SATYA JAIN (D) THR. LRS. & ORS.
v.
ANIS AHMED RUSHDIE (D) TR.LRS. & ORS.
(Civil Appeal No. 8653 of 2012 ETC.)

DECEMBER 3, 2012

[P. SATHASIVAM AND RANJAN GOGOI, JJ.]

Specific Performance:

Agreement to sell - Suit by purchaser, for specific performance of agreement - Decreed by trial court - High Court reversed the decree - Held: Purchaser was, at all times, ready and willing to perform his part of the contract - It was the seller who defaulted in execution of sale deed -Insistence of the seller on further payments by the purchaser directly to him and not to the Income Tax Authorities was not justified - Purchaser was not obliged to make any further payment to seller apart from payment of earnest money - Purchaser entitled to decree of specific performance - However, due to efflux of time and escalation of price of property, seller is entitled to additional compensation ie. a price higher than what was stipulated in the agreement - Direction to execute the sale deed for the market price of the suit property as on date - Trial court directed to ascertain the market price.

Suit for specific performance - Test of readiness and willingness of plaintiff - Held: No straitjacket formula can be laid down on the basis of which the readiness and willingness of the plaintiff is to be judged - It would depend on overall conduct of the plaintiff in the light of the conduct of the defendant.

Specific Relief Act, 1963 - s. 20 - Parameters for exercise of discretion under - Held : Cannot be entrapped within any precise expression of language and the contours thereof

would depend on the facts and circumstances of each case - The discretion to direct specific performance of an agreement and that too after lapse of a long period, has to be exercised on sound, reasonable, rational and acceptable principles - The ultimate guiding test would be the principles of fairness and reasonableness - Efflux of time and escalation of price of property, by itself, cannot be a valid ground to deny the relief of specific performance.

Principle of 'Business Efficacy' - Applicability of - The test of business efficacy requires that a term can only be implied if it is necessary to give business efficacy to the contract to avoid such a failure of consideration that the parties cannot as reasonable businessmen have intended - If the contract makes business sense without the term, courts will not imply the same - In the instant case, invocation of the principle by the High Court, notwithstanding the clear language of the agreement, not correct.

Limitation Act, 1963 - s. 15(5) - Limitation for filing suit - The period of the absence of the defendant from India has to be excluded while computing the limitation for filing of the suit - Thus the suit in the instant case was filed well within time.

Plaintiff No. 1 was the tenant of the defendant in respect of the suit property. They entered into an agreement dated 22.12.1970 to sell the suit property to plaintiff No.1. for Rs. 3,75,000/-. Plaintiff No.1 paid Rs. 50,000/- to the defendant as earnest money. Under clause 7 of the agreement, plaintiff No.1 was required to pay to the Income Tax Authorities such amount as would be desired by the defendant against the tax dues of the defendant so as to facilitate the grant of the required tax clearance certificate and such money was to be deducted from the balance of the sale price at the time of the execution of the sale deed. In response to the query of plaintiff No.1 as regards Tax Clearance, the defendant

sent a legal notice stating that he had written a letter to the plaintiff No.1 on 9.9.1971 calling upon him to pay a sum of Rs. 1 lakh to the defendant. Plaintiff No.1 denied the receipt of letter dated 9.9.1971. He also reiterated his readiness to tender any payment as might be due under clause 7 of the agreement. Plaintiff No.1 received a notice from the defendant terminating the tenancy. The plaintiff filed the suit seeking a decree for specific performance of the agreement dated 22.12.1970. The defendant in his written statement contended, inter alia, that the suit was barred by limitation; that the plaintiffs were not entitled to a decree for specific performance as plaintiff No.1 had breached the conditions of the agreement, particularly, clause 7 thereof. The trial court decreed the suit and directed execution of the sale deed. High Court, in appeal, reversed the decree.

Allowing the appeals, the Court

HELD: 1. On due application of the provisions of Section 15(5) of the Limitation Act, 1963, the suit filed by the plaintiff was well within time as the period of the absence of the defendant from India has to be excluded while computing the limitation for filing of the suit. [Para 15] [337-B-C]

P C K Muthia Chettiar and Ors v. V E S Shanmugham Chettair (D) and Anr. **AIR 1969 SC 552: 1969 SCR 444 - relied on.**

Atul Kristo Bose v. Lyon and Co. **ILR 14 Cal 457;** *Muthukanni Mudaliar v. Andappa Pillai* **AIR 1955 Mad 96 - referred to.**

2.1 Under clause 7 of the agreement, the obligation of plaintiff No.1 was to pay to the Income Tax Department. Neither clause 7 nor any other Clause of the

agreement had cast upon plaintiff No.1 a duty to tender any further payment to the defendant or to credit the bank account of the defendant with any further advance amount. Plaintiff No.1 had repeatedly asserted in his correspondence that he was always ready and willing to pay any amount (within the balance consideration payable) to the Income Tax department so that the necessary tax clearance certificate could be issued. Nothing has been brought on record by the defendant to show that any demand or request had been made by him to plaintiff No.1 for payment of any amount to the Income Tax Department. [Para 20] [340-D-F]

2.2 The High Court, notwithstanding the clear language of clause 7 of the agreement, had invoked the principle of "business efficacy" to hold that a slight deviation from the plain meaning of the language of clause 7 would be justified so as to read an obligation on the part of the plaintiff to pay the further amount of Rs. one lakh as demanded by the defendant instead of insisting on making such further payment(s) only to the Income Tax Authorities. [Para 21] [340-G]

2.3 The principle of business efficacy is normally invoked to read a term in an agreement or contract so as to achieve the result or the consequence intended by the parties acting as prudent businessmen. Business efficacy means the power to produce intended results. The test of business efficacy requires that a term can only be implied if it is necessary to give business efficacy to the contract to avoid such a failure of consideration that the parties cannot as reasonable businessmen have intended. But only the most limited term should then be implied - the bare minimum to achieve this goal. If the contract makes business sense without the term, the courts will not imply the same. [Para 22] [340-H; 341-A-C]

United India Insurance Company Limited vs. Manubhai Dharamasinhbhai Gajera and Ors. **(2008) 10 SCC 404: 2008 (9) SCR 778 - relied on.**

The Moorcock by Lord Justice Bowen - referred to.

2.4 The business efficacy test, therefore, should be applied only in cases where the term that is sought to be read as implied is such which could have been clearly intended by the parties at the time of making of the agreement. In the instant case not only the language of clause (7) of agreement dated 22.12.1970 is clear and unambiguous there is no other clause in the agreement which had obliged plaintiff No.1 to make any further payment after the initial part payment of Rs.50,000/-. The obligation of plaintiff No.1 was to pay any further amount(s) to the Income-Tax authorities, at the request of the defendant, in order to facilitate the issuance of the Tax Clearance Certificate. No payment to the defendant beyond the initial amount of Rs.50,000/- was contemplated. The intent of the parties, acting as prudent businessmen, appears to be clear. An obvious intent to exclude any obligation of the plaintiff to pay any further amount (beyond Rs.50,000/-) to the defendant is clearly discernible. Consequently, resort to the principle of business efficacy by the High Court to read such an implied term in the agreement dated 22.12.1970 was not warranted in the facts and circumstances of the case. [Para 24] [342-G-H; 343-A-D]

3. No straitjacket formula can be laid down on the basis of which the readiness and willingness of the plaintiff in a suit for specific performance is to be judged. The test of readiness and willingness of the plaintiff would depend on his overall conduct i.e. prior and subsequent to the filing of the suit which has also to be viewed in the light of the conduct of the defendant. In

the instant case, plaintiff No.1 was, at all times, ready and willing to perform his part of the contract. On the contrary, it is the defendant who had defaulted in the execution of the sale document. The insistence of the defendant on further payments by the plaintiff directly to him and not to the Income Tax authorities as agreed upon was not at all justified and no blame can be attributed to the plaintiff for not complying with the said demand(s) of the defendant. [Para 25] [343-F-G; 344-A-B]

J.P. Builders and Anr. v. A. Ramdas Rao and Anr. **(2011) 1 SCC 429: 2010 (15) SCR 538 - relied on.**

R.C. Chandiok vs. Chuni Lal Sabharwal **(1970) 3 SCC 140: 1971 (2) SCR 573;** *N.P. Thirugnanam vs. Dr. R. Jagan Mohan Rao* **(1995) 5 SCC 115: 1995 (2) Suppl. SCR 53;** *P.D' Souza vs. Shondrilo Naidu* **(2004) 6 SCC 649: 2004 (3) Suppl. SCR 186 - referred to.**

4. The discretion to direct specific performance of an agreement and that too after elapse of a long period of time, undoubtedly, has to be exercised on sound, reasonable, rational and acceptable principles. The parameters for the exercise of discretion vested by Section 20 of the Specific Relief Act, 1963 cannot be entrapped within any precise expression of language and the contours thereof will always depend on the facts and circumstances of each case. The ultimate guiding test would be the principles of fairness and reasonableness as may be dictated by the peculiar facts of any given case, which features the experienced judicial mind can perceive without any real difficulty. Efflux of time and escalation of price of property, by itself, cannot be a valid ground to deny the relief of specific performance. These two features, at best, may justify award of additional compensation to the vendor by grant of a price higher than what had been stipulated in the agreement which

price, in a given case, may even be the market price as on date of the order of the final Court. [Paras 28 and 29] [344-H; 345-A-C and F]

P.S. Ranakrishna Reddy v. M.K. Bhagyalakshmi **(2007) 10 SCC 231: 2007 (2) SCR 876;** *Narinderjit Singh v. North Star Estate Promoters Ltd.* **(2012) 5 SCC 712 - relied on.**

5. The findings and conclusions recorded by the High Court are set aside and the suit for specific performance of the agreement dated 22.12.1970 is decreed. The sale deed to be executed by the defendants in favour of the plaintiffs for the market price of the suit property as on the date of the present order. As no material is available to enable this Court to make a correct assessment of the market value of the suit property as on date, the trial judge is requested to undertake the said exercise with such expedition as may be possible in the prevailing facts and circumstances. [Para 30] [345-G; 346-A-C]

Case Law Reference:

1969 SCR 444	**relied on**	**Para 14, 15**
ILR 14 Cal 457	**referred to**	**Para 14**
AIR 1955 Mad 96	**referred to**	**Para 14**
AIR 1928 Mad 1088	**referred to**	**Para 14**
AIR 1944 Mad 437	**referred to**	**Para 14**
2008 (9) SCR 778	**relied on**	**Para 23**
2010 (15) SCR 538	**relied on**	**Para 25**
1971 (2) SCR 573	**referred to**	**Para 25**
1995 (2) Suppl. SCR 53	**referred to**	**Para 25**
2004 (3) Suppl. SCR 186	**referred to**	**Para 25**

2007 (2) SCR 876	**relied on**	**Para 28**
(2012) 5 SCC 712	**relied on**	**Para 28**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8653 of 2012.

From the Judgment & Order dated 31.10.2011 of the High Court of Delhi at New Delhi in RFA No. 11 of 1984.

WITH

C.A. Nos. 8654-8655, 8656, 8657, 8675-76 of 2012.

Shanti Bhushan, A.B. Dial, P. Vishwanatha Shetty, Dr. Abhishek Singhvi, V. Giri, Vijay Hansaria, Pradeep Aggarwal, Umesh Pratap Singh, Ruchi Kohli, Aruna Gupta, Ananya Datta Majumdar, Rajiv Nanda, Pankaj Bhagat, Dr. Sushil Balwada, Lal Pratap Singh, Ram Niwas, Vijay Kumar Paradesi, Vikram Singh Arya, Sarad Kumar Singhania, N. Annapoorani, Shaveer Ahmed, Ashish Rana, Tanmay Mehta, V. Balaji, C. Kannan Sneha Kalita, Sadique Mohd., MSM A. Thambhi, Prashant Kenle and Sanjay Sharawat for the appearing parties.

The Judgment of the Court was delivered by

RANJAN GOGOI, J. 1. Leave granted.

2. The appellants, apart from the appellant Narendra Jain (Plaintiff No.2), claim to be the Legal heirs and representatives of the original plaintiffs 1 and 3 who had instituted suit No. 994/1977 in the High Court of Delhi seeking a decree of specific performance in respect of an agreement dated 22.12.1970 executed by and between original plaintiff No.1 (Bhikhu Ram Jain) and the original defendant Anis Ahmed Rushdie in respect of a property described as Bungalow No.4, Flag Staff Road, Civil Lines, Delhi (hereinafter referred to as the 'suit property'). The plaintiff Nos.2 and 3 were/are the sons of the original plaintiff No.1. The suit was decreed by the learned trial judge. The decree having been reversed by a Division Bench

of the High Court the present appeals have been filed by the original plaintiff No.2, Narendra Jain and the other appellants who claim to be vested with a right to sue on the basis of the claims made by the original plaintiffs in the suit. It is, however, made clear at the very outset that though all such persons claiming a right to sue through the deceased plaintiffs 1 and 3 are being referred to hereinafter as the plaintiffs and an adjudication of the causes/claims espoused is being made herein the said exercise does not, in any way, recognize any right in any such impleaded 'plaintiffs' which Question(s) are left open for decision if and when so raised.

3. The pleaded case of the respective parties may now be briefly noticed.

In the suit filed by the original plaintiffs it was pleaded that the defendant, who was the owner of the suit property, after inducting the plaintiff No. 1 as a tenant in respect of the half portion of the suit property at a monthly rent of Rupees three hundred w.e.f. 20.12.1970 had executed an agreement dated 22.12.1970 to sell the suit property to the said plaintiff No.1. According to the plaintiffs the price fixed under the agreement was Rupees 3,75,000/- (Rupees three lakh and seventy five thousand only) out of which an amount of Rupees 50,000/- (Rupees fifty thousand only) was paid to the defendant by the plaintiff No.1 as part payment. Under clauses 4, 5 and 7 of the agreement dated 22.12.1970 the defendant was required to obtain necessary Tax Clearance Certificate from the Income Tax Authorities for sale of the suit property and intimate the said fact and also deliver to the plaintiff No.1 a copy of such certificate within twelve months from the date of the execution of the agreement dated 22.12.1970. Within three months thereafter, the plaintiff No.1 was required to pay the balance sale consideration on receipt of which the defendant was under an obligation to execute the sale deed in favour of the plaintiff. Under clause (7) of the agreement dated 22.12.1970 the plaintiff No.1 was to pay to the Income Tax Authorities such

amount as may be desired by the defendant (not exceeding the balance sale price of the property) against the tax dues of the defendant so as to facilitate the grant of the required tax clearance certificate. Clause (7) of the agreement also contemplated that such money as may be paid by the plaintiff No.1 to the Income Tax Authorities in the defendant-vendor's account was to be deducted by the plaintiff from the balance of the sale price at the time of the execution of the sale deed.

4. According to the plaintiffs, as the plaintiff No.1 had not received any intimation from the defendant in the matter of execution of the sale deed he had written a letter dated 27.12.1971 to the defendant enquiring about the steps taken to obtain the necessary Tax Clearance certificate from the Income Tax Authorities. The plaintiffs had pleaded that the said letter was not replied to. Instead a legal notice dated 6.11.1972 was issued on behalf of the defendant wherein it was, inter alia, claimed that defendant had written a letter to the plaintiff No.1 as far back as on 9.9.1971 calling upon him to pay a sum of Rupees One lakh so as to enable the defendant to furnish a bank guarantee to the Income Tax Authorities in order to facilitate the issuance of the necessary Tax Clearance certificate. The request of the defendant was not responded to by the plaintiff No.1. Accordingly, by the notice dated 6.11.1972, the defendant had asked/required the plaintiff to pay the aforesaid amount of Rupees One lakh within three days failing which, it was mentioned, the agreement dated 22.12.1970 would stand terminated and the earnest money (Rupees fifty thousand) paid shall stand forfeited. According to the plaintiffs, in response to the aforesaid notice dated 6.11.1972, the plaintiff No.1 wrote a letter dated 14.11.1972 denying the receipt of any communication from the defendant that he had applied for the tax clearance certificate or any intimation to the effect any amount is required to be paid to the Income Tax Authority for processing the matter of grant of the clearance certificate. In the aforesaid letter the plaintiff No.1 had further stated that under clause (7) of the agreement he was

obliged to deposit, at the request of the defendant, any amount not exceeding the total sale consideration with the Income Tax Authorities and no further/additional amount was required to be tendered to the defendant after payment of the initial amount of Rupees Fifty Thousand. In the said letter dated 14.11.1972 the plaintiff No.1 had also reiterated his readiness to tender any payment as may be due under the aforesaid clause (7) of the agreement. As the letter dated 14.11.1972 was not responded to, the plaintiff No.1 had addressed another letter dated 15.12.1972 to the Advocate of the defendant reiterating the contents of his earlier letter dated 14.11.1972. Thereafter, there was no correspondence between the parties for about five years until the suit was filed on 3.11.1997. It may be specifically noted, at this stage, that according to the plaintiffs the suit could not be instituted earlier as the defendant was all along residing in London. Another relevant fact that would be required to be noticed is that on 16.9.1977 the plaintiff No.1 had received a notice terminating the tenancy qua half portion of the suit property which had commenced on and from 20.12.1970. It is in these circumstances that the plaintiff had filed the suit seeking a decree of specific performance of the agreement dated 22.12.1970 and, in the alternative, for a decree of a sum of Rs.1,30,120.50 being the total of the part amount paid to the defendant and damages along with interest thereon.

5. Denying the claims made by the plaintiffs the original defendant had filed a written statement contending, inter alia, that the suit was barred by limitation. Though the defendant had admitted the creation of the tenancy in favour of the plaintiff No.1 on 20.12.1970 as well as execution of the agreement to sell dated 22.12.1970, it was contended that the plaintiffs were not entitled to a decree of specific performance of the agreement inasmuch, as the plaintiff No.1 had breached the conditions of the agreement, particularly, clause (7) thereof. In this regard, it was specifically pleaded by the defendant that on 09.09.1971 the defendant had addressed a letter to the plaintiff No.1 informing him that as the Income Tax Authorities

had agreed to issue the necessary tax clearance certificate on furnishing of a bank guarantee of Rs.One lakh in favour of the Commissioner of the Income Tax, the aforesaid amount be made available to the defendant or the same be credited in the defendant's bank account. According to the defendant, the plaintiff No.1 failed to so act as a result of which the bank guarantee could not be furnished and consequently the Income Tax clearance certificate was not issued. The defendant had also filed an amended/additional written statement pleading that undue hardship would be caused to him in the event a decree for specific performance is to be granted. The defendant had also taken the plea that apart from addressing the letter dated 9.9.1971, the demand/request of the defendant to make available the additional amount of Rs. One lakh for the purpose of furnishing the bank guarantee to the Income Tax authorities was conveyed to the plaintiff No.1 through the common broker of the parties, one Lajjya Ram Kapur (PW-3).

6. On the pleadings of the parties the following issues were framed for trial in the suit:

1. Whether the suit is within time?

2. Whether the suit is for mis-joinder of plaintiff Nos. 2 and 3?

3. Whether the written statement has been signed and verified by a duly authorized person? If not to what effect?

4. Whether plaintiff No.1 has always been ready and willing to perform his part of the agreement dated 22.12.1970?

5. Whether the defendant has committed the breach of the agreement dated 22.12.1970?

6. Whether plaintiff No.1 has committed breach of any of the terms of the agreement dated 22.12.1977,

if so, to what effect?

7. Whether the plaintiffs are entitled to specific performance of the agreement dated 22.12.1970?

8. If Issue No.7 is not proved, whether plaintiff No.1 is not entitled to refund of earnest money and interest thereon?

7. The learned trial judge by judgment dated 5.10.1983 decreed the suit of the plaintiffs for specific performance of the agreement dated 22.12.1970 and directed execution of the sale deed by the defendant in favour of any of the plaintiffs, failing which, the Registry of the Court was directed to ensure the execution of the same. The balance of the sale consideration i.e. Rupees 3.25 lakhs was to be paid by the plaintiffs at the time of the execution of the sale deed and in the event the sale deed was to be executed through the Registry of the Court the aforesaid amount was to be deposited in Court before registration of the sale document.

8. Aggrieved by the aforesaid judgment and decree passed by the learned trial judge, the original defendant had filed an appeal which was allowed by the impugned judgment dated 31.10.2011. During the proceedings of the appeal before the High Court the original plaintiffs 1 and 3 as well as the original defendant had died. As already noticed, while the original plaintiff No.2 continues to remain on record as an appellant, the remaining appellants claim to be the legal heirs/ representatives of the deceased plaintiff Nos.1 and 3. In so far as the original defendant in the suit is concerned the legal representatives of the said defendant are on record having been so impleaded.

9. We have heard Mr.Shanti Bhushan, Mr.A.B. Dial and Mr.P.Vishwanatha Shetty, learned senior counsels appearing for the appellants and Dr.Abhishek Singhvi, Mr.V.Giri and Mr. Vijay Hansaria, learned senior counsels appearing for the

respondents.

10. On behalf of the appellants it is urged that the decree passed by the learned trial Judge has been reversed in appeal, inter alia, on the ground that the plaintiffs' suit is barred by limitation. It is contended that the said conclusion has been reached on an apparent mis-interpretation of the provisions of Section 15(5) of the Limitation Act, 1963. It is also contended that the claim of the plaintiff that a letter dated 9.9.1971, had been sent by the defendant to the plaintiff, requesting for a further sum of Rupees One lakh for the purpose of furnishing a bank guarantee in favour of the Income Tax Authorities so as to facilitate the issuance of the tax clearance certificate(s) and the alleged refusal/failure of the plaintiff to comply with the said request, is not borne out by the evidence on record. No such request was made and neither the letter dated 9.9.1971 nor the verbal request to the said effect allegedly made through the broker, Lajjia Ram Kapur, was received or communicated to the plaintiffs. In any event, according to learned counsel, under clause (7) of the agreement the plaintiff was obliged to make further amounts available, on the defendant's account, to the Income Tax Authorities only. Apart from the initial payment of Rupees Fifty thousand the plaintiff was not required to make any further payment directly to the defendant. The meaning attributed by the first appellate court to clause (7) of the agreement on the principle of "business efficacy" and the consequential findings on the question of readiness and willingness of the plaintiffs are plainly incorrect. Learned counsel has submitted that in such a situation, notwithstanding the expiry of long efflux of time, when the plaintiff was in no way at fault a decree of specific performance should follow, if required by suitably enhancing the value of the property. Specifically, learned counsel has indicated the willingness of the plaintiffs to offer an amount of Rs. 6 crores for the property in question as against the amount of Rs.3.75 lakhs as mentioned in the agreement dated 22.12.1970.

