error of jurisdiction was committed in the instant case as the finding recorded by the civil court was that the defendants were licensees and not tenants.

(iv) Superadded to all these factors is the fact that the appellate court had granted relief to the appellant not in relation to the alternative plea raised by him but on the principal case set up by the plaintiff. If the plaintiff succeeded on the principal case set up by him whether or not the alternative plea was contradictory or inconsistent or even destructive of the original plea paled into insignificance.

The apex court set aside the order of the high court and restored the order of the first appellate court.

Adjudication of counterclaim

A "counterclaim" for all intents and purposes, must be understood as a suit filed by one who is impleaded as a defendant. The purpose of the scheme relating to counterclaim is to avoid multiplicity of the proceedings. A counterclaim is essentially filed to obstruct the claim raised by the plaintiff in a suit. A counterclaim has the same effect as a cross – suit and it must be tried jointly, with the suit filed by the plaintiff. Therefore, for all intents and purposes a counterclaim is treated as a plaint, and is governed by the rules applicable to plaints. The court trying a suit,

as well as the counterclaim, has to pronounce its judgment on the prayer(s) made in the suit, and also, those made in the "counterclaim". Since a "counterclaim" is of the nature of an independent suit, a "counterclaim" cannot be allowed to proceed where the defendant has already instituted a suit against the plaintiff, on the same cause of action. The above conclusion is drawn on the basis of the accepted principle of law crystallized in section 10 read with section 151 of the CPC.[81]

Since the counterclaim preferred by the defendant in a suit is in the nature of a cross-suit, by a statutory command even if the suit is dismissed, counterclaim shall remain alive for adjudication. For making a counterclaim entertainable by the court, the defendant is required to pay the requisite court fee on the valuation of the counterclaim. The plaintiff is obliged to file a written statement and in case there is default the court can pronounce the judgment against the plaintiff in relation to the counterclaim put forth by the defendant as it has an independent status.[82]

When a counterclaim is dismissed on being adjudicated on merits it forecloses the rights of the defendant. As per order 8 rule 6-A (2) the court is required to pronounce a final judgment in the same suit both on the original claim and also on the counterclaim. The seminal purpose is to avoid piecemeal adjudication. The plaintiff can file an application for exclusion of a counterclaim and can do so at any time before issues are settled in relation to the counterclaim.[83]

When an order is passed by the court conclusively disposing of the counter claim on merit, such an order gets the status of a decree. Thus, the challenge to the same has to be made before the appropriate forum where appeal could lay by paying the requisite fee. It could not be unsettled by the high court in exercise of the power under article 227 of the Constitution of India.[84]

***Ex parte* judgement: Order 8 rule 10**

Order 8 rule 10, CPC envisages procedure to be followed when party fails to present written statement called for by the court. It authorizes the court to pronounce judgment against such party, or to make such order in relation to the suit as it thinks fit. In *Maya Devi*,[85] the apex court delineated that the failure to file a written statement, which brings order 8 rule 10 into operation, or the factum of the defendant having been set *ex parte*, does not invite a punishment in the form of an automatic decree. Both under order 8 rule 10 and on the invocation of order 9, the court is duty-bound to diligently ensure that the plaint stands proved and the prayers therein are worthy of being granted. The absence of the defendant does not absolve the trial court from fully satisfying itself of the factual and legal veracity of the plaintiff's claim. It, perhaps, casts a greater responsibility and onerous obligation on the trial court as well as the executing court to be fully satisfied that the claim has been proved and substantiated to the hilt by the plaintiff.

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81 *Aloys Wobben* v. *Yogesh Mehra* (2014) 15 SCC 360.

82 *Rajni Rani v. Khairati Lal* (2015) 2 SCC 682.

83 *Ibid.*

84 *Ibid.*

85 *Maya Devi* v. *Lalta Prasad* (2015) 5 SCC 588.