11. Opposing the contentions advanced on behalf of the appellants, learned counsels for the respondent (referred hereinafter in the singular) have submitted that the meaning sought to be attributed to the provisions of Section 15(5) of the Limitation Act, 1963 is wholly unacceptable. It is argued that the law does not countenance a situation where the initiation of a civil action can be postponed till the availability of the defendant in India, which would be the virtual effect of Section 15(5) of the Limitation Act if the arguments made on behalf of the appellants on this score are to be accepted. It is further urged that the cause of action for the suit arose on the expiry of 15 months from the date of the agreement, namely, on 22.03.1972 and the period of three years for filing the suit had expired on 22.03.1975. Alternatively, as by letter dated 06.11.1972, three days further time has been granted by the defendant to the plaintiff the cause of action may be understood to have arisen on 09.11.1972 and the period of limitation of three years to be over on 09.11.1975. Learned counsel has also submitted that as by letter dated 13/15.11.1972 further four month's time had been granted by the plaintiff to the defendant the cause of action may be understood to have accrued on 14.03.1973 and the period of three years for fling the suit to be over on 14.03.1976. Yet, the present suit was filed on 03.11.1977 though from the materials on record it is evident that the defendant was present in India between 07.9.1977 to 01.10.1977. The provisions of Section 15(5) of the Limitation Act, according to learned counsel, have to be purposively and reasonably interpreted so as to avoid any absurd consequence(s). Continuing, learned counsel has urged that the materials on record, particularly the correspondence exchanged between the parties, indicate that even when the contents of the letter dated 09.09.1971 were specifically brought to the notice of the plaintiff in the subsequent correspondence addressed by the defendant, the plaintiff had not denied receipt of the said letter. As the plaintiff failed to respond to the defendant's request to make available the amount of Rupees One lakh required by him for the purpose

of furnishing the bank guarantee, the defendant, who was a British national, could not comply with the demand of the Income Tax Authorities as a result of which the necessary Tax Clearance certificate (s), which is a pre-requisite for the sale of the property, could not be obtained. It is, therefore, contended that though the defendant was, at all times, ready and willing to execute the sale deed it is the plaintiff who had failed to perform his part of the bargain. Consequently, the High Court was correct in refusing the decree of specific performance. In any event, according to learned counsel, specific performance of the agreement dated 22.12.1970 ought not to be ordered by this Court at this juncture in view of the completely altered market conditions in respect of immovable property in the National Capital where the suit property is situated. It is also pointed out that the High Court had already granted refund of the part consideration (Rupees fifty thousand) paid by the plaintiff to the defendant alongwith interest at the rate of 12% from the date of payment of the said amount till the date of the realization/return of the same. The said direction, it is submitted, adequately takes care of the equities arising in the present case.

12. On the basis of the discussions that have preceded three issues, in the main, arise for our determination. In proper sequential order, the first would be whether the suit is barred by limitation. If not, which of the parties to the agreement dated 22.12.1970 are in breach of the terms and conditions thereof and, lastly, if no such breach can be attributed to the plaintiff whether a decree of specific performance should be granted at this belated point of time.

13. Even going by any of the three different/alternative dates on which the cause of action for the plaintiffs' suit had arisen, as conceded by the learned counsel for the respondent, it is evident that the suit was filed beyond the stipulated period of three years from any of the dates of the accrual of the cause of action. However, the plaintiffs have invoked the provisions

of Section 15 (5) of the Limitation Act, 1963 to claim the benefit of the exclusion of the period during which the defendant was absent from India. There can, indeed, be no doubt that if the plaintiff is entitled to exclude the period of such absence the bar of limitation will not apply to the present suit. The court, therefore, must make an endeavour to find out the true meaning of the provisions contained in Section 15 (5) of the Limitation Act in order to determine as to whether the plea put forward by the plaintiffs is sustainable in law.

14. The provisions contained in Section 15 (5) of the Limitation Act, 1963 are pari materia with those in Section 13 of the Indian Limitation Act, 1908. The aforesaid provision of the Act of 1908 has received a full and complete consideration of this Court in *P C K Muthia Chettiar & Ors v. V E S Shanmugham Chettair (D) & Anr.*[1]. While holding that the words of the Section (Section 13), namely, "that time during which the defendant has been absent from India" are clear and therefore must be excluded in computing the period of limitation, two earlier decisions in *Atul Kristo Bose v. Lyon & Co.*[2] and *Muthukanni Mudaliar v. Andappa Pillai*[3] were also noticed by this Court. The discussion in respect of the aforesaid two earlier decisions which had formed the basis of the conclusions in *P C K Muthia Chettiar* (Supra), as noticed above, have been set out in paragraph 6 of the judgment which may be profitably extracted below :

> ***" 6.*** *In Atul Kriato Bose v. Lyon & Co.*[4] *the defendants were foreigners and they never came to India on or after the date of the accrual of the cause of action. The Calcutta High Court held that Section 13 applied and that the suit was not barred by limitation. The Court was not impressed with the argument that according to this construction a defendant who was in England when a cause of action against him accrued, and has remained there ever since might be liable after an indefinite time to be sued in a Calcutta court. In Mathukanni v. Andappa*[5] *the plaintiff and the defendant who were residents of Mannargudi in India had gone to Kaula Lampur to earn their livelihood, and while there the defendant executed a promissory note to the plaintiff on November 16, 1921. In 1925 the plaintiff brought a suit on the promissory note in the District Munsif's Court of Mannargudi. The cause of action in the suit arose outside India. A Full Bench of the Madras High Court held that the plaintiff was entitled to the benefit of Section 13 and in computing the period of limitation he was entitled to exclude the time during which the defendant was absent in Kaula Lampur. We agree with this decision. The Full Bench rightly overruled the earlier decisions in Ruthinu v. Packiriswami*[6] *and Subramania Chettiar v. Maruthamuthu*[7]*. We hold that the suit is not barred by limitation.*

15. In the present case from the evidence on record it is established that till the date of filing of the suit i.e. 03.11.1977, the defendant was in India during following periods:

1. from 24.09.1970 to 15.10.1970,
2. from 17.12.1970 to 28.12.1970,
3. from 16.08.1971 to 11.09.1971,
4. from 29.10.1972 to 10.11.1972,
5. from 02.09.1977 to 01.10.1977

The decision of this Court in *P C K Muthia Chettiar*

1. AIR 1969 SC 552.
2. ILR 14 Cal 457 para 6.
3. AIR 1955 Mad 96.
4. (1887) ILR 14 Cal 457.
5. AIR 1955 Mad 96.
6. AIR 1928 Mad 1088.
7. AIR 1944 Mad 437.

*(*Supra) clearly lays down that the operation of Section 13 of the Limitation Act, 1908 (corresponding to Section 15 (5) of the Limitation Act, 1963) does not make any exception in cases where the cause of action had arisen in a foreign country or in India or in cases in which the defendant was in India or in a foreign country at the time of the accrual of the cause of action. Taking into account the ratio laid down by this Court in *P C K Muthia Chettiar (Supra)* and the period during which the defendant was absent from India there can be no doubt, whatsoever, that on due application of the provisions of Section 15(5) of the Limitation Act of 1963, the suit filed by the plaintiff was well within time as the period of the absence of the defendant from India has to be excluded while computing the limitation for filing of the suit.

16. To answer the next question that would arise consequent to our decision on the first issue the clauses of the agreement between the parties will have to be noticed in some detail. The total sale price was agreed at Rs. 3,75,000/- out of which a sum of Rs.50,000/- had been acknowledged to have been paid by the purchaser(plaintiff No.1) to the vendor (defendant) by means of an account payee cheque. Under clause 4 of the agreement, the vendor was required to obtain, at his own cost, a Wealth Tax clearance certificate to enable the transfer of property to be made and to intimate the said fact along with a copy of the tax clearance certificate to the purchaser not later than 12 months from the date of the agreement. Under Clause 5 of the agreement, the vendor was to execute the sale deed within a period of 15 months from the date of the agreement. The purchaser, in turn, was to pay to the vendor the balance sale consideration after deducting the amount of Rs.50,000/- at the time of the registration of the sale deed which was to be within three months after receipt of the necessary intimation that the tax clearance certificate has been obtained along with the copy thereof as contemplated under clause 4 of the agreement. Under Clause 7 of the agreement, the purchaser was obliged to pay to the Income Tax authorities

such amount as may be desired by the vendor (not exceeding the balance sale price payable) in order to enable the vendor to get the required Wealth Tax clearance certificate. The aforesaid clause further stipulated that such money as may be paid to the Income Tax authorities, at the request of the vendor and on the vendor's account, will be deducted by the purchaser from the balance sale consideration at the time of the execution of the sale deed. It must also be noted that under the terms of the agreement between the parties apart from the payment contemplated by Clause 7 to the authority and in the manner specified therein the purchaser had no obligation to tender any further payment directly to the vendor.

17. The defendant had claimed that on 09.09.1971 he had hand delivered a letter of the even date (Exh.D/1) to the plaintiff No. 1 requesting the plaintiff to pay to the defendant or to deposit in the defendant's bank account a sum of one lakh in order to enable the defendant to furnish a bank guarantee for the purpose of obtaining the necessary tax clearance certificate. According to the defendant though the plaintiff had written a letter dated 27.12.1971 (Ex. PW/11) enquiring about the status of the tax clearance certificate and reiterating his anxiety to have the sale transaction completed there was neither any mention of the letter dated 09.09.1971 in the said communication dated 27.12.1971 nor did the same contain the response of the plaintiff to the request of the defendant for further money. The defendant has also relied on a notice dated 06.11.1972 issued to the plaintiff (Exh.P-6) wherein reference to the letter dated 09.09.1971 of the defendant was made and the request for further money was reiterated. Furthermore, according to the defendant, though the plaintiff had replied to the aforesaid notice dated 06.11.1972 by his letter dated 14.11.1972, once again, the plaintiff had remained silent with regard to the letter dated 09.09.1971. On the other hand, according to the plaintiffs, the letter dated 09.09.1971 was not received by the plaintiff No.1 at any point of time; neither had the plaintiff been intimated about the defendant's demand or

request, as may be, for the further amount of Rs.1 lakh through the broker Lajja Ram (PW 3). Furthermore, in his reply dated 14.11.1972 the plaintiff No.1 had stated that under the agreement he was duty bound to pay such further amount as may be requested by the defendant (upto the limit of the balance sale consideration) only to the Income Tax authorities. No such request had been received by the plaintiff, though, the plaintiff was ready to deposit any amount, upto the extent of the balance sale price, with the Income Tax authorities as required under Clause 7 of the agreement.

18. Though considerable arguments had been advanced by the learned counsels for either side on what would be the correct conclusion that should be drawn from the above correspondence exchanged by and between the parties in so far as the question of identification of the party at fault is concerned it will not be necessary for us to enter into the said arena and record any finding on the contentions advanced. Nothing would hinge on the existence or receipt of the letter dated 09.09.1971 as the demand for the additional payment of Rs.1 lakh by the defendant was clearly made by the defendant's legal notice dated 06.11.1972 which, admittedly, the plaintiff No.1 had received. In his reply dated 14.11.1972 to the said notice dated 06.11.1972 the plaintiff No.1 had unequivocally stated that under the terms of the agreement he was required to pay, at the defendant's request, further amount(s) only to the Income Tax authorities which he is ready to do, if a request is so made by the defendant. What, therefore, has to be addressed by the Court is whether the demand raised by the defendant for an additional amount of rupees one lakh for the purpose of facilitating the issuance of the Tax Clearance certificate and the refusal of the plaintiff to pay any such amount renders either of the parties in default of the terms of the agreement dated 22.12.1970.

19. Clause 7 of the agreement is in the following terms:

"*7. That the purchaser agree to pay to the Income Tax authorities such money as may be desired by the Vendor(not exceeding the balance sale price of the property, against the Tax dues from the Vendor to facilitate the Vendor to get the required wealth tax certificate. Such money as paid to the Income Tax Authorities on the request of the Vendor will be paid in the Vendor's account and will be deducted by the purchaser from the balance of the sale price at the time of the execution of the sale Deed*."

20. Under the said clause 7 of the agreement, clearly, the obligation of the plaintiff No.1 was to pay to the Income Tax department such sum (not exceeding the balance consideration payable) as may be requested by the defendant. Neither clause 7 nor any other Clause of the agreement had cast upon the plaintiff No.1 a duty to tender any further payment to the defendant or to credit the bank account of the defendant with any further advance amount after payment of the initial amount of Rs.50,000/-. In as far as the obligation to pay the Income Tax Department as contemplated by clause 7 is concerned it has been already noticed that the plaintiff No.1 had repeatedly asserted in the correspondence referred to above that he was always ready and willing to pay any amount (within the balance consideration payable) to the Income Tax department so that the necessary tax clearance certificate can be issued in favour of the defendant. Nothing has been brought on record by the defendant to show that any demand or request had been made by him to the plaintiff No.1 for payment of any amount to the Income Tax Department.

21. The High Court, notwithstanding the clear language of clause 7 of the agreement, had invoked the principle of "business efficacy" to hold that a slight deviation from the plain meaning of the language of clause 7 would be justified so as to read an obligation on the part of plaintiff to pay the further amount of Rs. One lakh as demanded by the defendant instead of insisting on making such further payment(s) only to the

Income Tax authorities.

22. The principle of business efficacy is normally invoked to read a term in an agreement or contract so as to achieve the result or the consequence intended by the parties acting as prudent businessmen. Business efficacy means the power to produce intended results. The classic test of business efficacy was proposed by Lord Justice Bowen in The Moorcock[8]. This test requires that a term can only be implied if it is necessary to give business efficacy to the contract to avoid such a failure of consideration that the parties cannot as reasonable businessmen have intended. But only the most limited term should then be implied – the bare minimum to achieve this goal. If the contract makes business sense without the term, the courts will not imply the same. The following passage from the opinion of *L.J. Bowen* in the *Moorcock (supra)* sums up the position:

"x x x x x x x x x

> In business transactions such as this, what the law desires to effect by the implication is to give such business efficacy to the transaction as must have been intended at all events by both parties who are business men; not to impose on one side all the perils of the transaction, or to emancipate one side from all the chances of failure, but to make each party promise in law as much, at all events, as it must have been in the contemplation of both parties that he should be responsible for in respect of those perils or chances."

23. Though in an entirely different context, this court in *United India Insurance Company Limited vs. Manubhai Dharamasinhbhai Gajera and Others*[9] had considered the circumstances when reading an unexpressed term in an agreement would be justified on the basis that such a term was

8. (1889) 14 PD 64.

9. (2008) 10 SCC 404.

always and obviously intended by and between the parties thereto. Certain observations in this regard expressed by Courts in some foreign jurisdictions were noticed by this court in para 51 of the report. As the same may have application to the present case it would be useful to notice the said observations:

> *"Prima facie that which in any contract is left to be implied and need not be expressed is something so obvious that it goes without saying; so that, if, while the parties were making their bargain, an officious bystander, were to suggest some express provision for it in their agreement, they would testily suppress him with a common 'Oh, of course!*
>
> *Shirlaw v. Southern Foundries (1926) Ltd.* (1939) 2 All ER 113 (CA) "
>
> ———————————————————————
>
> *"An expressed term can be implied if and only if the court finds that the parties must have intended that term to form part of their contract: it is not enough for the court to find that such a term would have been adopted by the parties as reasonable men if it had been suggested to them: it must have been a term that went without saying, a term* necessary *to give business efficacy to the contract, a term which, although tacit, formed part of the contract which the parties made for themselves.*
>
> *Trollope and Colls Ltd. v. North West Metropolitan Regl. Hospital Board* (1973) 2 All ER 260 (HL)"

24. The business efficacy test, therefore, should be applied only in cases where the term that is sought to be read as implied is such which could have been clearly intended by the parties at the time of making of the agreement. In the present case not only the language of clause (7) of agreement

dated 22.12.1970 is clear and unambiguous there is no other clause in the agreement which had obliged the Plaintiff No.1 to make any further payment after the initial part payment of Rs.50,000/-. The obligation of the Plaintiff No.1 was to pay any further amount(s) to the Income-Tax authorities, at the request of the defendant, in order to facilitate the issuance of the Tax Clearance Certificate. No payment to the defendant beyond the initial amount of Rs.50,000/- was contemplated by all. The above would appear to be consciously intended by the parties so as to exclude the possibility of any substantial monetary loss to the plaintiff in the event the defendant is to resile from his commitment to execute the sale document. The intent of the parties, acting as prudent businessmen, appears to be clear. An obvious intent to exclude any obligation of the plaintiff to pay any further amount (beyond Rs.50,000/-) to the defendant is clearly discernible. Consequently, resort to the principle of business efficacy by the High Court to read such an implied term in the agreement dated 22.12.1970, in our considered view, was not warranted in the facts and circumstances of the present case.

25. The principles of law on the basis of which the readiness and willingness of the plaintiff in a suit for specific performance is to be judged finds an elaborate enumeration in a recent decision of this Court in *J.P. Builders and another v. A. Ramadas Rao and another*[10]. In the said decision several earlier cases i.e. in *R.C. Chandiok vs. Chuni Lal Sabharwal*[11], *N.P. Thirugnanam vs. Dr. R. Jagan Mohan Rao*[12] and *P.D' Souza vs. Shondrilo Naidu*[13] have been noticed. To sum up, no straitjacket formula can be laid down and the test of readiness and willingness of the plaintiff would depend on his overall conduct i.e. prior and subsequent to the

10. (2011) 1 SCC 429.
11. (1970) 3 SCC 140.
12. (1995) 5 SCC 115.
13. (2004) 6 SCC 649.

filing of the suit which has also to be viewed in the light of the conduct of the defendant. Having considered the matter in the above perspective we are left with no doubt whatsoever that in the present case the Plaintiff No.1 was, at all times, ready and willing to perform his part of the contract. On the contrary it is the defendant who had defaulted in the execution of the sale document. The insistence of the defendant on further payments by the plaintiff directly to him and not to the Income Tax authorities as agreed upon was not at all justified and no blame can be attributed to the plaintiff for not complying with the said demand(s) of the defendant.

26. Having arrived at the above conclusion it is wholly unnecessary for us to consider the arguments advanced on behalf of the appellants with regard to the provisions of the Foreign Exchange Regulation Act, 1973 (FERA) in the light of which it had been contended that it was not open in law for the plaintiff to comply with the demands for the additional amount(s) made by the defendant. The failure of the defendant to bring on record the draft sale deed which had to accompany the application for the required Tax Clearance Certificate, an aspect highlighted on behalf of the appellants to show the absence of a genuine desire of the defendant to go through the transaction, also, would not require any consideration for the above stated reason.

27. The ultimate question that has now to be considered is whether the plaintiff should be held to be entitled to a decree for specific performance of the agreement of 22.12.1970. The long efflux of time (over 40 years) that has occurred and the galloping value of real estate in the meantime are the twin inhibiting factors in this regard. The same, however, have to be balanced with the fact that the plaintiffs are in no way responsible for the delay that has occurred and their keen participation in the proceedings till date show the live interest on the part of the plaintiffs to have the agreement enforced in law.

28. The discretion to direct specific performance of an agreement and that too after elapse of a long period of time, undoubtedly, has to be exercised on sound, reasonable, rational and acceptable principles. The parameters for the exercise of discretion vested by Section 20 of the Specific Relief Act, 1963 cannot be entrapped within any precise expression of language and the contours thereof will always depend on the facts and circumstances of each case. The ultimate guiding test would be the principles of fairness and reasonableness as may be dictated by the peculiar facts of any given case, which features the experienced judicial mind can perceive without any real difficulty. It must however be emphasized that efflux of time and escalation of price of property, by itself, cannot be a valid ground to deny the relief of specific performance. Such a view has been consistently adopted by this Court. By way of illustration opinions rendered in *P.S. Ranakrishna Reddy v. M.K. Bhagyalakshmi*[14] and more recently in *Narinderjit Singh v. North Star Estate Promoters Ltd.*[15] may be usefully recapitulated.

29. The twin inhibiting factors identified above if are to be read as a bar to the grant of a decree of specific performance would amount to penalizing the plaintiffs for no fault on their part; to deny them the real fruits of a protracted litigation wherein the issues arising are being answered in their favour. From another perspective it may also indicate the inadequacies of the law to deal with the long delays that, at times, occur while rendering the final verdict in a given case. The aforesaid two features, at best, may justify award of additional compensation to the vendor by grant of a price higher than what had been stipulated in the agreement which price, in a given case, may even be the market price as on date of the order of the final Court.

30. Having given our anxious consideration to all relevant

14. (2007) 10 SCC 231.

15. (2012) 5 SCC 712.

aspects of the case we are of the view that the ends of justice would require this court to intervene and set aside the findings and conclusions recorded by the High Court of Delhi in R.F.A.No.11/1984 and to decree the suit of the plaintiffs for specific performance of the agreement dated 22.12.1970. We are of the further view that the sale deed that will now have to be executed by the defendants in favour of the plaintiffs will be for the market price of the suit property as on the date of the present order. As no material, whatsoever is available to enable us to make a correct assessment of the market value of the suit property as on date we request the learned trial judge of the High Court of Delhi to undertake the said exercise with such expedition as may be possible in the prevailing facts and circumstances.

31. All the appeals shall accordingly stand allowed in terms of our above conclusions and directions.

K.K.T. Appeals allowed.

SATYA JAIN (D) & ORS.

v.

ANIS AHMED RUSHDIE (D) TH. LRS. & ORS.

(I.A. Nos. 3-5 AND I.A. No. D37212 of 2013)

IN

(Civil Appeal No. 8653 of 2012)

MAY 8, 2013

[P. SATHASIVAM AND RANJAN GOGOI, JJ.]

Interim applications - Judgment of Supreme Court - Decreeing suit for specific performance and directing execution of sale deed - Interim applications seeking impleadment and clarification of judgment - Held: In some applications facts on the basis of which modification/ clarification sought, not brought to the notice of the court at the time of hearing of appeal or the judgment and in other applications facts and events forming basis for their claim occurred subsequent to the judgment - Therefore, applications are not maintainable - Applicants' endeavour to reopen the concluded issues and alteration of consequential directions not permissible - Parties have the option to seek remedies for their rights as may be open in law.

Supreme Court Rules, 1966 - Interim applications - Suit for specific performance - Decreed by supreme Court in its final order, setting aside the judgment of High Court - Defendants directed to execute the sale deed in favour of the plaintiffs at the market price as on date of the judgment - Interim applications and review petition by the plaintiffs - Seeking modification of the direction for execution of sale deed at the market price and correction of certain typographical errors - Held: An application for modification/ clarification of the judgment passed by Supreme court not permissible - It is not contemplated by the provisions of

Supreme Court Rules - The Rules provide only the remedy of review - The grounds on which the modification/clarification are sought, were not before the Court at the time of final hearing, therefore, those facts cannot be legitimate basis for any modification even if the interim applications are construed to be applications for review - The direction in the judgment of the Court to execute the sale deed at the market price came to be recorded as per "offer" made on behalf of the appellants/plaintiffs and there was no material available in this regard - It is, therefore, clear that the Court did not intend to lay down any law of general application while issuing the said direction - Typographical errors corrected - It is open to the parties to avail the remedies against the determination of the market price which would be done by trial court - Review.

Delhi Administration Vs. Gurdip Singh Uban and Ors. **(2000) 7 SCC 296: 2000 (2) Suppl. SCR 496 and** *A.P. SRTC and Ors. Vs. Abdul Kareem* **(2007) 2 SCC 466: 2007 (1) SCR 888 - relied on.**

Case Law Reference:

2000 (2) Suppl. SCR 496	**Relied on**	**Para 12**
2007 (1) SCR 888	**Relied on**	**Para 12**

CIVIL APPELLATE JURISDICTION

I.A. Nos.3-5 & I.A. No. D37212 of 2013 in Civil Appeal No(s). 8653 of 2012.

From the Judgment & Order dated 31.10.2011 of the Division Bench of High Court of Delhi at New Delhi in RFA (OS) No. 11 of 1984.

WITH

IA Nos. 12-13 & 14-15 in Civil Appeal Nos. 8675-8676 of 2012.

Shanti Bhushan, S. Ganesh, M.N. Krishnamani, Anoop Choudhary, June Choudhary, Aruna Gupta, M.L. Lahoty, Pradeep Aggarwal, Lal Pratap Singh, Umesh Pratap Singh, Brijesh Kumar Singh, Gargi B. Bharali, Ruchi Kohli, R.K. Sanghi, Arun Maitri, Satyendra Kumar, Rajiv Singh, Prashant Kumar, Triveni Patekar, Amulya Dhingra, Rajan Singh, Amit Singh, Merusagar Samantaray, Sanjay Sharawat, Rajiv Nanda, N. Annapoorni for the appearing parties.

The Order of the Court was delivered by

O R D E R

RANJAN GOGOI, J. 1. Civil Appeal No. 8653 of 2012 and other connected appeals were allowed by this Court by judgment and order dated 3.12.2012. The decree passed by the Appellate Bench of the High Court of Delhi in RFA (OS) No. 11/1984 was set aside and the suit for specific performance filed by the plaintiffs 1 (since deceased), 2 and 3 was decreed in the following terms :-

> "30....We are of the further view that the sale deed that will now have to be executed by the defendants in favour of the plaintiffs will be for the market price of the suit property as on the date of the present order. As No material, whatsoever is available to enable us to make a correct assessment of the market value of the suit property as on date we request the learned trial judge of the High Court of Delhi to undertake the said exercise with such expedition as may be possible in the prevailing facts and circumstances.
>
> 31. All the appeals shall accordingly stand allowed in terms of our above conclusions and directions."

2. I.A. Nos. 3-5, 12-13, 14-15 and D.No. 37212 of 2013 have been filed seeking impleadment/clarification/modification/ correction of the judgment dated 3.12.2012, in the circumstances noted below.

3. I.A. Nos. 3-5 have been filed by one Amit Jain, Rahul Jain and Smt. Aruna Jain contending that during the pendency of the Civil Appeal before this Court, out of total suit property measuring 5373 Sq. Yds., two parcels measuring 1500 Sq. Yds., in all, were sold by Ms. Sameen Rushdie Momen (respondent No.1 in Civil Appeal No. 8653/2012 and Respondent 1B in Civil Appeals No. 8675-76 of 2012) in favour of the applicants. On the said basis, the applicants seek impleadment and clarification of the judgment dated 3.12.2012 to mean that the successor-in-interest of the original defendant (late Anis Ahmed Rushdie) i.e. Ms. Sameen Rushdie Momen, has been left with the right of ownership in respect of only 3873 Sq. Yds. of the property situated at No. 4, Flag Staff Road, Civil Lines, Delhi.

4. I.A. Nos. 12-13 have been filed by Narender Jain and Arvind Jain (original plaintiffs No.2 & 3) seeking the following reliefs :-

> "(a) modify/clarify/correct Paragraphs 29 and 30 of the judgment and order dated 3.12.2012 as mentioned in the present application;
>
> (b) correct the typographical errors in the judgment and order dated 3.12.2012 as mentioned in Paragraph 8 of this application;
>
> (c) pass such other and further orders as may be deemed fit and proper in the facts and circumstances of the present case."

5. In the aforesaid I.As. the applicants have, *inter alia,* stated that Ms. Sameen Rushdie Momen who is the legal heir/ successor-in-interest of the deceased sole defendant Anis Ahmed Rushdie (by virtue of a Will dated 9.1.1984 executed by Anis Ahmed Rushdie and accepted by the other legal heirs) had executed a irrevocable General Power of Attorney dated 4.11.2010 with consideration in favour of one Fine Properties

Private Limited disposing of all her rights, shares and interest etc. in the suit property "as on whereon basis" subject to the following salient terms:-

"1. That, the FIRST-PARTY agrees to absolutely grant to the SECOND-PARTY all his rights, shares, interest, liens, registrations clear-titles, etc. in the un-encumbered plot/property/ house bearing no. 4, Flag Staff Road, Delhi-110054 alongwith: unauthorized Occupant/ User (i.e. late Sh. BHIKU RAM JAIN): and another unauthorized-Occupant/ User (i.e. legal-heirs of late Mr. I.M. Lal): and portion of the property in possession of the FIRST-PARTY.

And the SECOND PARTY has accepted to be the Attorney for the purchase acquisition and possessing of the entire-property, for the total CONSIDERATION of Rs.4,50,00,000/- (Rupees Four-Crores and Fifty Lacs) only through this presently executed and registered G.P.A.

Sufficiency of the above CONSIDERATION for signing and executing of this G.P.A. is hereby acknowledged (payments and receipts) by both Parties.

(vii) Para 6 of the said General Power of Attorney reads under:-

6. That, the SECOND-PARTY shall pursue and bear the entire charge, costs, expenses, fees, etc. regarding the following:-

- R.F.A. (OS) No. 11 of 1984;
- Special Leave Petition (S.L.P.) or equivalent, etc. before the Supreme Court of India), if subsequently filed thereafter;

Effective from the date of execution and registration of this G.P.A.

(vii) Para 8 of the said General Power of Attorney reads as under :-

8. That, on handing over the payment of: full-CONSIDERATION to the FIRST-PARTY, by the SECOND-PARTY, the FIRST-PARTY ceases to exercise any rights, interests, liens, titles, etc. (what-so-ever) in the said plot/property/house; and the Attorney for the same shall absolutely stand in favour of the SECOND-PARTY (in all respects what-so-ever).'

(viii) Para 12 of the said General Power of Attorney reads as under :-

12. That, the CONSIDERATION-amounts shall not be returned/refunded, by the FIRST-PARTY to the SECOND-PARTY.

Also, the amount paid, incurred, etc. and expenses, cost etc. and incidentals thereto towards the Registration (eg. Stamp Duty, etc.) by the SECOND-PARTY shall also not be returned/ refunded/reimbursed)."

6. In the light of the aforesaid facts, the applicants state that directions contained in judgment dated 3.12.2012 requiring the legal heirs of the deceased sole defendant, i.e., Respondents 1A to 1D (in Civil Appeal No. 8675-76 of 2012) to execute the sale deed in favour of the plaintiffs, at the market price of the suit property as on the date of the judgment, would require appropriate modification inasmuch as the defendant-respondents are not entitled to the said reliefs having already parted with the suit property.

7. The applicants further/alternatively contend that in view

of the several decisions of this Court referred to in paragraph 5 of the I.A., the judgment of the Court directing execution of the sale deed by the defendant-respondents in favour of the plaintiffs at the market price as on the date of the said judgment i.e. 3.12.2012 would also require appropriate modification.

8. In addition to the above, correction of certain typographical errors specifically mentioned in paragraph 8 of the I.A. have been prayed for by the applicants.

9. I.A. Nos. 14-15 of 2013 have also been filed by plaintiffs 2 and 3, i.e., Narender Jain and Arvind Jain seeking to bring to the notice of the Court that Fine Properties Private Limited has filed an I.A. before the learned Trial Judge of the High Court seeking certain orders in respect of the execution of the sale deed in terms of the judgment of this Court dated 3.12.2012. The applicants contend that notice has been issued in the aforesaid I.A. by the learned Trial Judge of the High Court without any justifiable basis and the same needs to be appropriately interfered with by this Court. In any event, the proceedings in the aforesaid I.A. are required to be stayed till a decision is rendered by this Court in the present I.As.

10. In addition to the above, I.A. D.No.37212 of 2013 has been filed by one Chopra Marketing Private Limited seeking impleadment in C.A. No. 8653 of 2012 on the basis that an agreement to sell the suit property was executed by and between the applicant and persons claiming to be the Attorneys of the defendant-respondents pursuant whereto the applicant had parted with a sum of Rs. 2 crores as advance payment. According to the applicant it had subsequently come to its knowledge that rights in the suit property had already been created in favour of the Fine Properties Private Limited as well as the applicants in I.A. 3-5 for which reason a FIR dated 8.12.2012 has been filed by the applicant before the Jurisdictional Police Station, i.e., Economic Offences Wing, Delhi.

11. We have heard the learned counsels for the parties.

12. An application for modification/clarification of a final order passed by this Court is not contemplated by the provisions of the Supreme Court Rules, 1966 which specifically provides the remedy of review and also lays down the procedure governing the consideration of a review application by this Court. In fact, filing of such applications for modification has been deprecated by this Court in *Delhi Administration Vs. Gurdip Singh Uban & Ors.* [(2000) 7 SCC 296] and *A.P. SRTC & Ors. Vs. Abdul Kareem* [(2007) 2 SCC 466]. It is in the above backdrop that we must proceed to examine the prayers made in the I.As. filed.

13. Insofar as I.A. Nos.3-5 are concerned, suffice it will be to note that the facts stated therein, on the basis of which the prayer for modification/clarification has been made, were not before the Court at the time when the judgment dated 3.12.2012 was rendered. In I.A. Nos.14-15 and I.A. D.No. 37212 of 2013 the reliefs sought are based on facts and events which have occurred subsequent to the order of this Court. Not only on the basis of the principles of law laid down by this Court in *Gurdip Singh Uban* and *Abdul Kareem* (supra), even otherwise, the said I.As. would not be maintainable and the prayers made therein cannot be granted. The applicants seek to reopen concluded issues and alteration of the consequential directions which have attained finality. Such a course of action is not permissible and at best the parties may be left with the option of seeking such remedies as may be open in law to vindicate any perceived right or claim. We, therefore, dispose of the I.A. Nos.3-5, 14-15 and D.No. 37212 of 2013 in the above terms.

14. Insofar as I.A. Nos.12-13 of 2013 are concerned, Shri Shanti Bhushan, learned senior counsel for the applicants has submitted that an application seeking review of this Court's judgment dated 3.12.2012, to the extent prayed for in the I.As., has been filed. That apart, Shri Bhushan has drawn our attention

to some typographical errors in the judgment dated 3.12.2012. We, therefore, deem it proper to consider the aforesaid I.As. on a slightly different footing.

15. Insofar as typographical errors and the suggested corrections mentioned in para 8 of the I.As. are concerned, we have examined the contents of the relevant paragraphs of the judgment dated 3.12.2012. On such consideration, we find that the errors pointed out by the applicants in para 8, indeed, have occurred. Consequently, we correct the said errors in the following terms.

(i) Para 2 of the judgment dated 3.12.2012 be read as follows :

"2. The appellants, Narendra Jain (original Plaintiff No.2), and Arvind Jain (original Plaintiff No. 3) also claim to be the Legal heirs and representatives of the original plaintiff No. 1 who had along with Narendra Jain and Arvind Jain instituted suit No. 994/1977 in the High Court of Delhi seeking a decree of specific performance in respect of an agreement dated 22.12.1970 executed by and between original plaintiff No.1 (Bhikhu Ram Jain) and the original defendants Anis Ahmed Rushdie in respect of a property described as Bungalow No.4, Flag Staff Road, Civil Lines, Delhi (hereinafter referred to as the 'suit property'). The plaintiff Nos. 2 and 3 are the sons of the original plaintiff No.1. The suit was decreed by the learned trial judge. The decree having been reversed by a Division Bench of the High Court the present appeals have been filed by the original plaintiff No.2, Narendra Jain and Arvind Jain (original Plaintiff No.3) and the other appellants who claim to be vested with a right to sue on the basis of the claims made by the original plaintiffs in the suit. It is, however, made clear at the very outset that though all such persons claiming a right to sue through the deceased plaintiffs 1 and 3 are being referred to hereinafter as the

plaintiffs and an adjudication of the causes/claims espoused is being made herein the said exercise does not, in any way, recognize any right in any such impleaded 'plaintiffs' which Question(s) are left open for decision if and when so raised."

(ii) In paragraph 4 of the judgment dated 3.12.2012 the date of the filing of the suit mentioned as 3.11.1997 be read as 3.11.1977.

(iii) In paragraph 6 of the judgment dated 3.12.2012 the date 22.12.1977 be read as 22.12.1970.

(iv) Paragraph 8 of the judgment dated 3.12.2012 be replaced by following paragraph :-

"8. Aggrieved by the aforesaid judgment and decree passed by the learned trial Judge, the original defendant had filed an appeal which was allowed by the impugned judgment dated 31.10.2011. During the proceedings of the appeal before the High Court the original plaintiff 1 as well as the original defendant had died. As already noticed, while the original plaintiff No.2 and original plaintiff No.3 continue to remain on record as appellants, the remaining appellants claim to be the legal heirs/representatives of the deceased plaintiff No.1. In so far as the original defendant in the suit is concerned the legal representatives of the said defendant are on record having been so impleaded."

16. This will bring the Court to a consideration of the prayer for clarification/modification of the direction for execution of the sale deed by the defendants in favour of the plaintiffs at the market price as on 3.12.2012. The first ground on which such modification has been sought is that during the pendency of the appeals all rights in the suit property have been transferred by the defendant-respondents to one Fine Properties Private Limited for valuable consideration and therefore, the said

defendant-respondents are not entitled to any relief much less the relief of the market value of the property. Additionally, it has been contended that instead of the defendant-respondents it is the Registrar of the Delhi High Court who should be directed to execute the sale deed in favour of the plaintiffs.

17. We have already observed that the facts surrounding the alleged transfer of the suit property or the rights over the said property by the defendant-respondents to Fine Properties Private Limited were not before the Court at the time of hearing of the appeals in question or even at the time when the judgment dated 3.12.2012 was rendered. Though the aforesaid facts along with the supporting documents were filed by way of an additional paper book no specific order of the Court was sought or granted to the appellants to rely on the said documents. In such circumstances, the aforesaid facts now sought to be brought on record cannot be a legitimate basis for any modification of our judgment even if the I.As. in question are construed to be applications for review of our judgment dated 3.12.2012.

18. The aforesaid prayer for modification is based on the additional ground that the same is contrary to the several decisions of this Court reference to which has been made in para 5 of the I.A. We do not consider the abovestated ground to be a justifiable or sufficient cause to alter our direction(s) for execution of the sale deed at the market price inasmuch as the said direction was passed by us in the peculiar facts and circumstances of the present case enumerated below.

19. In paragraph 10 of the judgment dated 3.12.2012, the statement made on behalf of the appellants (Plaintiffs) that they are ready and willing to offer an amount of Rs.6 crores for the property as against the sum of Rs.3.75 lakhs as mentioned in agreement dated 22.12.1970 has been specifically recorded. It is the aforesaid "offer" made on behalf of the appellants/ plaintiffs that had led to the direction in question inasmuch as no material was available to Court to find out as to whether the

offered amount of Rs.6 crores was, in any way, indicative of the market value of the property. It is in such a situation that the direction to execute the sale deed at the market price and the request to the learned Trial Judge to determine the same came to be recorded in the judgment dated 3.12.2012. It is, therefore, clear that we did not intend to lay down any law of general application while issuing the direction for execution of the sale deed at the market price as on the date of the judgment i.e. 3.12.2012.

20. The exercise by the learned Trial Judge in terms of our judgment dated 3.12.2012 is yet to be made. The aforesaid determination, naturally, will be made by the learned single Judge only after affording an opportunity to all the affected parties and after taking into account all relevant facts and circumstances. Furthermore, any party aggrieved by such determination will be entitled to avail of such remedies that may be open in law to such a party. In view of the above, we do not deem it to be necessary to cause any variation or modification in the aforesaid direction contained in our judgment dated 3.12.2012.

21. Accordingly, I.A. Nos. 12-13 of 2013 shall stand disposed of in the above terms.

K.K.T. IAs disposed of.

MOHD. MEHTAB KHAN & ORS.
v.
KHUSHNUMA IBRAHIM & ORS.
(Civil Appeal No. 678 of 2013)

JANUARY 24, 2013

[P. SATHASIVAM AND RANJAN GOGOI, JJ.]

Specific Relief Act, 1963 - s. 6 - Scope of - Held: The proceeding u/s. 6 is summary proceeding to afford immediate remedy in cases of illegal dispossession - Questions of title or better rights of possession does not arise for adjudication.

Interim Order: Grant of interim order - Principles, the courts must follow in this regard, explained - Held: The interim relief granted to the plaintiffs by the appellate court, in the instant case is a mandatory direction to handover possession to the plaintiffs - Grant of mandatory interim relief requires highest degree of satisfaction, much higher than a case involving grant of prohibitory injunction - When trial court, on a consideration of the respective cases of the parties and the documents was of the view that the entitlement of the plaintiffs to an order of interim mandatory injunction was in serious doubt, the appellate court could not have interfered with the exercise of discretion by the trial judge unless such exercise was found to be palpably incorrect or untenable - Interim Mandatory Injunction.

Appeal - Against discretionary order - Jurisdiction of appellate court - Explained.

Plaintiff Nos. 1 and 2 filed a suit u/s. 6 of Specific Relief Act, 1963. They took the plea that their possession of the suit flat and suit office was forcibly taken by defendants 2, 3 and 4. The court appointed a Receiver. As per report of the Receiver, defendant Nos. 5 to 9 were

found in possession of the suit flat. Formal possession of the flat was taken by the Receiver, but he could not take possession of the suit office. The plea of the defendants was that the plaintiffs were not in possession of the suit properties. Trial court declined the interim relief to put the plaintiffs back in possession of the suit properties, in view of the inconsistencies and improbabilities in the plaintiffs case, which needed to be established in the trial. Appellate Court granted interim relief to the plaintiff reversing the order of trial court. Therefore, instant appeal was filed.

Disposing of the appeal, the Court

HELD: 1. A proceeding u/s. 6 of the Specific Relief Act, 1963 is intended to be a summary proceeding, the object of which is to afford an immediate remedy to an aggrieved party to reclaim possession of which he may have been unjustly denied by an illegal act of dispossession. Questions of title or better rights of possession do not arise for adjudication in a suit u/s. 6 where the only issue required to be decided is as to whether the plaintiff was in possession at any time six months prior to the date of filing of the suit. The legislative concern underlying s. 6 is to provide a quick remedy in cases of illegal dispossession so as to discourage litigants from seeking remedies outside the arena of law. The same is evident from the provisions of s. 6(3) which bars the remedy of an appeal or even a review against a decree passed in such a suit. [Para 12] [370-D-G]

P.S. Sathappan (Dead) by Lrs. v. Andhra Bank Ltd. and Ors. **(2004) 11 SCC 672: 2004 (5) Suppl. SCR 188 - referred to.**

2. Given the ground realities of the situation, it is neither feasible nor practical to take the view that interim

matters, even though they may be inextricably connected with the merits of the main suit, should always be answered by maintaining a strict neutrality, namely, by a refusal to adjudicate. Courts, therefore, will have to venture to decide interim matters on consideration of issues that are best left for adjudication in the full trial of the suit. In view of the inherent risk in performing such an exercise, which is bound to become delicate in most cases, courts must follow certain principles in this regard, though such principles cannot be entrapped within any straitjacket formula or any precise laid down norms. Courts must endeavour to find out if interim relief can be granted on consideration of issues other than those involved in the main suit and also whether partial interim relief would satisfy the ends of justice till final disposal of the matter. The consequences of grant of injunction on the defendant, if the plaintiff is to lose the suit alongwith the consequences on the plaintiff where injunction is refused but eventually the suit is decreed has to be carefully weighed and balanced by the court in every given case. Interim reliefs which amount to pre-trial decrees must be avoided wherever possible. Though observations and clarifications to the effect that the findings recorded are prima facie and tentative, meant or intended only for deciding the interim entitlement of the parties have not worked well and interim findings on issues concerning the main suit has had a telling effect in the process of final adjudication, it is here that strict exercise of judicial discipline will be of considerable help and assistance. The power of self-correction and comprehension of the orders of superior forums in the proper perspective will go a long way in resolving the dangers inherent in deciding an interim matter on issues that may have a close connection with those arising in the main suit. [Para 13] [371-C-H; 372-A-B]

3. The interim relief granted to the plaintiffs by the Appellate Bench of the High Court in the instant case is a mandatory direction to handover possession to the plaintiffs. Grant of mandatory interim relief requires the highest degree of satisfaction of the Court; much higher than a case involving grant of prohibitory injunction. [Para 14] [372-C-D]

Dorab Cawasji Warden vs. Coomi Sorab Warden and Ors. **(1990) 2 SCC 117: 1990 (1) SCR 332 - relied on.**

4. In a situation where the trial court, on a consideration of the respective cases of the parties and the documents laid before it, was of the view that the entitlement of the plaintiffs to an order of interim mandatory injunction was in serious doubt, the appellate court could not have interfered with the exercise of discretion by the trial judge unless such exercise was found to be palpably incorrect or untenable. The reasons that weighed with the trial judge, in the instant case, did not indicate that the view taken is not a possible view. The appellate court, therefore, should not have substituted its views in the matter merely on the ground that in its opinion the facts of the scase call for a different conclusion. Such an exercise is not the correct parameter for exercise of jurisdiction while hearing an appeal against a discretionary order. As long as the view of the trial court was a possible view the appellate court should not have interfered with the same, following the virtually settled principles of law in this regard. [Para 15] [373-F-H; 374-A-B]

Wander Ltd. v. Antox India (P) Ltd. **1990 (Supp) SCC 727 - relied on.**

Case Law Reference:

2004 (5) Suppl. SCR 188 Referred to Para 13

1990 (1) SCR 332 Relied on Para 14

1990 (Supp) SCC 727 Relied on Para 15

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 678 of 2013.