Arrest and detention to enforce compliance with court order imposing financial liability and effects thereof

In *Subrata Roy Sahara* v. *Union of India*,[86] the apex court delineated the scope of provisions in CPC *viz.*, sections 51, 55 and 58 that permit arrest and detention of a person to enforce compliance with court order imposing financial liability. The court stated thus:[87]

> A perusal of Section 51 CPC leaves no room for any doubt that for the execution of a decree for payment of money an executing court may order the arrest and detention of the judgment-debtor. Section 55 CPC lays down the manner and modalities to be followed while executing an order of arrest or detention. A perusal of Section 58 CPC postulates the detention of a judgment-debtor for up to six weeks for the recovery of a meagre amount of less than Rs 5000. Where the amount is in excess of Rs 5000, the provision postulates detention for up to three months. Interestingly, the first proviso to Section 58(1) CPC clearly brings out the purpose of the person's detention. It provides for the concerned person's release on the satisfaction of the money decree even before the duration for which he had been ordered to be detained. But the second proviso to Section 58(1) CPC provides that such an order of detention would not be revoked "without the order of the Court". Another interesting aspect pertaining to the detention of an individual for the execution of a money decree is contained in Section 58(2) CPC, which provides that a person who has been ordered to be arrested and detained (in the course of execution of a money decree) and has been released from jail, would not be treated as having been discharged from his debt. In other words, the detention of a judgment-debtor in prison (for the execution of a money decree), would not liberate/free him from the financial liability which he owes to the decree-holder. It is therefore apparent, from the provisions of CPC, that a court can order for the arrest and detention of a person, even for the enforcement of a paltry amount of Rs 2000 (and also for recovery of amounts in excess thereof).

The court also held that even though the provisions of CPC are inapplicable to proceedings under the SEBI Act (except when expressly provided for), having regard to the fact that those provisions of CPC have evolved as a matter of long years of experience emanating out of the common law of England, if an order is passed keeping in mind the parameters laid down in CPC, it would be sufficient to conclude that the rules of natural justice were fully complied with.

Further, it was also held that the principle laid down in *Jolly George Varghese* v. *Bank of Cochin*[88] is inapplicable to the facts and circumstances of the present case.

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86 (2014) 8 SCC 470.

87 *Id*., para 62.

88 (1980) 2 SCC 360.

Power of counsel to enter into compromise on behalf of client

As per the provisions of order 3 rule 4, once the counsel gets power of attorney/authorisation by his client to appear in a matter, he gets a right to represent his client in the court and conduct the case. Though order 23 rule 3 requires a compromise to be in writing and signed by parties, the signature of the advocate/ counsel is valid for the said purposes.[89]

Further, in *Y. Sleebachen*, the court also ruled that the proper forum to approach, at the first instance, to challenge the compromise is the court which recorded the compromise and not the appellate court as the trial Judge, before whom the compromise was recorded, will be in a better position to deal with the matter as was privy to events that led to the compromise order.

Even filing a separate suit to set aside a decree on the ground that the compromise on which the decree is based was not lawful is also barred by order 23 rule 3-A.[90]

Payment of deficient court fee

Section 149 CPC empowers the court to accept the payment of court fee at a later point of time if the appeal papers had been filed within the due date. Therefore, when the appeals were presented without payment of proper court fee and the required court fee was duly paid at the time of refilling, it should be construed that such payment of court fee was deemed to have been paid on the date on which the appeals were originally presented by virtue of the implication of section 149, CPC.[91]