From the Judgment & Order dated 09.10.2012 of the High Court of Bombay in Appeal (Lodging) No. 412 of 2012.

V. Krishnamurthy, Subodh K. Pathak, Shashi Ranjan, Dharmendra Kumar Sinha for the Appellants.

Shyam Divan, Atul Y. Chitale, Sanyukta Mukherjee, R.K. Kenanda Singh, Abhijat P. Medh for the Respondents.

The Judgment of the Court was delivered by

RANJAN GOGOI, J. 1. Leave granted.

2. Aggrieved by the grant of interim relief by an Appellate Bench of the Bombay High Court in a suit under Section 6 of the Specific Relief Act, 1963 (hereinafter for short the "SR Act"), the present appeal has been filed by the defendants 5, 10 and 11 in the suit. More specifically, by the impugned order dated 09.10.2012 the Receiver of the suit properties appointed by the learned Single Judge has been directed to remain in possession and hand over the same to the respondent Nos.1 and 2 (plaintiffs) who are to be in possession as agents of the Receiver.

3. Before embarking upon the necessary discussion of the factual matrix of the case, an identification of the contesting parties in the manner indicated below would be necessary.

Name	Relationship	Status in the Trial Court
Khunshnuma Ibrahim Khan	Wife of Deceased Ibrahim Khan	Plaintiff No.1
Raghib Ibrahim Khan	Son of Deceased Ibrahim Khan	Plaintiff No.2
Shri Asadullah Khan @ Sameer Khan	Younger Brother of Deceased Ibrahim Khan	Defendant No. 1
Shri Najmuzzaman Khan	Elder Brother of Deceased Ibrahim Khan	Defendant No.2
Smt. Tara Begum	Wife of Defendant No.2	Defendant No.3
Shri Sheheryaar Khan	Son-in-law of Defendant Nos. 2 & 3	Defendant No.4
Mohd.Mehtab Khan	Son from 1st wife of deceased	Defendant No.5
Mohd. Ilyas Khan	Brother of Defendant No.3	Defendant No.6
Mohd. Dayan Khan	Unrelated	Defendant No.7
Smt. Shehzadi	Wife of Defendant No.12	Defendant No.8
Miss Rani	Unrelated	Defendant No.9
Tabish Ebrahim Khan	Son from 2nd wife of Deceased	Defendant No.10
Kamran Khan	Son from 1st wife of Deceased	Defendant No.11
Zakarullah Khan	Son from 1st wife of Deceased	Defendant No.12

4. The plaintiff No. 1 claims to be the 3rd wife of one Ibrahim Khan whereas the plaintiff No. 2 is the son of the first plaintiff and Ibrahim Khan. According to the plaintiffs, Ibrahim Khan and the first plaintiff were married in the year 1993 and out of the said wedlock the plaintiff No. 2 was born some time in the year 1996. The plaintiffs claim that they alongwith Ibrahim Khan were residing in flat No. A-505, Noor-e-Jahan Complex, Pipe Road, Kurla (West), Mumbai and that they were also in occupation of an office being 201/202, 2nd floor in the Big 3 Building, 88, Anandilal Poddar Marg, Marine Lines, Mumbai from where the first plaintiff was carrying on her profession of advocate and solicitors in the name of M/s. K.K. Associates. It is the case of the plaintiffs that both the aforesaid properties were the self-acquired properties of Ibrahim Khan and that the suit flat was gifted in favour of the first plaintiff whereas a general power of attorney was executed in favour of the first plaintiff insofar as the suit office is concerned.

5. The further case of the plaintiffs is that Ibrahim Khan had gone to Delhi on 28.11.2011 to attend a wedding. On 1.12.2011 the first plaintiff could come to know that Ibrahim Khan had suffered a brain hemorrhage and was admitted in the hospital. According to the plaintiffs, they took an early morning flight to Delhi on the very next day. However, at about 9.30/ 10.00 O'Clock in the morning, Ibrahim Khan died. Thereafter, at the insistence of the first defendant (brother of the deceased) the body of the deceased was taken to Bhagalpur, Bihar which was the native place of Ibrahim Khan. The plaintiffs accompanied the body of the deceased to Bhagalpur and the last rites were performed at the said place in the afternoon of 4.12.2011. On 5.12.2011 the plaintiff No. 1 received a call from her next door neighbour, one Nadeem, that the lock of the suit flat was broken and a new lock had been placed by some unknown persons. According to the plaintiffs, the first plaintiff called her house help Niranjan who informed her that the defendants 2, 3 and 4 had forcibly taken possession of the suit flat. It is also the case of the plaintiffs that when she had

contacted her office she was informed that the defendant No. 4 had gone to the suit office and had snatched the keys from the office staff and had locked up the premises.

6. According to the plaintiffs, they reached Mumbai on 6.12.2011 and on going to the suit flat they found that new locks had been put thereon. They, thereafter, lodged a complaint to the police on 6.12.2011 and thereafter on 12.12.2011 instituted Suit No. 27 of 2012 under Section 6 of the SR Act. On 14.12.2011, when the matter was taken up by the Court, the defendant Nos. 1 to 4 informed the Court that they are not in possession of the suit flat but it is the defendants 5, 11 and 12 who are in possession. The Court by order dated 14.12.2011 appointed a Receiver and directed him to make an inspection of the suit flat and suit office and report back to the Court. Such inspection was made by the Court appointed Receiver on 16.12.2011. The report of inspection was submitted to the Court to the effect that the defendant Nos. 5 to 9 were found to be in possession of the suit flat. Formal possession thereof was taken over by the Court Receiver in terms of the order dated 14.12.2011. In the report of the Court Receiver, it was further mentioned that the defendant No. 10 had produced the keys of the suit office. However, the Court Receiver did not succeed in opening the doors of the office premises as there were further locks fixed thereon and inquiries did not indicate as to who was in possession of the keys. Accordingly, the Court Receiver informed the Court that formal possession of the suit office could not be taken. In the aforesaid circumstances, at the instance of the plaintiffs, defendants 5 to 12 were impleaded in the suit.

7. At this stage the specific case of the defendants as advanced before the learned Trial Judge, may be taken note of. The fact that the first plaintiff was the 3rd wife of Ibrahim Khan and the second plaintiff was the son born out of the said marriage is not disputed by the defendants. The death of Ibrahim Khan in the circumstances stated in the plaint is also

not in dispute. According to the defendants, the appellants were residing in the suit premises with the deceased Ibrahim Khan till the middle of the year 2009 when the first plaintiff separated from the deceased. Thereafter, according to the defendants, the plaintiffs were not in possession of the suit flat and, instead, were staying in the house of the father of the first plaintiff at Mira Road. The second plaintiff was studying in a school located on Mira Road. It is the specific case of the defendants that the deceased, at the relevant time, was residing in the suit flat alongwith his son from the first wife (defendant No. 5) and that the defendants had inherited the suit flat on the death of Ibrahim Khan. Insofar as the suit office is concerned, it is the specific case of the defendants that the plaintiff No. 1 was not in possession of the said premises and that the said plaintiff No. 1 had been functioning from an office located at another place, i.e., shop No. 32/33 Ashoka Centre, 2nd floor, L.T. Marg, Mumbai.

8. Alongwith the respective pleadings of the parties elaborate documents had been laid before the learned Trial Judge on the basis of which contentions were advanced by the respective parties each claiming to be in possession of the suit flat and suit office on the relevant date in order to justify the reliefs that the respective parties were seeking from the Court. As would be evident from the order of the Appellate Bench of the High Court, insofar as the suit flat is concerned, the plaintiffs had produced as many as 50 documents details of which has been catalogued in a chronological order in the order dated 9.10.2012. Insofar as suit office is concerned, similarly, the plaintiffs had relied on as many as 31 documents to show their claim of possession. Likewise, the defendants had also relied on an equally long and elaborate list of documents to show that the plaintiffs were not in possession of the suit flat and suit office at the relevant point of time, as claimed. As the details of the said documents have been minutely taken note of by both the Benches of the High Court it is not necessary for this Court to traverse the said aspect of the case once again. Instead, we

may briefly notice the reasons which had weighed with the learned Trial Judge to refuse interim relief to the plaintiffs and those that had prevailed upon the Appellate Bench to reverse the said order of the learned Trial Judge.

9. Both the learned Trial Judge as well as the Appellate Court considered the very same documents brought on record by the contesting parties to arrive at their respective conclusions with regard to the entitlement of the plaintiffs. Specifically, the learned Trial Judge had discussed the narration of the events of dispossession pleaded by the plaintiffs and held the same to be somewhat unreliable and inconsistent in view of the fact that the defendant No. 1 (son of the deceased Ibrahim Khan) who is alleged to have been instrumental in dispossessing the plaintiffs was at the relevant point of time in Bhagalpur in connection with the cremation of the deceased, Ibrahim Khan. In this regard the claim of defendants 2 to 4 that they were also in Bhagalpur at the relevant time was considered by the learned Trial Judge. The versions of the occurrence allegedly narrated to the plaintiff No. 1 by her neighbours and her domestic aid were also found to be somewhat contradictory. The learned Trial Judge took into account the fact that the plaintiffs' version with regard to prosecution of studies by the second plaintiff in the school at Mira Road and his residing with the parents of the plaintiff No. 1 at Mira Road was brought on record in the rejoinder and did not constitute the part of the plaint case. In coming to his conclusions in the matter the learned Trial Judge also took into account the fact that the visiting card of the plaintiff No. 1 showed an address other than of the suit office and also the fact that the communication conveying the temporary membership of the plaintiff No. 1 in the Bombay Bar Association sent to the suit flat address was returned with the remarks "shifted". The fact that the visiting card of the plaintiff showing the office address at Ashoka Centre contained the same telephone numbers of the plaintiff that were mentioned in certain communications of the bank were duly taken note of

by the learned Trial Judge. In the above context the claim of the plaintiff No.1 that the said visiting card is a forged and fabricated document was held to be an issue fit for decision in the trial of the suit. The learned Trial Judge took into account the passports of both the plaintiffs issued in the year 2009 showing the address of the suit premises as well as the vouchers/memos showing payment by the plaintiff No.1 for the household and electronic goods which were found in the suit flat. On an overall consideration of the aforesaid facts and the documents laid in support thereof, the learned Trial Judge was of the view that there were inconsistencies and improbabilities in the case of the plaintiffs which needed to be established in the trial of the suit. Accordingly, the interim relief of direction to be put back in possession, as claimed by the plaintiffs, was declined.

10. The Appellate Court understood the very same documents considered by the learned Trial Judge in a wholly different manner. Specifically, it was held that the various household and electronic goods found in the suit flat during the inspection carried out by the Receiver on 16.12.2011 were proved to have been purchased by the plaintiffs on the basis of a invoice/voucher dated 22.8.2008 and the said fact pointed to the possession of the suit flat by the plaintiffs and, in fact, demolished the case of the defendants that the first plaintiff and the deceased had separated some time in the middle of the calendar year 2009. The passports issued to the plaintiffs in 2009 recording the address of the suit flat; the HDFC bank statement of plaintiff No. 1; the ICICI bank Credit Card Statement of plaintiff No. 1 during the relevant time, all indicating the address of the suit flat were duly relied upon by the Appellate Court in coming to its conclusion. The Appellate Court also relied on an application form submitted (before the Appellate Court) by the second plaintiff on 11.8.2011 for admission in the 11th standard in H.R. College of Commerce and Economics at Dinshaw Vachcha Road, Church Gate, Mumbai which was

signed by the deceased Ibrahim Khan himself giving the address of the suit office and the suit flat. The version of the plaintiffs that the visiting card showing her office at Ashoka Centre was a forged document and also the claim that the plaintiff had used the said premises temporarily as the suit office was under renovation was accepted by the learned Appellate Court as sufficient explanation to counter the stand taken by the defendants. On the aforesaid basis the order of the learned Trial Judge was found fit for reversal and refusal of interim relief to the plaintiffs was held to be unjustified. Accordingly, interim relief(s) was granted in the appeal.

11. We have heard Mr. V. Krishnamurthy, Senior Advocate for the appellants and Mr. Shyam Divan, Senior Advocate for respondents No. 1 and 2.

12. A proceeding under Section 6 of the Specific Relief Act, 1963 is intended to be a summary proceeding the object of which is to afford an immediate remedy to an aggrieved party to reclaim possession of which he may have been unjustly denied by an illegal act of dispossession. Questions of title or better rights of possession does not arise for adjudication in a suit under Section 6 where the only issue required to be decided is as to whether the plaintiff was in possession at any time six months prior to the date of filing of the suit. The legislative concern underlying Section 6 of the SR Act is to provide a quick remedy in cases of illegal dispossession so as to discourage litigants from seeking remedies outside the arena of law. The same is evident from the provisions of Section 6(3) which bars the remedy of an appeal or even a review against a decree passed in such a suit.

13. While the bar under Section 6(3) of the SR Act may not apply to the instant case in view of the initial forum in which the suit was filed and the appeal arising from the interim order being under the Letters Patent issued to the Bombay High Court, as held by a Constitution Bench of this Court *P.S.*

Sathappan (Dead) by Lrs. v. Andhra Bank Ltd. & Ors.[1], what is ironical is that the correctness of the order passed in respect of the interim entitlement of the parties has reached this Court under Article 136 of the Constitution. Ordinarily and in the normal course, by this time, the suit itself should have been disposed of. Tragically, the logical conclusion to the suit is no where in sight and it is on account of the proverbial delays that have plagued the system that interim matters are being contested to the last court with the greatest of vehemence and fervour. Given the ground realities of the situation it is neither feasible nor practical to take the view that interim matters, even though they may be inextricably connected with the merits of the main suit, should always be answered by maintaining a strict neutrality, namely, by a refusal to adjudicate. Such a stance by the courts is neither feasible nor practicable. Courts, therefore, will have to venture to decide interim matters on consideration of issues that are best left for adjudication in the full trial of the suit. In view of the inherent risk in performing such an exercise which is bound to become delicate in most cases the principles that the courts must follow in this regard are required to be stated in some detail though it must be made clear that such principles cannot be entrapped within any straitjacket formula or any precise laid down norms. Courts must endeavour to find out if interim relief can be granted on consideration of issues other than those involved in the main suit and also whether partial interim relief would satisfy the ends of justice till final disposal of the matter. The consequences of grant of injunction on the defendant if the plaintiff is to lose the suit alongwith the consequences on the plaintiff where injunction is refused but eventually the suit is decreed has to be carefully weighed and balanced by the Court in every given case. Interim reliefs which amount to pre-trial decrees must be avoided wherever possible. Though experience has shown that observations and clarifications to the effect that the findings recorded are prima facie and tentative, meant or intended only

1. (2004) 11 SCC 672

for deciding the interim entitlement of the parties have not worked well and interim findings on issues concerning the main suit has had a telling effect in the process of final adjudication it is here that strict exercise of judicial discipline will be of considerable help and assistance. The power of self-correction and comprehension of the orders of superior forums in the proper perspective will go a long way in resolving the dangers inherent in deciding an interim matter on issues that may have a close connection with those arising in the main suit.

14. There is yet another dimension to the issues arising in the present appeal. The interim relief granted to the plaintiffs by the Appellate Bench of the High Court in the present case is a mandatory direction to handover possession to the plaintiffs. Grant of mandatory interim relief requires the highest degree of satisfaction of the Court; much higher than a case involving grant of prohibitory injunction. It is, indeed, a rare power, the governing principles whereof would hardly require a reiteration inasmuch as the same which had been evolved by this Court in *Dorab Cawasji Warden vs. Coomi Sorab Warden and Others*[2] has come to be firmly embedded in our jurisprudence. Paras 16 and 17 of the judgment in *Dorab Cawasji Warden* (supra), extracted below, may be usefully remembered in this regard:

> "16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who

2. (1990) 2 SCC 117.

succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

> (1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.
>
> (2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.
>
> (3) The balance of convenience is in favour of the one seeking such relief.

17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion."

15. In a situation where the learned Trial Court on a consideration of the respective cases of the parties and the documents laid before it was of the view that the entitlement of the plaintiffs to an order of interim mandatory injunction was in serious doubt, the Appellate Court could not have interfered with the exercise of discretion by the learned Trial Judge unless such exercise was found to be palpably incorrect or untenable. The reasons that weighed with the learned Trial Judge, as already noticed, according to us, do not indicate that the view taken is not a possible view. The Appellate Court, therefore, should not have substituted its views in the matter merely on the ground that in its opinion the facts of the case call for a different

conclusion. Such an exercise is not the correct parameter for exercise of jurisdiction while hearing an appeal against a discretionary order. While we must not be understood to have said that the Appellate Court was wrong in its conclusions what is sought to be emphasized is that as long as the view of the Trial Court was a possible view the Appellate Court should not have interfered with the same following the virtually settled principles of law in this regard as laid down by this Court in *Wander Ltd. v. Antox India (P) Ltd.*[3] Para 14 of the aforesaid judgment which is extracted below would amply sum up the situation:

> "14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these *principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph:* (SCR 721)

3. 1990 (Supp) SCC 727

"... These principles are well established, but as has been observed by Viscount Simon in Charles Osenton & Co. v. Jhanaton '...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'."

The appellate judgment does not seem to defer to this principle."

16. Though the above discussions would lead us to the conclusion that the learned Appellate Bench of the High Court was not correct in interfering with the order passed by the learned Trial Judge we wish to make it clear that our aforesaid conclusion is not an expression of our opinion on the merits of the controversy between the parties. Our disagreement with the view of the Division Bench is purely on the ground that the manner of exercise of the appellate power is not consistent with the law laid down by this Court in the case of *Wander Ltd.* (supra). Accordingly, we set aside the order dated 09.10.2012 passed by the Appellate Bench of the Bombay High Court and while restoring the order dated 13.04.2012 of the learned Trial Judge we request the learned Trial Judge, or such other court to which the case may, in the mean time, have been transferred to dispose of the main suit as expeditiously as its calendar would permit with the expectation that the same will be possible within a period of six months from the date of receipt of this order. The appeal shall stand disposed of in terms of the above.

K.K.T. Appeal disposed of.

BALBIR SINGH BEDI

v.

STATE OF PUNJAB AND ORS.

(Civil Appeal No. 1273 of 2004)

FEBRUARY 11, 2013

[DR. B.S. CHAUHAN AND V. GOPALA GOWDA, JJ.]

Service Law - Promotion - On the basis of seniority-cum-merit - Case of the appellant was considered alongwith other eligible candidates for the post of Battalion Commander but a person junior to him (respondent no.5), was promoted to the said post after considering his past five years' ACR and other records - Writ petition filed by appellant - Dismissed by High Court - On appeal, held: Where a promotion is to be given on the principle of "seniority-cum-merit", such promotion will not automatically be granted on the basis of seniority alone - A person lower in the seniority list, can be promoted, ignoring the claim of the senior person, who failed to achieve the benchmark i.e. minimum requisite merit - Fixing a criteria, or providing for minimum necessary merit, falls within the exclusive domain of policy making and cannot be interfered with by courts in the exercise of their judicial powers, unless the same is found to be off the mark, unreasonable, or malafide - Even in the absence of the executive instructions, the State/employer has the right to adopt any reasonable and bonafide criteria to assess the merit, for the purpose of promotion on the principle of "seniority-cum-merit" - The present case is not the one where, respondent no. 5 was found to be more meritorious, in fact, the same is admittedly a case, where the appellant was unable to achieve the benchmark set, as it is evident from the record that his ACRs were average, and the benchmark fixed by the State was 'Good' - Furthermore, appellant did not approach the court with clean hands, clean mind and clean objective - He had faced

criminal prosecution under ss.7 & 13(ii) of the PC Act, 1988 and ss.467/468/471/120-B IPC, but did not disclose this fact either before the High Court or before the Supreme Court - Claim of appellant for promotion therefore rightly rejected - Punjab Home Guard, Class-I Rules, 1988 - r.8.

Service Law - Promotion - "seniority-cum-merit" and "merit-cum-seniority" - Distinction between - Held: The principle of "seniority-cum-merit" and "merit-cum-seniority" are conceptually different - In the case of the former, there is greater emphasis upon seniority even though the same is not the deciding factor, while in the case of the latter, merit is the deciding factor.

The appellant, a District Commander, claimed to have become eligible for substantive promotion to the post of Battalion Commander as per the rules applicable. The case of the appellant was considered alongwith other eligible candidates, but a person junior to him (respondent no.5), was promoted to the said post after considering his past five years' Annual Confidential Reports ('ACR') and other records. The appellant made repeated representations in this regard, but the same were not considered.

Employees of another department governed by the same rules, filed Writ Petition in the High Court contending that their cases for promotion were not to be considered in the light of executive instructions dated 29.12.2000, as the vacancies on promotional posts had occurred much before the issuance of said executive instructions. The High Court, however, directed the authorities to consider the promotion of the parties therein, ignoring the instructions dated 29.12.2000.

The appellant retired on 31.12.2001 and filed Writ Petition seeking promotion and quashing of executive instructions issued on 29.12.2000 as well as on 6.9.2001.

The High Court dismissed the Writ Petition and therefore the instant appeal.

The appellant inter alia submitted that that recruitment to the post of Battalion Commander is governed by Rule 8 of the Punjab Home Guard, Class-I Rules, 1988 which prescribes that selection to the post must be made on the principle of "seniority-cum-merit"; and that the High Court committed an error by not giving weightage to seniority.

Dismissing the appeal, the Court

HELD: 1.1. Efficiency of administration is of paramount importance, and therefore, whilst adequate weightage is given to seniority, merit must also be duly considered. Even if a promotion is to be made on the basis of "seniority-cum-merit", a person who is lower in the seniority list, can in fact be promoted, ignoring the claim of the senior person, who failed to achieve the benchmark i.e. minimum requisite merit. [Para 6 and 8] [384-H; 385-G-H]

1.2. The principle of "seniority-cum-merit" and "merit-cum-seniority" are conceptually different, as in the case of the former, there is greater emphasis upon seniority even though the same is not the deciding factor, while the case of the latter, merit is the deciding factor. [Para 11] [386-F-G]

1.3. Where a promotion is to be given on the principle of "seniority-cum-merit", such promotion will not automatically be granted on the basis of seniority alone. Efficiency of administration cannot be compromised with at any cost. Thus, in order to meet said requirements, all eligible candidates in the feeder cadre must be subject to a process of assessment to determine whether or not an individual in fact possesses the specified minimum necessary merit, and in the event that he does possess

the same, his case must be considered giving due weightage to his seniority. Furthermore, the statutory authority must adopt a bonafide and reasonable method to determine the minimum necessary merit, as is required to be possessed by the eligible candidate. It must also take into account his period of service, educational qualifications, his performance during his past service for a particular period, his written test, interview, etc. The authority must further be competent to allocate separate maximum marks on each of the aforesaid counts. Fixing such criteria, or providing for minimum necessary merit, falls within the exclusive domain of policy making. Thus, it cannot be interfered with by courts in the exercise of their judicial powers, unless the same is found to be off the mark, unreasonable, or malafide. [Para 15] [388-D-H; 389-A]

1.4. Even in the absence of the executive instructions, the State/employer has the right to adopt any reasonable and bonafide criteria to assess the merit, for the purpose of promotion on the principle of "seniority-cum-merit". The executive instructions in question are nothing but codification of directions issued by this Court in other cases. Therefore, a challenge made to the executive instructions on the ground that they were issued at a date subsequent to the date on which the vacancy arose, is meaningless. The present case is not the one where, respondent No. 5 was found to be more meritorious, in fact, the same is admittedly a case, where the appellant was unable to achieve the benchmark set, as it is evident from the record that his ACRs were average, and the benchmark fixed by the State was 'Good'. [Para 18] [390-C-E]

1.5. It is evident from the material on record i.e. from the counter-affidavit filed by the State that appellant faced criminal prosecution as FIR No. 25 dated 12.4.1996 had

been lodged against him under Sections 7 & 13(ii) of the PC Act, 1988 and Sections 467/468/471/120-B IPC, at Police Station: Vigilance Bureau, Patiala, wherein the appellant faced trial though, acquitted as is evident from the judgment and order dated 2.5.2006 passed in Sessions Case No. 5 of 10.5.2001. His acquittal took place after five years to his retirement. Be that as it may, for the reason best known to the appellant, this fact was not disclosed by him either before the High Court or before this Court. It is another matter as what could have been the effect of pendency of the said criminal case so far as this case is concerned. Thus, the appellant did not approach the court with clean hands, clean mind and clean objective. [Para 19] [390-F-H;371-A]

1.6. In the facts of this case, no fault can be found with the High Court's judgment. [Para 20]

State of Kerala & Anr. v. N.M. Thomas & Ors. **AIR 1976 SC 490: 1976 (1) SCR 906 - followed.**

Sr. Jagathigowda C.N. & Ors. v. Chairman, Cauvery Gramin Bank & Ors. **AIR 1996 SC 2733: 1996 (4) Suppl. SCR 190;** *Union of India & Ors. v. Lt. Gen Rajendra Singh Kadyan & Anr.* **AIR 2000 SC 2513: 2000 (1) Suppl. SCR 722;** *Syndicate Bank Scheduled Castes and Scheduled Tribes Employees Association (Regd.) & Ors. v. Union of India & Ors.* **1990 Supp. SCC 350: 1990 SCR 713;** *Govind Ram Purohit & Anr. v. Jagjiwan Chandra & Ors.* **1999 SCC (L&S) 788;** *The Central Council for Research in Ayurveda & Siddha & Anr. v. Dr. K. Santhakumari* **(2001) 5 SCC 60: 2001 (3) SCR 519;** *Bibhudatta Mohanty v. Union of India & Ors.* **(2002) 4 SCC 16: 2002 (2) SCR 613;** *K. Samantaray v. National Insurance Co Ltd.* **AIR 2003 SC 4422: 2003 (3) Suppl. SCR 669;** *State of U.P. v. Jalal Uddin & Ors.* **(2005) 1 SCC 169: 2004 (5) Suppl. SCR 92;** *Bhagwandas Tiwari & Ors. v. Dewas Shajapur Kshetriya Gramin Bank & Ors.* **AIR 2007 SC 994: 2006 (8) Suppl. SCR 760;** *Harigovind Yadav v. Rewa Sidhi*

Gramin Bank & Ors. **AIR 2006 SC 3596: 2006 (2) Suppl. SCR 116;** *Rajendra Kumar Srivastava & Ors. v. Samyut Kshetriya Gramin Bank & Ors.* **AIR 2010 SC 699:2009 (15) SCR 936;** *Rupa Rani Rakshit & Ors. v. Jharkhand Gramin Bank & Ors.* **AIR 2010 SC 787: 2009 (15) SCR 1133 and** *Haryana State Warehousing Corporation & Ors. v. Jagat Ram & Anr.* **(2011) 3 SCC 422: 2011 (2) SCR 1151 - relied on.**

Case Law Reference:

1976 (1) SCR 906	**followed**	**Para 6**
1996 (4) Suppl. SCR 190	**relied on**	**Para 7**
2000 (1) Suppl. SCR 722	**relied on**	**Para 8**
1990 SCR 713	**relied on**	**Para 8**
1999 SCC (L&S) 788	**relied on**	**Para 8**
2001 (3) SCR 519	**relied on**	**Para 8**
2002 (2) SCR 613	**relied on**	**Para 8**
2003 (3) Suppl. SCR 669	**relied on**	**Para 9**
2004 (5) Suppl. SCR 92	**relied on**	**Para 9**
2006 (8) Suppl. SCR 760	**relied on**	**Para 9**
2006 (2) Suppl. SCR 116	**relied on**	**Para 10**
2009 (15) SCR 936	**relied on**	**Para 12**
2009 (15) SCR 1133	**relied on**	**Para 13**
2011 (2) SCR 1151	**relied on**	**Para 14**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1273 of 2004.

From the Judgment & Order dated 09.10.2003 of the High Court of Punjab & Haryana at Chandigarh in Civil Writ Petition No. 15672 of 2003.

P.S. Patwalia, Debasis Misra for the Appellant.

Jagjit Singh Chhabra, Rr-Ex-Parte for the Respondents.

The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J. 1. This appeal has been preferred against the impugned judgment and order dated 9.10.2003 passed by the High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition No. 15672 of 2003 by way of which the claim of the appellant for promotion has been rejected.

2. The facts and circumstances giving rise to this case are that:

A. The appellant was appointed as Civil Defence Instructor in the year 1964, and was promoted as Company Commander in October 1968. He was later promoted to the post of District Commander in July 1989. He, then claimed to have become eligible for substantive promotion to the post of Battalion Commander as per the rules applicable.

B. The case of the appellant was considered alongwith other eligible candidates, and vide order dated 30.1.2001, a person junior to him (Respondent No. 5), was promoted to the said post after considering his past five years' Annual Confidential Reports (hereinafter referred to as `ACR') and other records.

C. The appellant made repeated representations in this regard, but the same were not considered. Employees of the other department governed by the same rules, filed Civil Writ Petition Nos. 4491 and 11011 of 2001 in the Punjab and Haryana High Court contending that their cases for promotion were not to be considered in the light of executive instructions dated 29.12.2000, as the vacancies on promotional posts had occurred much before the issuance of said executive instructions. The said writ petitions were disposed of by the

High Court vide judgment and order dated 14.1.2003, by which the High Court directed the authorities to consider the promotion of the parties therein, ignoring the instructions dated 29.12.2000.

D. The appellant retired on 31.12.2001 and filed Civil Writ Petition No. 15672 of 2003, seeking promotion and quashing of executive instructions issued on 29.12.2000 as well as on 6.9.2001. However, the High Court dismissed the said Civil Writ Petition vide impugned judgment and order dated 9.10.2003.

Hence, this appeal.

3. Shri P.S. Patwalia, learned senior counsel appearing on behalf of the appellant, has submitted that if the criteria for promotion is "seniority-cum-merit", the question of ignoring the seniority does not arise. Additionally, recruitment to the post of Battalion Commander is governed by Rule 8 of the Punjab Home Guard, Class-I Rules, 1988 (hereinafter referred to as the `1988 Rules'), which provides that 75 per cent posts of this cadre would be filled up by promotion from the Battalion 2nd-in-Command consisting of District Commanders, the Chief Instructor, and Junior Officers at the State Headquarters, working under the control of the Commandant General, Punjab, all having a minimum work experience of 8 years. However, it prescribes that selection to the post must be made on the principle of "seniority-cum-merit". The High Court committed an error by not giving weightage to seniority. Furthermore, as the executive instructions followed therein were issued subsequent to the date on which the vacancy occurred, the said instructions must not be applied to the present case. Appellant was given officiating charge of the post, and he performed the duties and functions on the said post, he could not be found unfit for any reason whatsoever, at a later stage. Therefore, the judgment and order impugned is liable to be set aside.

4. On the other hand, Shri Jagjit Singh Chhabra, learned

counsel appearing on behalf of Respondent Nos. 1 to 4, has submitted that the aforementioned rule provides for promotion only on the basis of "seniority-cum-merit". Therefore, the State, even in the absence of any executive instructions, could fix the required benchmark. The same, however, must be fixed prior to considering a case for promotion, as once the process of promotion begins, it would not be fair to change the rules of the game. The fixing of such a benchmark is completely unrelated to the date on which the vacancy occurred. Appellant, vide order dated 13.5.1997, was authorised only to sign bills and vouchers relating to the office, which could not confer any right to the appellant. Moreover, at the relevant point of time, appellant was facing criminal prosecution under the provisions of the Prevention of Corruption Act, 1988 (hereinafter referred to as `the PC Act') as well as for the offences under the Indian Penal Code, 1860 (hereinafter referred to as `IPC'). In view thereof, no fault can be found with respect to the judgment of the High Court. The appeal lacks merit and is liable to be dismissed.

5. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

6. A Seven Judge Bench of this Court in *State of Kerala & Anr. v. N.M. Thomas & Ors.,* AIR 1976 SC 490, held:

> "Seniority cum merit' means that given the minimum necessary merit requisite for efficiency of administration, the senior, though less meritorious, shall have priority. This will not violate Articles 14, 16 (1) and 16 (2) of the Constitution of India."

Thus, it is apparent that this Court has provided for giving weightage to seniority, without any compromise being made with respect to merit, as the candidate must possess minimum requisite merit. Efficiency of administration is of paramount importance, and therefore, whilst adequate weightage is given to seniority, merit must also be duly considered.

7. In *Sr. Jagathigowda C.N. & Ors. v. Chairman, Cauvery Gramin Bank & Ors.,* AIR 1996 SC 2733, this Court has observed as under:-

> "It is settled proposition of law even while making promotion on the basis of seniority cum merit, the totality of the service record of the officer concerned has to be taken into consideration. The Performance Appraisal Forms are maintained primarily for the purpose that the same are taken into consideration when the person concerned is considered for promotion to the higher rank."

8. In *Union of India & Ors. v. Lt. Gen Rajendra Singh Kadyan & Anr.,* AIR 2000 SC 2513, it was observed as under:-

> "Seniority-cum-merit" postulates the requirement of certain minimum merit or satisfying a benchmark previously fixed. Subject to fulfilling this requirement the promotion is based on seniority. There is no requirement of assessment of comparative merit both in the case of seniority-cum-merit."

The said principle has also been approved, reiterated and followed by this Court in *Syndicate Bank Scheduled Castes and Scheduled Tribes Employees Association (Regd.) & Ors. v. Union of India & Ors.,* 1990 Supp. SCC 350; *Govind Ram Purohit & Anr. v. Jagjiwan Chandra & Ors.,* 1999 SCC (L&S) 788; *The Central Council for Research in Ayurveda & Siddha & Anr. v. Dr. K. Santhakumari,* (2001) 5 SCC 60; and *Bibhudatta Mohanty v. Union of India & Ors.,* (2002) 4 SCC 16.

In view of the aforesaid judgments of this Court, it is evident that even if a promotion is to be made on the basis of "seniority-cum-merit", a person who is lower in the seniority list, can in fact be promoted, ignoring the claim of the senior person, who failed to achieve the benchmark i.e. minimum requisite merit.

9. In *K. Samantaray v. National Insurance Co Ltd.,* AIR 2003 SC 4422, this Court explained the difference between the principles of "merit-cum-seniority", and "seniority-cum-merit", while placing reliance upon its earlier judgments, and held that for the purpose of promotion, even on a "seniority-cum-merit" basis, weightage in terms of numerical marks for various categories is given, and the authority is permitted to work out the marks for individual as occurring under each head, otherwise the word 'merit' would loose its sanctity. (See also: *State of U.P. v. Jalal Uddin & Ors.,* (2005) 1 SCC 169; and *Bhagwandas Tiwari & Ors. v. Dewas Shajapur Kshetriya Gramin Bank & Ors.,* AIR 2007 SC 994).

10. This Court in *Harigovind Yadav v. Rewa Sidhi Gramin Bank & Ors.,* AIR 2006 SC 3596, held that promotion, if to be made on the criterion of "seniority-cum-merit", must not be made exclusively on the basis of merit. The Court negatived the idea of selecting the more meritorious where Rules provided for the criterion of "seniority-cum-merit", but did not rule out the laying down of criteria for fixing a minimum benchmark. In paragraph 17 of the said judgment, the Court has observed as under:-

> "Interviews can be held and assessment of performance can be made by the Bank in connection with promotions. But that can be only to assess the minimum necessary merit."

11. The principle of "seniority-cum-merit" and "merit-cum-seniority" are conceptually different, as in the case of the former, there is greater emphasis upon seniority even though the same is not the deciding factor, while the case of the latter, merit is the deciding factor.

12. In *Rajendra Kumar Srivastava & Ors. v. Samyut Kshetriya Gramin Bank & Ors.,* AIR 2010 SC 699, while considering the aforementioned issue, this Court held that when a promotion is to be made on the principle of "seniority-cum-

merit", then the said promotion must be made only after assessing the minimum necessary merit for such promotion. This must be done on the basis of seniority among the candidates possessing such minimum necessary merit, additionally, it must be ensured that the benchmark fixed is bonafide and reasonable. Fixing the benchmark cannot be challenged as being opposed to the principle of "seniority-cum-merit" and further, cannot be held to be violative of the concept of promotion by "seniority-cum-merit" considering the nature of duties and functions to be performed on the promotional post. The criteria for selection is not subject to challenge generally as it falls within the area of policy making. Therefore, the criteria for adjudging claims on the basis of the principle of "seniority-cum-merit", depends upon various factors which the employer may determine depending upon the class, category and nature of posts in the hierarchy of administration, and the requirements of efficiency for the posts.

13. In *Rupa Rani Rakshit & Ors. v. Jharkhand Gramin Bank & Ors.,* AIR 2010 SC 787, this Court while considering the earlier judgments of this Court, held that where promotion is made on the principle of "seniority-cum-merit", such promotion cannot be made on the basis of seniority alone. Merit also plays some role. The standard method adopted by the principle of "seniority-cum-merit", is to subject all eligible candidates in the feeder cadre to a process of assessment of a specified level of minimum necessary merit, and then to promote candidates, who are found to possess the minimum necessary merit, strictly in order of seniority. The minimum merit necessary for promotion to the said post may be assessed either by subjecting candidates to a written examination, or an interview, or by assessment of their work performance during the previous years, or by a combination of either of the above, or of all the aforesaid methods. There cannot be any hard and fast rule with respect to how minimum merit should be ascertained. For the purpose of assessing the merit of employees, the employer may proceed with reference to four

criteria (Period of service, educational qualifications, performance during last three years and interview) allocating separate maximum marks as regards each of the aforesaid counts.

14. In *Haryana State Warehousing Corporation & Ors. v. Jagat Ram & Anr.,* (2011) 3 SCC 422, this Court considered a similar issue and reiterated a similar view. The Court also observed that, for the purpose of according promotion on the principle of "seniority-cum-merit", a comparative assessment of all eligible candidates is not permissible. Once a person has secured minimum marks with respect to merit, his seniority would play a significant role. Thus, in the event that an employee is found to possess minimum requisite merit, he is entitled to be considered for promotion on the basis of his seniority.

15. In view of the above, the law as regards this point can be summarised to the effect that, where a promotion is to be given on the principle of "seniority-cum-merit", such promotion will not automatically be granted on the basis of seniority alone. Efficiency of administration cannot be compromised with at any cost. Thus, in order to meet said requirements, all eligible candidates in the feeder cadre must be subject to a process of assessment to determine whether or not an individual in fact possesses the specified minimum necessary merit, and in the event that he does possess the same, his case must be considered giving due weightage to his seniority. Furthermore, the statutory authority must adopt a bonafide and reasonable method to determine the minimum necessary merit, as is required to be possessed by the eligible candidate. It must also take into account his period of service, educational qualifications, his performance during his past service for a particular period, his written test, interview, etc. The authority must further be competent to allocate separate maximum marks on each of the aforesaid counts. Fixing such criteria, or providing for minimum necessary merit, falls within the exclusive domain of policy making. Thus, it cannot be interfered

with by courts in the exercise of their judicial powers, unless the same is found to be off the mark, unreasonable, or malafide.

16. The relevant portions of the executive instructions dated 29.12.2000 read as under:

"(iii) In the case of promotion to posts with pay scales less than Rs.12000-16350, the benchmark will be 'Good'. This benchmark will determine the fitness of the officer and person graded 'Very Good' or 'Outstanding' will not supersede persons graded 'Good'.

(iv) Henceforth each Annual Confidential Report will be evaluated as under:-

Outstanding : +A .....4 Marks

Very Good : A .....3 Marks

Good : +B .....2 Marks

Average : B .....1 Mark

ACRs for 5 years are taken into consideration for promotion. Out of a total of 20 marks, officers earning 0 to 14 marks will be graded overall 'Good' and those earning 15 to 17 marks will be graded overall 'Very Good'. Those earning 18 to 20 marks will be graded as 'Outstanding'. Departmental which are 'Outstanding' must have been out of the ordinary and reasons for giving grading must be cogent and well spelt out, to be accepted and outstanding. If the ACR does not fulfill the above criteria, the entry of the 'Outstanding' should be read as 'Very Good' only. An officer will not be fit for promotion if he is rated 'below average' in any of the 5 years."

17. Similarly, the executive instructions dated 6.9.2001 so far as applicable in the instant case, read as under:

"3. In the case of promotion to posts falling in Group 'B' the minimum benchmark will be 'Good' and there would be no supercession i.e. promotions would be made strictly on seniority-cum-merit.

4. For making promotion in all the categories there should not be any adverse remarks in the ACRs under consideration."

18. If, the instant case is examined in light of the aforesaid settled legal propositions, it becomes evident that even in the absence of the executive instructions, the State/employer has the right to adopt any reasonable and bonafide criteria to assess the merit, for the purpose of promotion on the principle of "seniority-cum-merit". The aforesaid executive instructions are nothing but codification of directions issued by this Court in the cases referred to hereinabove. Therefore, a challenge made to the executive instructions on the ground that they were issued at a date subsequent to the date on which the vacancy arose, is meaningless. The present case is not the one where, Respondent No. 5 was found to be more meritorious, in fact, the same is admittedly a case, where the appellant was unable to achieve the benchmark set, as it is evident from the record that his ACRs were average, and the benchmark fixed by the State was `Good'.

19. It is evident from the material on record i.e. from the counter-affidavit filed by the State that appellant faced criminal prosecution as FIR No. 25 dated 12.4.1996 had been lodged against him under Sections 7 & 13(ii) of the PC Act, 1988 and Sections 467/468/471/120-B IPC, at Police Station: Vigilance Bureau, Patiala, wherein the appellant faced trial though, acquitted as is evident from the judgment and order dated 2.5.2006 passed in Sessions Case No. 5 of 10.5.2001. His acquittal took place after five years to his retirement.

Be that as it may, for the reason best known to the appellant, this fact was not disclosed by him either before the High Court or before this Court. It is another matter as

what could have been the effect of pendency of the said criminal case so far as this case is concerned. Thus, we are of the view that the appellant did not approach the court with clean hands, clean mind and clean objective.

20. In view of the aforesaid settled legal proposition, in the facts of this case, we have no hesitation in holding that no fault can be found with the High Court's judgment impugned before us. The appeal lacks merit and is, accordingly, dismissed.

B.B.B. Appeal dismissed.

LIFE CONVICT BENGAL @ KHOKA @ PRASANTA SEN

v.