In *Tajender Singh Ghambhir* v. *Gurpreet Singh*,[92] the apex court held that deficiency in court fee in respect of the plaint can be made good during the appellate proceedings as well. In this case, the appellant – plaintiff filed a suit and paid adequate court fee in respect thereof. Later on the plaint was amended and on amended valuation there was deficiency in court fee. The trial court, however, did not pass any order requiring the plaintiff to make up such deficiency. In the first appeal the issue of deficit court fee was raised by the respondent. The first appellate court rejected the contention stating that since the trial court did not prescribe any time - limit in connection with the court fee and even no objection was raised by the defendants in that regard, an opportunity deserved to be granted to the plaintiff to make for the deficiency in the interest of justice. The high court reversed the decision of the trial court relying on section 6 of the Court Fees Act, 1870. Allowing the appeal against the order of the high court, the apex court held that in the absence of any order by the trial court directing the plaintiff to pay the deficient court fee within a particular time, section 6 (2) and (3) of the Court Fees Act, 1870 could not be invoked against the plaintiff. The apex court also observed that the high court had failed to consider clause (ii) of section 12 of the Court Fees Act, 1870, which empowers the appellate court to direct the party to make up deficit court fee in the plaint at the appellate stage.

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89 *Y. Sleebachen* v. *State of T.N.* (2015) 5 SCC 747.

90 *R. Rajanna v. S.R. Venkataswamy* (2014) 15 SCC 471.

91 *H. Dohil Constructions Co. (P) Ltd. v. Nahar Exports Ltd.* (2015) 1 SCC 680.

92 (2014) 10 SCC 702.

Section 89: Reference of matter to the *Lok Adalat*

In *M.P. State Legal Services Authority* v. *Prateek Jain*,[93] the apex court took strong exception to the practice of referring the matter to the *Lok Adalat*, when the parties had settled the matter between themselves and the application to that effect was filed in the court. It was of the opinion that in such a situation, the court could have passed the order itself, instead of relegating the matter to the *Lok Adalat*. The court further observed:[94]

> We would be failing in our duty if we do not mention that, of late, there is some criticism as well which, inter alia, relates to the manner in which cases are posted before the Lok Adalats. We have to devise the methods to ensure that faith in the system is maintained as in the holistic terms access to justice is achieved through this system. We, therefore, deprecate this tendency of referring even those matters to the Lok Adalat which have already been settled. This tendency of sending settled matters to the Lok Adalats just to inflate the figures of decision/settlement therein for statistical purposes is not a healthy practice. We are also not oblivious of the criticism from the lawyers, intelligentsia and general public in adopting this kind of methodology for window-dressing and showing lucrative outcome of particular Lok Adalats.

Limitation

The issue of limitation is always a mixed question of facts and law.[95] Thus, unless there is a determination of facts, suit cannot be dismissed on the ground of limitation. Order 14 rule 2 of CPC does not authorize the court to treat such mixed question of facts and law as preliminary issue. Order 14 rule 2 provides that where issues both of law and of fact arise in the same suit, and the court is of the opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose the court may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. It does not confer any jurisdiction upon the court to try a suit on mixed issues of law and fact as preliminary issues.[96]

XI CONCLUSION

Decisions rendered during the survey year have largely contributed for further crystallizing and reaffirming the existing legal positions on several questions. However, it is to be noted that the observation made in *Sandeep Thapar*,[97] that provisions in procedural law are declaratory and not mandatory, in a way,

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93 (2014) 10 SCC 690.

94 *Id*., para 17.

95 *Surjit Kaur Gill* v. *Adarsh Kaur Gill* (2014) 16 SCC 125.

96 *Satti Paradesi Samadhi & Pillayar Temple* v. *M. Sankuntala* (2015) 5 SCC 674.

97 *Supra* note 26.

undermines the significance of the procedural law in legal ordering and, thus, appears to be lacking in circumspection. Further, the principle laid down in *Arsad Sheikh*[98] that "the judgment of the high court should only be set aside on the ground of non-compliance with sub-section (4) of section 100 if some prejudice has been caused to the appellants by not formulating such a substantial question of law", needs reconsideration in view of the settled position that formulation of substantial question of law is *sine quo non* for entertaining the second appeal under section 100. Though, the decision does not appear to be all that incorrect, when viewed in the light of the factual matrix of the case, logical extension of the principle laid down to other cases should not be encouraged. Excepting these, on the whole, it can be stated that the judicial approach has largely been consistent.

98 *Supra* note 46.