B.K. SRIVASTAVA & ORS.

CONTEMPT PETITION (C) NO. 363 OF 2011

IN

(Writ Petition (Crl.) No. 279 of 2004)

FEBRUARY 13, 2013

[P. SATHASIVAM AND JAGDISH SINGH KHEHAR, JJ.]

Penal Code, 1860 - s.57 - Life imprisonment - Meaning and effect of -Remission - Entitlement to - Held: Once a person is sentenced to undergo life imprisonment unless imprisonment for life is commuted by the competent authority, he has to undergo imprisonment for the whole of his life - S.57 IPC does not, in any way, limit the punishment of imprisonment for life to a term of 20 years - In absence of subsequent order of remission by the competent Government either based on s.57 IPC or any other provision of CrPC, the life convict cannot be released - Neither s.57 IPC nor Explanation to s.61 of the W.B. Act lays down that a life imprisonment prisoner has to be released after completion of 20 years - 20 years mentioned in Explanation to s.61 of the W.B. Act is only for the purpose of ordering remission - On facts, if the State Government taking into consideration various aspects refused to grant remission of the whole period then the petitioner cannot take advantage of the above Explanation and even s.57 IPC and seek for pre-mature release -Further the question of remission of the entire sentence or a part of it lies within the exclusive domain of the appropriate Government u/s.401 CrPC and neither s.57 IPC nor any rules or local Acts (in the case on hand W.B. Act) can stultify the effect of the sentence of life imprisonment given by the Court under the IPC - West Bengal Correctional Services Act, 1992 - ss. 2(c) and 61, Explanation - Code of Criminal Procedure, 1973 - s.432.

Contempt of Court - Life convict filed writ of Habeas Corpus for his immediate release stating that he had already undergone full sentence of 20 years with remission - Supreme Court directed the respondents- State of West Bengal to consider the claim and proceed to conclude the sentence for the purpose of consideration of remission - Contempt petition filed by the life convict contending that inspite of the said order of the Supreme Court and the W.B. Act, the respondents had not granted remission and had not released him - Held: In West Bengal, there is a duly constituted Sentence Review Board for consideration of applications for premature release made by life convicts - On facts, the State Sentence Review Board, after careful consideration of all the aspects, had declined to recommend the petitioner-life convict for his premature release - State Government accepted the recommendation of the State Sentence Review Board and communicated its decision to the petitioner - There was no violation of the order passed by the Supreme Court - No merit in the contempt petition - West Bengal Correctional Services Act, 1992 - Code of Criminal Procedure, 1973 - s.432.

The petitioner - a life convict was convicted under Section 302/34 IPC. He filed a writ of Habeas Corpus for his immediate release stating that he had already undergone full sentence of 20 years with remission. The Supreme Court disposed of the writ petition directing the respondents- State of West Bengal to consider the claim of the petitioner and proceed to conclude the sentence for the purpose of consideration of remission as per the applicable Statute/Policy.

The petitioner filed the instant contempt petition contending that inspite of the said order of the Supreme Court and the West Bengal Correctional Services Act, 1992, the respondents had not granted remission and had not released him. He contended that the respondents - the State of West Bengal and its officers had disobeyed

the order passed by the Supreme Court by not complying with the same. The petitioner contended that as per order of the Supreme Court, the respondents ought to have released the petitioner on completion of a period of 20 years.

Per contra, the respondents- State Government highlighted that on going into the period of custody, other particulars and the provisions of the West Bengal Act, it had rejected the prayer of the petitioner for his premature release, hence, there was no violation of the order passed by the Supreme Court. The respondents contended that it cannot be construed that the period of imprisonment for life is equivalent to imprisonment for 20 years and that in absence of remission order for the whole period by the State Government, the petitioner could not be released.

Dismissing the contempt petition, the Court

HELD: 1.1. In the absence of subsequent order of remission by the competent Government either based on Section 57 of IPC or any other provision of the Criminal Procedure Code, 1973, the life convict cannot be released. Neither Section 57 IPC nor Explanation to Section 61 of the W.B. Act lays down that a life imprisonment prisoner has to be released after completion of 20 years. 20 years mentioned in Explanation to Section 61 of the W.B. Act is only for the purpose of ordering remission. If the State Government taking into consideration various aspects refused to grant remission of the whole period then the petitioner cannot take advantage of the above Explanation and even Section 57 IPC and seek for premature release. Further the question of remission of the entire sentence or a part of it lies within the exclusive domain of the appropriate Government under Section 432 of the Code of Criminal Procedure, 1973 and neither Section 57 of the IPC nor any rules or local Acts (in the

case on hand W.B. Act) can stultify the effect of the sentence of life imprisonment given by the Court under the IPC. To put it clear, once a person is sentenced to undergo life imprisonment unless imprisonment for life is commuted by the competent authority, he has to undergo imprisonment for the whole of his life. Section 57 IPC does not, in any way, limit the punishment of imprisonment for life to a term of 20 years. [Para 16] [412-F-H; 413-A-B]

1.2. In the case on hand, it is highlighted by the counsel for the respondents that in West Bengal there is a duly constituted Review Board for consideration of applications for premature release made by life convicts. On receipt of the application for premature release except under Article 161 of the Constitution, the Review Board would go into all the details and place it before the Government. Ultimately on approval of the Hon'ble Chief Minister, the convict is prematurely released under Section 432 of the Criminal Procedure Code, 1973. Insofar as application under Article 161 is concerned, it was explained that the procedure followed remains the same but the file is finally placed before His Excellency the Governor of the State through the Hon'ble Chief Minister. In the instant case, it is seen that after careful consideration of all the aspects, the State Sentence Review Board in its meeting held on 27.01.2011 did not recommend the petitioner for his premature release. The recommendation of the Review Board was placed before the State Government and the State Government accepted the recommendation of the State Sentence Review Board. The decision of the State Government was communicated to the petitioner. In view of the decision of the State Sentence Review Board, approval by the State Government and the principles enunciated in various decisions of this Court including the decision of the Constitution Bench in Gopal Vinayak Godse's

case, there is no merit in the contempt petition. [Paras 17, 18 and 19] [413-C, G-H; 414-A; 415-A-C]

Gopal Vinayak Godse vs. The State of Maharashtra & Ors. **AIR 1961 SC 600: 1961 SCR 440 - followed.**

State of Madhya Pradesh vs. Ratan Singh & Ors. **(1976) 3 SCC 470: 1976 (0) Suppl. SCR 552;** *Kartar Singh & Ors. vs. State of Haryana* **(1982) 3 SCC 1: 1983 (1) SCR 445;** *Laxman Naskar vs. Union of India & Ors.* **(2000) 2 SCC 595: 2000 (1) SCR 796;** *Mohd. Munna vs. Union of India & Ors. etc.* **(2005) 7 SCC 417: 2005 (3) Suppl. SCR 233 - relied on.**

Pandit Kishori Lal vs. King Emperor **AIR 1945 PC 64 - referred to.**

Case Law Reference:

1961 SCR 440	**followed**	**Paras 11,12, 13,19**
1976 (0) Suppl. SCR 552	**relied on**	**Para 12**
1983 (1) SCR 445	**relied on**	**Para 13**
AIR 1945 PC 64	**referred to**	**Para 13, 15**
2000 (1) SCR 796	**relied on**	**Para 14**
2005 (3) Suppl. SCR 233	**relied on**	**Para 14**

CRIMINAL ORIGINAL JURISDICTION : Contempt Petition (Civil) No. 363 of 2011.

IN

Writ Petition (Criminal) No. 279 of 2004.

Under Article 32 of the Constitution of India.

B.S. Malik, Naveen Sherawat, Chander Shekhar Ashri for the Petitioner.

Avijit Bhattacharjee, Bikas Kargupta, Sarbani Kar for the Respondents.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. The petitioner - a life convict has filed this contempt petition against the respondents - the State of West Bengal and its officers for disobeying the order dated 24.11.2010 passed by this Court by not complying with the same within the prescribed period of eight weeks and failure to release him in accordance with the statute.

2. **Brief facts:**

(a) Prior to the above contempt petition, the petitioner filed a writ of Habeas Corpus being W.P. (Crl.) No. 279 of 2004 - for his immediate release in which it was stated that as per his calculation, he has undergone total sentence of imprisonment for a period of 22 years 2 months and 16 days including earned remission. According to him, even as per the stand taken by the respondents in their counter affidavits, he had undergone sentence for a period of 20 years 1 month and 17 days including remission and set off as on 31.12.2004. In other words, according to the petitioner, he has already undergone full sentence of 20 years with remission.

(b) By order dated 24.11.2010, this Court disposed of W.P. (Crl.) Nos. 20 and 279 of 2004 with the following directions:

> "In the light of the decision of this Court in *State of Haryana & Ors. vs. Jagdish,* 2010 (4) SCC 216 and considering the relief prayed in both the writ petitions, we dispose of the writ petitions by the following directions:
>
> The State of West Bengal is directed to consider the claim of both the writ petitioners, life convicts and proceed to conclude the sentence for the purpose of consideration of remission as per the Statute/Policy applicable on the date of conviction and pass appropriate orders in terms

> of the above decision within a period of eight weeks from the date of the receipt of the copy of this order.
>
> The Writ Petitions are disposed of.
>
> Sd/-
> (P.Sathasivam,J.)
> Sd/-
> (Dr. B.S.ChauhanJ.)"

3. It is the claim of the petitioner that in spite of the said order of this Court dated 24.11.2010 and in view of the West Bengal Correctional Services Act, 1992 (West Bengal Act 32 of 1992) (hereinafter referred to as "the W.B.Act"), the respondents have not released him which necessitated him to file the above contempt petition.

4. Pursuant to the notice issued by this Court, Mr. B.K. Srivastava, respondent No.1, Secretary to the Government of West Bengal, Judicial Department has filed the counter affidavit highlighting their stand. In addition to the same, Dr. G.D. Gautama, respondent No.2, Additional Chief Secretary to the Government of West Bengal, Home Department and Mr. Biplab Das - respondent No.3, Superintendent of the Presidency Correctional Home have filed counter affidavits reiterating their stand. In these counter affidavits, the State Government has highlighted that on going into the period of custody, other particulars and the provisions of the West Bengal Act, it rejected the prayer of the petitioner for his premature release, hence, according to them, there is no violation of order dated 24.11.2010 passed by this Court and prayed for dismissal of the present contempt petition.

5. We heard Mr. B.S. Malik, learned senior counsel for the petitioner and Mr. Avijit Bhattacharjee, learned counsel for the respondents.

Discussion:

6. In order to appreciate the claim of both the parties, it is useful to refer relevant provisions relating to release of prisoners under the W.B. Act. Section 2(c) of the W.B. Act defines "correctional home" which reads as under:

> "2(c) "correctional home" means any place used permanently or temporarily under the orders of the State Government for detention of persons, whether under-trial or convicted, in accordance with any order for confinement under any law providing for preventive detention or any other law for the time being in force, but does not include a place for confinement of a person under the custody of the police;"

Chapter XVII of the said Act deals with remission, release and parole. Section 58 speaks about remission, Section 59 relates to special remission to examinees and Section 61, with which we are concerned, speaks about release. Section 61 contains 6 sub-sections and thereafter Explanation has been appended to. Mr. B.S. Malik, learned senior counsel for the petitioner heavily relied on the Explanation to Section 61 which reads as under:

> "Explanation - For the purpose of calculation of the total period of imprisonment under this section, the period of imprisonment for life shall be taken to be equivalent to the period of imprisonment for 20 years."

7. Relying on the Explanation and in view of the fact that even according to the State, the petitioner has crossed 20 years in correctional home (prison), according to the learned senior counsel, as per order of this Court dated 24.11.2010, the respondents ought to have released the petitioner on completion of a period of 20 years. The above claim was resisted by Mr. Avijit Bhattacharjee, learned counsel for the respondents. According to him, it cannot be construed that the

period of imprisonment for life is equivalent to imprisonment for 20 years. He further pointed out that in the absence of remission order for the whole period by the State Government, the petitioner cannot be released.

8. Even at the outset, Mr. B.S. Malik, learned senior counsel for the petitioner, relied on a decision rendered by this Court on 16.09.2011 in Writ Petition (Crl.) No. 38 of 2011 titled *Harpal Singh vs. State of Haryana & Another.* The said writ petition, under Article 32 of the Constitution, was filed by one Harpal Singh for issuing a writ of *Habeas Corpus* and to set him at liberty forthwith from his illegal detention in the prison beyond 20 years of his sentence. This Court, after going into the Jail Custody Certificate dated 28.08.2011 issued by the Superintendent Central Jail, Ambala and finding that the petitioner had undergone imprisonment of more than 20 years with remissions, allowed the writ petition and directed the authorities to release him forthwith from the jail unless his presence in jail is needed with reference to any other case.

9. After going into the relevant provisions, viz., Section 57 of the Indian Penal Code, 1860 (in short "IPC"), Sections 2(c) and 61 of the W.B. Act as well as various decisions of this Court on this point, we are unable to accept the claim of the petitioner for the following reasons.

10. Before adverting to various decisions, it is useful to reproduce Section 57 of IPC which reads as under:

> "57. *Fractions of term of punishment* - In calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years."

11. At the foremost, it is useful to refer the decision of the Constitution Bench of this Court in *Gopal Vinayak Godse vs. The State of Maharashtra & Ors.,* AIR 1961 SC 600. In that case, a writ petition, under Article 32 of the Constitution, was

filed for an order in the nature of Habeas Corpus claiming that the petitioner therein has justly served his sentence and should, therefore, be released forthwith. Among other questions, the main question considered by the Constitution Bench was whether there is any provision of law whereunder a sentence for life imprisonment, without any formal remission by appropriate Government, can be automatically treated as one for a definite period? The Constitution Bench, in an answer to the above question, said "No". The following discussion and ultimate conclusion are relevant:

> "5……. No such provision is found in the Indian Penal Code, Code of Criminal Procedure or the Prisons Act. Though the Government of India stated before the Judicial Committee in the case cited supra that, having regard to Section 57 of the Indian Penal Code, 20 years' imprisonment was equivalent to a sentence of transportation for life, the Judicial Committee did not express its final opinion on that question. The Judicial Committee observed in that case thus at p. 10:
>
> > "Assuming that the sentence is to be regarded as one of twenty years, and subject to remission for good conduct, he had not earned remission sufficient to entitle him to discharge at the time of his application, and it was therefore rightly dismissed, but in saying this, Their Lordships are not to be taken as meaning that a life sentence must in all cases be treated as one of not more than twenty years, or that the convict is necessarily entitled to remission."
>
> Section 57 of the Indian Penal Code has no real bearing on the question raised before us. For calculating fractions of terms of punishment the section provides that transportation for life shall be regarded as equivalent to imprisonment for twenty years. It does not say that transportation for life shall

> be deemed to be transportation for twenty years for all purposes; nor does the amended section which substitutes the words "imprisonment for life" for "transportation for life" enable the drawing of any such all embracing fiction. A sentence of transportation for life or imprisonment for life must prima facie be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life."

> "7. It is common case that the said rules were made under the Prisons Act, 1894 and that they have statutory force. But the Prisons Act does not confer on any authority a power to commute or remit sentences; it provides only for the regulation of prisons and for the treatment of prisoners confined therein. Section 59 of the Prisons Act confers a power on the State Government to make rules, inter alia, for rewards for good conduct. Therefore, the rules made under the Act should be construed within the scope of the ambit of the Act. The rules, inter alia, provide for three types of remissions by way of rewards for good conduct, namely, (i) ordinarily, (ii) special and (iii) State. For the working out of the said remissions, under Rule 1419(c), transportation for life is ordinarily to be taken as 15 years' actual imprisonment. The rule cannot be construed as a statutory equation of 15 years' actual imprisonment for transportation for life. The equation is only for a particular purpose, namely, for the purpose of "remission system" and not for all purposes. The word "ordinarily" in the rule also supports the said construction. The non obstante clause in sub-rule (2) of Rule 1447 reiterates that notwithstanding anything contained in Rule 1419 no prisoner who has been sentenced to transportation for life shall be released on completion of his term unless orders of the Government have been received on a report submitted to it. This also indicates that the period of 15 years' actual imprisonment specified

in the rule is only for the purpose of calculating the remission and that the completion of the term on that basis does not ipso facto confer any right upon the prisoner to release. The order of the Government contemplated in Rule 1447 in the case of a prisoner sentenced to transportation for life can only be an order under Section 401 of the Code of Criminal Procedure, for in the case of a sentence of transportation for life the release of the prisoner can legally be effected only by remitting the entire balance of the sentence. Rules 934 and 937(c) provide for that contingency. Under the said rules the orders of an appropriate Government under Section 401 Criminal Procedure Code, are a pre-requisite for a release. No other rule has been brought to our notice which confers an indefeasible right on a prisoner sentenced to transportation for life to an unconditional release on the expiry of a particular term including remissions. The rules under the Prisons Act do not substitute a lesser sentence for a sentence of transportation for life.

8. Briefly stated the legal position is this: Before Act 26 of 1955 a sentence of transportation for life could be undergone by a prisoner by way of rigorous imprisonment for life in a designated prison in India. After the said Act, such a convict shall be dealt with in the same manner as one sentenced to rigorous imprisonment for the same term. Unless the said sentence is commuted or remitted by appropriate authority under the relevant provisions of the Indian Penal Code or the Code of Criminal Procedure, a prisoner sentenced to life imprisonment is bound in law to serve the life term in prison. The rules framed under the Prisons Act enable such a prisoner to earn remissions - ordinary, special and State - and the said remissions will be given credit towards his term of imprisonment. For the purpose of working out the remissions the sentence of transportation for life is ordinarily equated with a definite period, but it is only for that particular purpose and not for

any other purpose. As the sentence of transportation for life or its prison equivalent, the life imprisonment, is one of indefinite duration, the remissions so earned do not in practice help such a convict as it is not possible to predict the time of his death. That is why the Rules provide for a procedure to enable the appropriate Government to remit the sentence under Section 401 of the Code of Criminal Procedure on a consideration of the relevant factors, including the period of remissions earned. The question of remission is exclusively within the province of the appropriate Government; and in this case it is admitted that, though the appropriate Government made certain remissions under Section 401 of the Code of Criminal Procedure, it did not remit the entire sentence. We, therefore, hold that the petitioner has not yet acquired any right to release."

From the above decision, it is clear that in the absence of subsequent order of remission by the competent Government either based on Section 57 of IPC or any other provision of the Criminal Procedure Code, 1973, the life convict cannot be released. The above decision of the Constitution Bench has been followed in various subsequent decisions.

12. In *State of Madhya Pradesh vs. Ratan Singh & Ors.,* (1976) 3 SCC 470, following the decision of the Constitution Bench in *Gopal Vinayak Godse's* case (supra), this Court held as under:

"4. As regards the first point, namely, that the prisoner could be released automatically on the expiry of 20 years under the Punjab Jail Manual or the Rules framed under the Prisons Act, the matter is no longer res integra and stands concluded by a decision of this Court in Gopal Vinayak Godse v. State of Maharashtra where the Court, following a decision of the Privy Council in Pandit Kishori Lal v. King-Emperor,AIR 1945 PC 64 observed as follows:

"Under that section, a person transported for life or any other term before the enactment of the said section would be treated as a person sentenced to rigorous imprisonment for life or for the said term.

If so, the next question is whether there is any provision of law whereunder a sentence for life imprisonment, without any formal remission by appropriate Government, can be automatically treated as one for a definite period. No such provision is found in the Indian Penal Code, Code of Criminal Procedure or the Prisons Act.

* * *

A sentence of transportation for life or imprisonment for life must prima facie be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life."

The Court further observed thus:

"But the Prisons Act does not confer on any authority a power to commute or remit sentences; it provides only for the regulation of prisons and for the treatment of prisoners confined therein. Section 59 of the Prisons Act confers a power on the State Government to make rules, inter alia, for rewards for good conduct. Therefore, the rules made under the Act should be construed within the scope of the ambit of the Act.... Under the said rules the orders of an appropriate Government under Section 401 of the Criminal Procedure Code, are a prerequisite for a release. No other rule has been brought to our notice which confers an indefeasible right on a prisoner sentenced to transportation for life to an unconditional release on the expiry of a particular term including remissions. The rules under the Prisons Act do not substitute a lesser sentence for a sentence of transportation for life.

The question of remission is exclusively within the

province of the appropriate Government; and in this case it is admitted that, though the appropriate Government made certain remissions under Section 401 of the Code of Criminal Procedure, it did not remit the entire sentence. We, therefore, hold that the petitioner has not yet acquired any right to release."

It is, therefore, manifest from the decision of this Court that the Rules framed under the Prisons Act or under the Jail Manual do not affect the total period which the prisoner has to suffer but merely amount to administrative instructions regarding the various remissions to be given to the prisoner from time to time in accordance with the rules. This Court further pointed out that the question of remission of the entire sentence or a part of it lies within the exclusive domain of the appropriate Government under Section 401 of the Code of Criminal Procedure and neither Section 57 of the Indian Penal Code nor any Rules or local Acts can stultify the effect of the sentence of life imprisonment given by the court under the Indian Penal Code. In other words, this Court has clearly held that a sentence for life would enure till the lifetime of the accused as it is not possible to fix a particular period of the prisoner's death and remissions given under the Rules could not be regarded as a substitute for a sentence of transportation for life. In these circumstances, therefore, it is clear that the High Court was in error in thinking that the respondent was entitled to be released as of right on completing the term of 20 years including the remissions. For these reasons, therefore, the first contention raised by the Learned Counsel for the appellant is well founded and must prevail.

9. From a review of the authorities and the statutory provisions of the Code of Criminal Procedure the following propositions emerge:

"(1) that a sentence of imprisonment for life does

not automatically expire at the end of 20 years including the remissions, because the administrative rules framed under the various Jail Manuals or under the Prisons Act cannot supersede the statutory provisions of the Indian Penal Code. A sentence of imprisonment for life means a sentence for the entire life of the prisoner unless the appropriate Government chooses to exercise its discretion to remit either the whole or a part of the sentence under Section 401 of the Code of Criminal Procedure;

(2) that the appropriate Government has the undoubted discretion to remit or refuse to remit the sentence and where it refuses to remit the sentence no writ can be issued directing the State Government to release the prisoner;

(3) that the appropriate Government which is empowered to grant remission under Section 401 of the Code of Criminal Procedure is the Government of the State where the prisoner has been convicted and sentenced, that is to say, the transferor State and not the transferee State where the prisoner may have been transferred at his instance under the Transfer of Prisoners Act; and

(4) that where the transferee State feels that the accused has completed a period of 20 years it has merely to forward the request of the prisoner to the concerned State Government, that is to say, the Government of the State where the prisoner was convicted and sentenced and even if this request is rejected by the State Government the order of the Government cannot be interfered with by a High Court in its writ jurisdiction."

After holding so, this Court set aside the order of the High Court releasing the prisoner therein from Central Jail, Amritsar.

13. In *Kartar Singh & Ors. vs. State of Haryana,* (1982) 3 SCC 1, a Bench of three Judges of this Court while considering the similar claim held as under:

"6……Further, Section 57 IPC or the remission rules contained in Jail Manual (e.g. para 516-B of Punjab/ Haryana Jail Manual) are irrelevant in this context. Section 57 IPC provides that imprisonment for life shall be reckoned as equivalent to imprisonment for 20 years for the specific purpose mentioned therein, namely, for the purpose of calculating fractions of terms of punishment and not for all purposes; similarly remission rules contained in Jail Manuals cannot override statutory provisions contained in the Penal Code and the sentence of imprisonment for life have to be regarded as a sentence for the remainder of the natural life of the convict. The Privy Council in Pandit Kishori Lal case and this Court in Gopal Godse case have settled this position once and for all by taking the view that a sentence for transportation for life or imprisonment for life must be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life. This view has been confirmed and followed by this Court in two subsequent decisions - in Ratan Singh case, and Maru Ram case In this view of the matter life convicts would not fall within the purview of Section 428 CrPC."

The Bench also considered *Gopal Godse* case (supra) and the decision of the Privy Council in *Pandit Kishori Lal vs. King Emperor,* AIR 1945 PC 64.

14. In *Laxman Naskar vs. Union of India & Ors.,* (2000) 2 SCC 595, this Court reiterated the same proposition.

15. The last decision which is directly on the point similar

to the case on hand is *Mohd. Munna vs. Union of India & Ors. etc.* (2005) 7 SCC 417. The said case arose in a writ petition filed under Art. 32 of the Constitution. According to the petitioner therein, the length of duration of imprisonment for life is equivalent to 20 years' imprisonment and that too subject to further remission admissible under law. It was further pointed out that on completion of this term, he was liable to be released under Rule 751(c) of the West Bengal Jail Code. The petitioner relied on Explanation to Section 61 of the West Bengal Correctional Services Act, 1992 (West Bengal Act 32 of 1992) whereunder imprisonment for life is equated to a term of 20 years' imprisonment. As said earlier, it is a case identical to the case on hand. Here again, Explanation to Section 61 of the West Bengal Act was pressed into service. After going into the very same provisions and considering the decision of the Privy Council in *Pandit Kishori Lal's* case (supra) as well as the decision of the Constitution Bench in *Gopal Vinayak Godse's* case (supra), this Court concluded thus:

> "13. The counsel contended that by virtue of Rule 751(c) of the West Bengal Jail Code, the petitioner was liable to be released from jail on completion of twenty years. He also relied on the Explanation to Section 61 of the West Bengal Correctional Services Act, 1992 (W.B. Act 32 of 1992) wherein the imprisonment for life is equated to a term of twenty years' simple imprisonment for the purpose of remission. But there is no provision either in the Indian Penal Code or in the Code of Criminal Procedure whereby life imprisonment could be treated as fourteen years or twenty years without there being a formal remission by the appropriate Government. Section 57 of the Penal Code reads as follows:
>
> > "57. *Fractions of terms of punishment.*-In calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years."

The above section is applicable for the purpose of remission when the matter is considered by the Government under the appropriate provisions. This very plea was placed before the Judicial Committee of the Privy Council in *Kishori Lal v. Emperor*[5] and the Privy Council held as under: (AIR p. 67)

> "Assuming that the sentence is to be regarded as one of 20 years, and subject to remission for good conduct, he had not earned remission sufficient to entitle him to discharge at the time of his application and it was therefore rightly dismissed but, in saying this, Their Lordships are not to be taken as meaning that a life sentence must and in all cases be treated as one of not more than 20 years or that the convict is necessarily entitled to remission."

14. The Prisons Rules are made under the Prisons Act and the Prisons Act by itself does not confer any authority or power to commute or remit sentence. It only provides for the regulation of the prisons and for the terms of the prisoners confined therein. Therefore, the West Bengal Correctional Services Act or the West Bengal Jail Code do not confer any special right on the petitioner herein.

15. In *Godse* case[6], the Constitution Bench of this Court held that the sentence of imprisonment for life is not for any definite period and the imprisonment for life must, prima facie, be treated as imprisonment for the whole of the remaining period of the convicted person's natural life. It was also held in AIR para 5 as follows: (SCR pp. 444-45)

> "It does not say that transportation for life shall be deemed to be transportation for twenty years for all purposes; nor does the amended section which substitutes the words 'imprisonment for life' for 'transportation for life' enable the drawing of any such all-embracing fiction. A sentence of

transportation for life or imprisonment for life must prima facie be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life."

16. Summarising the decision, it was held in AIR para 8 as under: (SCR p. 447)

"Briefly stated the legal position is this: Before Act 26 of 1955 a sentence of transportation for life could be undergone by a prisoner by way of rigorous imprisonment for life in a designated prison in India. After the said Act, such a convict shall be dealt with in the same manner as one sentenced to rigorous imprisonment for the same term. Unless the said sentence is commuted or remitted by appropriate authority under the relevant provisions of the Indian Penal Code or the Code of Criminal Procedure, a prisoner sentenced to life imprisonment is bound in law to serve the life term in prison. The Rules framed under the Prisons Act enable such a prisoner to earn remissions - ordinary, special and State - and the said remissions will be given credit towards his term of imprisonment. For the purpose of working out the remissions the sentence of transportation for life is ordinarily equated with a definite period, but it is only for that particular purpose and not for any other purpose. As the sentence of transportation for life or its prison equivalent, the life imprisonment, is one of indefinite duration, the remissions so earned do not in practice help such a convict as it is not possible to predicate the time of his death. That is why the Rules provide for a procedure to enable the appropriate Government to remit the sentence under Section 401 of the Code of Criminal Procedure on a consideration of the relevant

factors, including the period of remissions earned. The question of remission is exclusively within the province of the appropriate Government; and in this case it is admitted that, though the appropriate Government made certain remissions under Section 401 of the Code of Criminal Procedure, it did not remit the entire sentence. We, therefore, hold that the petitioner has not yet acquired any right to release."

We are bound by the above dicta laid down by the Constitution Bench and we hold that life imprisonment is not equivalent to imprisonment for fourteen years or for twenty years as contended by the petitioner.

17. Thus, all the contentions raised by the petitioner fail and the petitioner is not entitled to be released on any of the grounds urged in the writ petition so long as there is no order of remission passed by the appropriate Government in his favour. We make it clear that our decision need not be taken as expression of our view that the petitioner is not entitled to any remission at all. The appropriate Government would be at liberty to pass any appropriate order of remission in accordance with law."

16. It is clear that neither Section 57 IPC nor Explanation to Section 61 of the W.B. Act lays down that a life imprisonment prisoner has to be released after completion of 20 years. 20 years mentioned in Explanation to Section 61 of the W.B. Act is only for the purpose of ordering remission. If the State Government taking into consideration various aspects refused to grant remission of the whole period then the petitioner cannot take advantage of the above Explanation and even Section 57 IPC and seek for pre-mature release. Further the question of remission of the entire sentence or a part of it lies within the exclusive domain of the appropriate Government under Section 432 of the Code of Criminal Procedure, 1973 and neither Section 57 of the IPC nor any rules or local Acts (in the case

on hand W.B. Act) can stultify the effect of the sentence of life imprisonment given by the Court under the IPC. To put it clear, once a person is sentenced to undergo life imprisonment unless imprisonment for life is commuted by the competent authority, he has to undergo imprisonment for the whole of his life. It is equally well settled that Section 57 of the IPC does not, in any way, limit the punishment of imprisonment for life to a term of 20 years.

17. In the case on hand, it is highlighted by the learned counsel for the respondents that in West Bengal there is a duly constituted Review Board for consideration of applications for premature release made by life convicts. It consists of:

1. Additional Chief Secretary, Home Department - Chairman of the Review Board;
2. Commissioner of Police, Kolkata - Member
3. Chief Probation Officer, West Bengal - Member
4. Inspector General of Prisons, West Bengal - Member
5. Judicial Secretary, West Bengal - Convener
6. Director General and Inspector General of Police, West Bengal - Member
7. Principal Secretary, Jails Department, West Bengal - Member

On receipt of the application for premature release except under Article 161 of the Constitution, the Review Board would go into all the details and place it before the Government. Ultimately on approval of the Hon'ble Chief Minister, the convict is prematurely released under Section 432 of the Criminal Procedure Code, 1973. Insofar as application under Article 161 is concerned, it was explained that the procedure followed

remains the same but the file is finally placed before His Excellency the Governor of the State through the Hon'ble Chief Minister.

18. In the counter affidavits filed by the State, it is pointed out that regarding the case of the petitioner -Khoka @ Prasanta Sen, the Sentence Review Board observed as under:

"The life convict was convicted on 18.01.1990 under Section 302/34 IPC and detained in connection with S.T. No. 01 of June 1989. He was released on parole from Presidency Correctional Home on 29.04.2005 in compliance with Hon'ble Supreme Court's order in Writ Petition (Criminal) No. 279 of 2004. The police authority vehemently opposed the premature release of the life convict on the following grounds:

(a) He was a notorious fellow in the area before his conviction.

(b) He still maintains relationship with his old associates.

(c) He is within the age of 52 years with sound health.

(d) His socio economic condition is not sound.

(e) In case of his premature release there is every possibility of his reverting to criminality.

(f) During his parole he has been technically serving life imprisonment binding him to refrain from criminal activities for the time being. There is every possibility of his committing further crimes.

Considering the above fact, the Review Board did not find any reason to recommend premature release of the life convict now on parole."

It is seen that after careful consideration of all the aspects, the Review Board in its meeting held on 27.01.2011 did not recommend the petitioner for his premature release. The recommendation of the Review Board was placed before the State Government and the State Government accepted the recommendation of the State Sentence Review Board. The decision of the State Government was communicated to the petitioner vide letter No. 790-J dated 09.02.2012.

19. In view of the decision of the State Sentence Review Board, approval by the State Government and the principles enunciated in various decisions of this Court including the decision of the Constitution Bench in *Gopal Vinayak Godse's* case (supra), we find no merit in the contempt petition, consequently, the same is dismissed.

B.B.B. Contempt Petition dismissed.

AWANI KUMAR UPADHYAY

v.

THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD AND ORS.

(Civil Appeal Nos. 1340-1341 of 2013)

FEBRUARY 13, 2013.

[P. SATHASIVAM AND JAGDISH SINGH KHEHAR, JJ.]

Judiciary - Strictures against judicial officer - Propriety of - Held: Legal system acknowledges fallibility of the Judges, hence provides for appeals and revisions - Remarks/ observations and strictures against lower judicial officers should be avoided particularly when the officer has no occasion to put forth his reasonings - In the instant case, in view of the facts, strictures against the judicial officer not justified.

The High Court, while allowing a second appeal, passed severe strictures against the appellant, who was a judicial officer, and had decided the additional issues in the case, on the directions issued by his predecessor judicial officer. The appellant filed modification application for expunging the remarks, and the same was disposed of without modifying the judgment. The appellant filed present appeals seeking expunction of the adverse remarks.

Allowing the appeals, the Court

HELD: 1. The higher courts every day come across orders of the lower courts which are not justified either in law or in fact and modify them or set them aside. The legal system acknowledges the fallibility of the Judges, hence it provides appeals and revisions. Inasmuch as the lower judicial officers mostly work under a charged atmosphere

and are constantly under psychological pressure and they do not have the facilities which are available in the higher courts, the remarks/observations and strictures are to be avoided particularly if the officer has no occasion to put-forth his reasonings. It is settled legal position that no adverse remark can be made against any judicial officer without giving an opportunity to explain the conduct. [Paras 6 and 12] [421-H; 424-E-H]

2. If the passage complained of is wholly irrelevant and unjustifiable and its retention on the records will cause serious harm to the persons to whom it refers and its expunction will not affect the reasons for the judgment or order, request for expunging those remarks are to be allowed. Harsh or disparaging remarks are not to be made against judicial officers and authorities whose conduct comes into consideration before courts of law unless it is really for the decision of the case as an integral part thereof. [Para 12] [424-H; 425-A-B]

3. The adverse remarks made against the appellant were neither justified nor called for. The perusal of the impugned judgment would show that the word "severe strictures" is mentioned whereas no logical reasoning has been given as to what is the fault of the appellant and the High Court has not adduced any finding as to why it has disagreed with the reasoning given by the appellant particularly when the appellant asserted that neither he has rendered any decision as trial court Judge nor as the first Appellate Court Judge except deciding 12 additional issues on the directions issued by his predecessor. The strictures passed against the appellant are neither warranted nor is in conformity with the settled law as propounded by this Court. The adverse remarks passed in the impugned judgment and the final orders, insofar as the appellant is concerned are set aside. [Para 13 and 14] [425-C-F]

Parkash Singh Teji vs. Northern India Goods Transport Company Private Limited and Anr. **(2009) 12 SCC 577:2009 (6) SCR 278;** *Amar Pal Singh vs. State of Uttar Pradesh and Anr.* **(2012) 6 SCC 491: 2012 (5) SCR 1154 - relied on.**

Case Law Reference:

2009 (6) SCR 278	**Relied on**	**Para 6**
2012 (5) SCR 1154	**Relied on**	**Para 7**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1340-1341 of 2013.

From the Judgments & Orders dated 01.03.2012 & 23.04.2012 of the High Court of Judicature at Allahabad in Second Appeal No. 1444 of 2000 and Civil Misc. Modification Application No. 122702 in Second Appeal No. 1444 of 2000.

Harshvir Pratap Sharma, B.P. Gupta, Naresh Kumar for the Appellant.

Ravi Prakash Mehrotra, Deepti R. Mehrotra, Vibhu Tiwari, Vishwajit Singh, Ashok Kumar Gupta II for the Respondents.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. Leave granted.

2. These appeals arise from the judgment and final orders dated 01.03.2012 and 23.04.2012 passed by the High Court of Judicature at Allahabad in Second Appeal No. 1444 of 2000 and Civil Misc. Modification Application No. 122702 of 2012 in Second Appeal No. 1444 of 2000 respectively, whereby the High Court, while allowing the second appeal, passed severe strictures against the appellant-herein and forwarded a copy of its judgment to Hon'ble Chief Justice of the High Court to consider as to whether disciplinary proceedings are warranted against him?

3. The case of the appellant, in brief, is as under:

a) The appellant, who is a Member of the U.P. Higher Judicial Service, is posted as Additional District and Sessions Judge, Moradabad and, according to him, he is having unblemished service career and has successfully completed 30 years of service.

b) The High Court, while allowing the Second Appeal No. 1444 of 2000 titled U.P. Avas Evam Vikas Parishad, Lucknow and Another vs. Lajja Ram, passed severe strictures against the appellant herein in the judgment which, according to him, are ultimately going to affect permanently not only his reputation but also his entire service career.

c) It is the claim of the appellant that in the Second Appeal No. 1444 of 2000, he has not rendered any judgment as trial Court Judge or as the first Appellate Court Judge. According to him, a suit bearing No. 418 of 1997 was filed by Shri Lajja Ram against the U.P. Avas Evam Vikas Parishad, Lucknow and another and the said suit was decided by one learned Civil Judge, Senior Division, Ghaziabad presided over by Shri Chaturbhuj by a judgment and order dated 02.05.1997. Aggrieved by the said judgment, a first appeal was filed being First Appeal No. 105 of 1997 in the Court of Shri A.K. Aggarwal, second Additional Dist. & Sessions Judge, Ghaziabad. The first Appellate Court framed 12 additional issues and on those additional issues, the matter was remanded to the Court of the appellant as he was working as Civil Judge, Senior Division, Ghaziabad. Thereafter, in compliance with the order of the first Appellate Court, after recording the evidence of the parties, the appellant recorded the evidence of the parties and gave his findings on 31.05.1999.

d) It is the case of the appellant that in the impugned judgment and order, the High Court has neither furnished any independent finding on the issues which were determined by

the appellant herein nor anything about his ultimate decision. The present appeal is confined only to the portion wherein the High Court has made certain strictures. The appellant has also asserted that the High Court has not considered that the appellant has not rendered any decision as trial Judge or as the Judge of the first Appellate Court. On the direction by the first Appellate Court, only 12 additional issues were adjudicated by the appellant. Inasmuch as "severe strictures", if allowed to stand, would affect his entire future prospects of service, he approached this Court by filing this appeal by way of special leave.

e) While answering the substantial questions of law, namely, 3, 4, 5 and 6, the High Court decided the same in favour of the appellants therein and against the respondents. Ultimately, both the second appeals were allowed with exemplary cost of Rs. 5 Lakhs in Second Appeal No. 1444 of 2000 and Rs. 1 Lakh in Second Appeal No. 1445 of 2000. The High Court ultimately set aside the decrees passed by the courts below and dismissed both the suits. The High Court also directed that a FIR be lodged immediately against the plaintiffs for malicious prosecution and manipulation in the official records. After issuing such directions the High Court passed the following order, with which we are concerned in these appeals:

> "Severe stricture is passed against the Judge of thetrial Court as well as of lower appellate Court for passing extremely illegal and unjust judgments and decrees. A copy of this judgment shall be placed intheir service records and be also sent to Hon'ble the Chief Justice to consider as to whether disciplinary proceedings are warranted against them."

f) On coming to know of the strictures and the ultimate direction of the High Court, the appellant filed a Civil Misc. Modification Application No. 122702 of 2012 in Second Appeal No. 1444 of 2000 for expunging the remarks made in the

judgment dated 01.03.2012. The High Court, after hearing the counsel for the judicial officer without modifying the judgment, observed that *"I did not intend to make any suggestion for initiating disciplinary proceedings against the Judge who had decided the remitted issues only",* and by saying so disposed of the said application, however, permitted the appellant to make representation on the administrative side of the High Court. Not satisfied with the same, the appellant has filed the above appeal for a limited purpose of expunging those adverse remarks.

4. Heard Mr. Harshvir Pratap Sharma, learned counsel for the appellant and Mr Ravi Prakash Mehrotra, learned counsel for the Registrar General, High Court of Allahabad. In the present appeals, the other parties have been shown only as proforma respondents.

5. The questions which arise for consideration are:

(a) Whether in the facts and circumstances of the case, the High Court was justified in making severe strictures and directions against the appellant in its judgment dated 01.03.2012?

(b) Whether the direction to send the impugned judgment to Hon'ble Chief Justice of the High Court with a request to consider whether disciplinary proceedings are warranted against the appellant herein was justified?

(c) Whether the High Court is justified in disposing of the application for modification without expunging the offending portion which was made without affording opportunity to the appellant?

6. It is settled legal position that no adverse remark can be made against any judicial officer without giving an opportunity to explain the conduct. It is useful to refer a decision

of this Court in *Parkash Singh Teji vs. Northern India Goods Transport Company Private Limited and Another,* (2009) 12 SCC 577 which is identical to the case on hand. In the above decision, the directions of the High Court in its order dated 06.07.2006 reads as under:

> "Before parting, we wish to make it clear that the learnedJudge who passed the impugned judgment and decree need be careful in future, rather than adopting a hasty,slipshod and perfunctory approach as is manifest from thejudgment delivered by him in this case. We further direct that a copy of this order shall be placed on the personal/service record of the officer, while another copybe placed before the Hon'ble Inspecting Judge of the officer for His Lordship's perusal."

According to the appellant, by making such remarks and that too behind his back, are not warranted. Here again, after adverting to the earlier decisions and principles enunciated therein, this Court expunged the offending remarks made against the appellant and allowed the appeal filed by him.

7. Apart from the above decision, in an identical circumstance, this Court has expunged adverse remarks made against a judicial officer in *Amar Pal Singh vs. State of Uttar Pradesh and Another,* (2012) 6 SCC 491. The appellant therein, a judicial officer, being aggrieved by the comments and observations passed by the learned Single Judge of the High Court of Judicature of Allahabad in *Sunil Solanki vs. State of U.P.* (Criminal Revision No. 1541 of 2007, order dated 31.05.2007) has preferred an appeal before this Court. In this case, one Sunil Solanki had filed an application under Section 156(3) of the Code of Criminal Procedure, 1973 before the CJM, Bulandshahar with the allegation that on 11.02.2007 at 9.30 p.m. when he was standing outside the front door of his house along with some others, a marriage procession passed from in front of the door of his house and at that juncture, one Mauzzim Ali accosted him and eventually fired at him from his

country-made pistol which caused injuries in the abdomen area of Shafeeque, one of his friends. However, he escaped unhurt. Because of the said occurrence, Sunil Solanki endeavoured hard to get the FIR registered at the police station concerned but the entire effort became an exercise in futility as a consequence of which he was compelled to knock at the doors of the learned CJM by filing an application under Section 156(3) of the Code for issuance of a direction to the police to register an FIR and investigate the matter. While dealing with the application, the Chief Judicial Magistrate, the appellant in that appeal, ascribed certain reasons and dismissed the same.

8. Being dissatisfied, the appellant therein preferred a revision before the High Court and the learned Single Judge, taking note of the allegations made in the application, found that it was a fit case where the learned Magistrate should have directed the registration of FIR and investigation into the alleged offences. While recording such a conclusion, the learned single Judge has made certain observations which are reproduced below:

> "This conduct of the Chief Judicial Magistrate is deplorableand wholly mala fide and illegal."

Thereafter, the learned single Judge treated the order to be wholly hypothetical and commented it was:

> "Vexatiously illegal."

After stating so the learned single Judge further stated that the Chief Judicial Magistrate has committed a blatant error of law. Thereafter, he further commented:

> "… and has done unpardonable injustice to the injured andthe informant. His lack of sensitivity and utter callous attitude has left the accused of murderous assault to goscot-free to this day".

9. After making the aforesaid observations, the learned

Single Judge set aside the order and remitted the matter to the Chief Judicial Magistrate to decide the application afresh in accordance with law. Thereafter, he directed as follows:

> "Let a copy of this order be sent to the AdministrativeJudge, Bulandshahar to take appropriate action against theCJM concerned as he deems fit."

10. Aggrieved by the said direction, the appellant therein approached this Court by way of a special leave petition to delete the aforesaid comments, observations and the ultimate direction.

11. After referring all the various earlier decisions of this Court on this point expunged the remarks and set aside the said observation/comments and the direction made against the judicial officer. This Court also directed that if the said remarks have been entered into the annual confidential roll of the judicial officer, the same shall stand expunged and also marked a copy of the judgment to the Registrar General of the High Court, Allahabad to be placed on the personal file of the judicial officer concerned.

12. It is made clear that we are not undermining the ultimate decision of the High Court on merits. However, we are constrained to observe that the higher courts every day come across orders of the lower courts which are not justified either in law or in fact and modify them or set them aside. Our legal system acknowledges the fallibility of the Judges, hence it provides appeals and revisions. Inasmuch as the lower judicial officers mostly work under a charged atmosphere and are constantly under psychological pressure and they do not have the facilities which are available in the higher courts, we are of the view that the remarks/observations and strictures are to be avoided particularly if the officer has no occasion to put-forth his reasonings. Further, if the passage complained of is wholly irrelevant and unjustifiable and its retention on the records will cause serious harm to the persons to whom it refers and its

expunction will not affect the reasons for the judgment or order, request for expunging those remarks are to be allowed. We, once again, reiterate that harsh or disparaging remarks are not to be made against judicial officers and authorities whose conduct comes into consideration before courts of law unless it is really for the decision of the case as an integral part thereof.

13. We hold that the adverse remarks made against the appellant were neither justified nor called for. The perusal of the impugned judgment would show that the word "severe strictures" is mentioned whereas no logical reasoning has been given as to what is the fault of the appellant and the High Court has not adduced any finding as to why it has disagreed with the reasoning given by the appellant particularly when the appellant asserted that neither he has rendered any decision as trial Court Judge nor as the first Appellate Court Judge except deciding 12 additional issues on the directions issued by his predecessor. The strictures passed against the appellant are neither warranted nor is in conformity with the settled law as propounded by this Court.

14. Under these circumstances, the adverse remarks passed in the impugned judgment and the final orders dated 01.03.2012 and 23.04.2012 insofar as the appellant is concerned are set aside. Since these appeals are confined only for expunging the strictures, the same are allowed as pointed above. No costs.

K.K.T. Appeals allowed.

SECURITIES AND EXCHANGE BOARD OF INDIA

v.

M/S. INFORMETICS VALUATION AND RATING PVT. LTD.

(Civil Appeal No. 291 of 2012)

FEBRUARY 19, 2013

[SURINDER SINGH NIJJAR AND M.Y. EQBAL, JJ.]

Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999 - Regulations 3, 4(e), 6, 7 and First Schedule Form A - Application under Regulation 3 by company, to Securities and Exchange Board of India (SEBI) seeking registration as a Credit Rating Agency (CRA) - SEBI required the company to furnish complete details of its promoters, confirm the status of their eligibility under Regulation 4(e) (i.e. they have continuous net worth of minimum Rs. 100 crores as per its Audited Annual Accounts for the previous five years prior to filing of the application under Regulation 3), and to offer comments on a discrepancy noted in the promoter's net worth certificate etc - The company submitted the net worth certificate of its promoter which was issued on the basis of the certificate provided by their Bankers - SEBI further directed the company to produce accounts of its promoter for another two years after the date of application - On the Company's failure to produce two years account, rejected the application under Regulation 3 - Appeal - SAT allowed appeal of the Company and remitted the matter to SEBI to consider the application without requiring the company to produce the accounts for the two years after filing of the application - Appeal by SEBI - Held: The information sought by SEBI with regard to additional two years was beyond the scope of the Regulations and Form A, hence without jurisdiction - However, SEBI was within its power to ask for the Audited Accounts for the five years preceding the date of application - The Net Worth Certificate for five years did not

conform to the provisions contained in the regulation 4(e) as the certificate did not categorically state that it was based on the audited account - Therefore, under Regulation 6, it was duty of SEBI to have rejected the application - SEBI delayed the rejection of the application by granting time to remove the objections even beyond the permissible time - The company taking advantage of the liberty, provided the audited accounts for the five years preceding the date of application - It has also produced the audited accounts for the subsequent two years - Since SEBI extended the time, the impugned order, not modified - Appeal dismissed - Securities and Exchange Board of India Act, 1992.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 291 of 2012.

From the Judgment & Order dated 09.11.2011 of the Securities Appellate Tribunal, Mumbai, in Appeal No. 155 of 2011.

Chander Uday Singh, Pratap Venugopal, Gaurav Nair (for K.J. John) for the Appellant.

R.S. Suri, Chirag M. Shroff, Amrita Singh, Narinder Kr. Goyal for the Respondent.

The Order of the Court was delivered by

SURINDER SINGH NIJJAR, J. 1. The present appeal under Section 15Z of the Securities and Exchange Board of India Act, 1992 ("the SEBI Act") is directed against the impugned judgment and final order dated 9th November, 2011 passed by the Securities Appellate Tribunal, Mumbai ("the SAT"), in Appeal No. 155 of 2011, by which the appeal filed by M/s Informetics Valuation and Rating Pvt. Ltd., (the respondent herein) was allowed, and the order dated 24th June, 2011 passed by the Whole Time Member of SEBI and communication dated 21st July, 2011 of the Securities and

Exchange Board of India ("the SEBI") was set aside. By the impugned order, the SAT has remanded the matter back to the appellant to consider the application of the respondent seeking registration as a Credit Rating Agency ("CRA") without requiring the respondent to produce Audited Annual Accounts of the respondent's promoters for the two years ending December, 2010.

2. We may notice here the skeletal facts which are necessary for the determination of the limited legal issue involved in this appeal.

3. On 11th June, 2009, the respondent submitted an application to SEBI under Regulation 3 of the Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999 ("the CRA Regulations, 1999") seeking registration as a CRA. The respondent company was incorporated on 23rd June, 1986. The promoters of the respondent are stated to be:

(a) M/s. Coment (Mauritius) Limited through M/s. ACE Step Management Ltd.

(b) M/s. V. Malik & Associates, Chartered Accountants - Consortium Member for all the Accounting and Management backup.

(c) Infomerics India Foundation - Consortium Member as Policy Making Board.

4. The appellant (SEBI) is a Statutory Board established under the SEBI Act to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto. Under Section 11 of the SEBI Act, the appellant is duty bound to protect the interest of investors in securities and promote the development of, and to regulate, the securities market, by such measures as it thinks fit. Section 11(2) specifically enables SEBI to take the necessary measures

to provide for inter alia registration and regulating the working of the depositories, participants, custodians of securities, foreign institutional investors, credit rating agencies and such other intermediaries as the Board may, by notification specify in this behalf.

5. Pursuant to the aforesaid power, in July, 1999, SEBI issued a notification to bring CRAs under its regulatory ambit, in exercise of powers conferred under Section 30 read with Section 11 of the SEBI Act.

6. The CRA Regulations, 1999 empowers the appellant to regulate CRAs operating in India. Under the CRA Regulations, 1999, a CRA had been defined as a body corporate, which is engaged or proposes to be engaged in the business of rating of securities offered by way of public or rights issue. SEBI has also prescribed a Code of Conduct to be followed by the CRAs in the aforesaid regulations. The CRA Regulations, 1999 inter alia, contain:

A. Regulations pertaining to the registration of credit rating agencies, application for grant of initial and permanent certificate, eligibility criteria for promoter(s) of the credit rating agency, furnishing of information, clarification and personal representation by the promoter(s), grant of certificate by SEBI, its conditions, and procedure for refusal of certificate and its effect.

B. General obligations of Credit Rating Agencies, Code of Conduct, Agreement with client(s), Monitoring and process of rating and the Procedure for review of rating, Appointment of Compliance Officer, maintenance of proper books of Accounts and records, etc.

C. Restrictions on rating of securities issued by promoter(s) or by certain other person(s)

D. Procedure for inspection and investigation

E. Procedure for action in case of default

7. On 11th June, 2009, the respondent submitted an application to SEBI under Regulation 3 of the CRA Regulations, 1999. The office of the respondent was duly visited and inspected by the appellant. All information that was required by the appellant was supplied by the respondent. Further undertakings and confirmations as required by the appellant were also provided. By letter dated 20th August, 2009, the appellant required the respondent to furnish complete details of his promoters, confirm the status of their eligibility under Regulation 4(e) of the CRA Regulations, 1999, offer comments on a discrepancy noted in the promoter's net worth certificate etc. In the aforesaid letter, it was pointed out that under Regulation 4(e) of the CRA Regulations, 1999, the applicant is required to show that its promoters have a continuous net worth of minimum Rs.100 crores as per its Audited Annual Accounts for the previous five years prior to filing of the application with the Board for grant of certificate under the CRA Regulations, 1999. It is pointed out that although M/s. ACE Step Management Ltd., as a promoter of the respondent, has the continuous net worth of minimum Rs.100 crores as per its Audited Annual Accounts for the previous five years prior to the filing of the application, yet the net worth certificate dated 29th May, 2009, certified by the accountants in this regard pertains to M/s. Coment (Mauritius) Limited. Therefore, the respondent was advised to offer comments on the aforesaid discrepancy and submit the requisite net worth certificate in compliance with the relevant provisions of the CRA Regulations, 1999.

8. The respondent through its letter dated 21st August, 2009 submitted the reply to the aforesaid discrepancy pointed out by the appellant. The respondent stated that M/s. Coment (Mauritius) Limited has invested in the appellant company through its associate company M/s. ACE Step Management

Ltd., which was holding 3,65,000 (Three Lac Sixty Five Thousand) 10.84% equity shares in their company, which is within the parameters of Regulation 4(e) of the CRA Regulations, 1999. The respondent also confirmed that M/s. Coment (Mauritius) Limited is a promoter of the respondent company having a continuing net worth of minimum Rs.100 crores as per its Audited Annual Accounts for the previous five years prior to the filing of the application with the Board. Therefore, it was stated that there is no discrepancy and the net worth certificate submitted by the respondent is in compliance with the provisions of the CRA Regulations, 1999. Still not satisfied, the appellant through an e-mail dated 1st September, 2009 (5.36 PM) directed the respondent to furnish the Audited Annual Accounts of the promoters of the appellant company for the previous five years prior to the filing of the application with SEBI. The respondent through a letter dated 1st September, 2009 again informed the appellant that their promoter M/s. Coment (Mauritius) Limited had the continuous net worth of Rs. 100 crores as per the Annual Accounts for the previous five years. Their accounts are audited and they have provided the appellant with a certificate of their bankers ING Asia Private Bank Ltd., Dubai, to that effect. The certificate was enclosed with the aforesaid letter. The certificate issued by the ING Bank was as under:-

"ING
PRIVATE BANKING
Date: 21 May 2009

TO WHOMSOEVER IT MAY CONCERN

This is to confirm that M/s. Coment (Mauritius) Limited, Les Cascade Building, Edith Cavell Street, Port Louris, Republic of Mauritius, part of the Kataria Group has had a continued net worth of over Rs.100 crores as per its accounts for the previous five years.

We further confirm that M/s. ACE Step Management Ltd. is promoted by M/s. Coment (Mauritius) Limited.

The above information is given in strictest confidence at the request of our client and is without responsibility or engagement on the part of the Bank and/or any of its officers or employees for its content or any reliance made upon it. The letter does not constitute any guidance on the part of the bank.

Yours faithfully,
Sd/-
Nitin Bhatnagar
Director & Head South Asia Team"

9. The letter further pointed out that "since the Coment (Mauritius) Ltd. Balance sheet is not a public document though in terms of holding in our company it is 10.84 % but in their terms it is a small investment made they may not like to share balance sheet with us. However, their bankers have confirmed that as per certificate it is within the compliance of SEBI regulation." In view of the confirmation given by the bankers of M/s. Coment (Mauritius) Ltd. Promoter Company, the respondent requested the appellant to rely on the bankers certificate.

10. It is further pointed out that in any event the respondent had submitted the annual accounts for the last 5 years. However, inspite of aforesaid, the appellant vide its letter dated 15th September, 2009 directed the respondent to furnish an undertaking as to whether the promoter of respondent or any associate of the respondent are registered with any regulatory agency abroad and also directed the respondent to have Audited Annual Accounts of the promoters for the 5 years prior to filing of the application.

11. The respondent by a letter dated 21st September, 2009 stated that it would furnish the Balance Sheet for five

years period as soon as they were received by the respondent. The appellant by his letter dated 21st October, 2009 further directed the respondent to furnish the Audited Annual Accounts and detailed profile of the promoters of the respondent. On 26th November, 2009, respondent furnished the detailed profiles of its promoters and specific details about the promoters such as their activities in detail, the composition of the Board of Directors and the summary of their financial results for the last five years. However, the Balance Sheet for the five year's period was not furnished. Having furnished all the information, the respondent by its letter dated 11th January, 2010 requested for approval of its pending application dated 11th June, 2009, for being registered as a CRA. However, in spite of repeated requests, the necessary registration was not granted. In fact, the appellant by letter dated 28th July, 2010 once again advised the respondent to furnish Audited Annual Accounts of its promoters - M/s. Coment (Mauritius) Limited for the period 2006 to 2009. It appears that till 1st March, 2011, the appellant was not satisfied with the efforts made by the respondent to supply the necessary Audited Accounts and issued Show Cause Notice as to why the application for registration should not be rejected in terms of Regulation 11(1) of the CRA Regulations, 1999.

12. We may notice here that in the Show Cause Notice, it is specifically mentioned that the respondent has failed to produce the Audited Annual Accounts of the promoter M/s. Coment (Mauritius) Limited for the previous five years prior to the filing of the application with the Board for registration as a CRA. It was pointed out that the respondent has not fulfilled the requirement under Regulation 4(e) read with Regulation 7(1) of the CRA Regulations, 1999. Therefore, SEBI was prima facie of the view that the appellant was unable to furnish the information sought by the Board during the course of processing of the application for registration in accordance with the provisions of the CRA Regulations, 1999. The respondent pointed out in its reply to the Show Cause Notice

dated 4th March, 2011 that the appellant had enquired about the status of M/s. Coment (Mauritius) Limited directly from the Mauritius Regulatory Authority and collected all the details to cross check their credentials. In spite of the aforesaid, the appellant was still insisting upon the same information which in fact is not a precondition for registration under the SEBI law or regulations. It is pointed out that even though the information was not required to be provided under the regulations, the investor company and the applicant still agree to furnish the Balance Sheet only to enhance their credibility and as a mark of their respect to SEBI. The respondent in fact protested that it was not being given equal treatment under law as others had been granted registrations without submission of any Annual Accounts of investor companies. Thereafter, the respondent by its letters dated 15th March, 2011 and 18th March, 2011 submitted the Audited Annual Accounts of M/s. Coment (Mauritius) Limited for the periods ending 31st December, 2003 to 31st December, 2007. On its request, the respondent was also granted a personal hearing by the Whole Time Member of SEBI on 10th June, 2011. However, even during the personal hearing, the respondent was advised to file the Audited Accounts of M/s. Coment (Mauritius) Limited for the years 2009 and 2010. Again on 24th June, 2011, the Whole Time Member of the appellant directed the respondent to indicate as to which entity is its promoter(s) along with the basis of considering the entity as such and to submit Audited Annual Accounts of the promoter(s) for the last five years along with computation of net worth as per the SEBI prescribed formula latest by 15th July, 2011, failing which the application of the respondent would be deemed to be rejected. The Whole Time Member also directed the appellant to take a decision on the basis of the details provided by the respondent in pursuance of the order, latest by 15th August, 2011, in accordance with law. The respondent on 5th July, 2011 sought review/ reconsideration of the aforesaid order. Ultimately, on 21st July, 2011, the appellant rejected the application of the respondent.

13. Aggrieved by the rejection, the respondent preferred an appeal being Appeal No. 155 of 2011 on 30th August, 2011 before the SAT. Against the communication dated 21st July, 2011 of the appellant and the order dated 24th June, 2011 passed by the Whole Time Member of the appellant. The SAT by its judgment and final order dated 9th November, 2011 allowed the appeal and set aside the impugned order dated 24th June, 2011 and 21st July, 2011 and remitted the matter to the appellant to consider the application of the appellant without requiring it to produce the accounts for the two years ending December, 2010. Being aggrieved by the impugned order of SAT, SEBI is in appeal before this Court under Section 15Z of the SEBI Act.

14. We have heard the learned counsel for the parties at length.

15. Whilst allowing the appeal, the SAT interpreted Regulation 4(e), Regulation 7 and Form A contained in the First Schedule of the Regulations. It has been observed that :

> "An application was filed on June 11, 2009 and it is the requirement of regulation 4(e) that the net worth of one of the promoters of the applicant should be rupees one hundred crores as per the audited annual accounts for the previous five years prior to the filing of the application. As already mentioned above, Form A prescribes that the applicant should produce a certificate from a Chartered Accountant to substantiate the fact regarding the net worth of its promoter which was done and the Board has at no stage questioned its veracity. Without doing so it (the Board) could not have asked for the annual accounts of the promoter."

16. It is further observed that an application for the grant of a certificate is to be made in Form A as prescribed in the First Schedule to the Regulations. According to the eligibility criteria prescribed therein, the applicant is required to enclose

a Chartered Accountant's certificate, certifying the continues net worth to be of Rs. 100 crores for five years in the case of promoter referred to Regulation 4(e). With regard to the directions issued by the appellant to the respondent to produce the Annual Accounts of one of its promoters for the five years preceding the date of application, the SAT observed:-

> "It is pertinent to mention here that neither the regulations nor the eligibility criteria in Form A requires the applicant to produce the annual accounts of the promoter"

Reiterating its earlier view, the SAT further observed:

> "It is doubtful whether the Board could have asked for this information without doubting the veracity or correctness of the certificate of the Chartered Accountant that accompanied the application."
>
> "As already mentioned above, Form A prescribes that the applicant should produce a certificate from a Chartered Accountant to substantiate the fact regarding the net worth of its promoter which was done and the Board has at no stage questioned its veracity, without doing so it (the Board) could not have asked for the annual accounts of the promoter."

Apart from the above, it is also noticed by the SAT that accounts for five years preceding the application were duly produced by the respondent. However, the Board then directed the respondent to produce accounts for another two years for the period ending December, 2010. Since the respondent failed to produce the accounts for the two years, the application of the respondent for registration as a CRA has been rejected. It has been held that the direction for producing two year's accounts after the date of application could not be justified under Regulation 7. It has been held that such further information as referred to Regulation 7 would mean any information in addition

to the information already furnished by the applicant alongwith the application. The relevant observations of SAT are:

> "Surely the Board was not asking for any further information. It was only seeking the basic material on the basis of which the Chartered Accountant had furnished a certificate certifying that one of the promoters of the appellant had a net worth of rupees one hundred crores for the previous five years. This information could be asked for if the Board at any stage had doubted the correctness or veracity of the certificate of the Chartered Accountant."

17. In coming to the aforesaid conclusion it is observed by the SAT that wherever the regulations wanted the applicant to produce the Annual Accounts, a specific provision in that regard had been made in the regulations. On the other hand, for the purpose of substantiating the fact that the promoter of the applicant had a net worth of Rs. 100 crores for the previous five years, regulations do not require the Annual Accounts of the promoter to be produced. The regulations read with Form A prescribed that a certificate from the Chartered Accountant should be filed for this purpose. Therefore, it is held that the information sought by the appellant with regard to the additional two years was beyond the scope of the regulations and Form A, hence without jurisdiction.

18. Mr. C.U. Singh, learned senior counsel appearing for the appellant submitted that at this stage, it would not have been necessary to press the appeal on merits, but for the observations made by the SAT that without questioning the veracity of the certificate submitted by the Chartered Accountant, the Board could not have asked for the Annual Accounts of the promoter. He submitted that these observations would seriously curtail the powers of SEBI into requiring the applicant to furnish all relevant information while considering the application for registration as a CRA. For this limited purpose, learned senior counsel submitted that it is

necessary for this Court to examine the correctness of the order passed by the SAT.

19. On the other hand, Mr. Suri, learned senior counsel appearing for the respondent submitted that necessary information having been furnished to the Board, the demand for an additional two years was beyond the scope of enquiry under Regulation 4(e) and various clauses of Form A. He emphasised that such an information could not be called for under Regulation 7. According to the learned senior counsel that even for the five years preceding the date of application, the respondent is required only to look at the certificate of the Chartered Accountant which has been duly submitted by the respondent. However, in order to comply with the directions issued by the appellant, the respondent has already submitted the audited accounts for the five years preceding the date of application. Therefore, at this stage, there should be no hurdle to the registration of the respondent as CRA by the appellant.

20. We have considered the entire material and the submissions made by the learned senior counsel for the parties. The controversy raised herein revolves around the interpretation of the provisions contained in Regulation 4(e), Form A read with Regulation 7 of the CRA Regulations, 1999. In order to appreciate the true scope and ambit of the aforesaid provisions, it is necessary to take a bird's eye view of the SEBI Act and the CRA Regulations, 1999. As noticed earlier, the regulations have been made in exercise of the powers conferred on the Board by Section 30 read with Section 11 of the SEBI Act. Section 30 empowers the Board by notification to make regulations consistent with the Act and to carry out the purposes of SEBI Act. Section 30 (2)(d) empowers the Board to make regulations with regard to the conditions subject to which certificate of registration is to be issued, the amount of fee to be paid for the certificate of registration and the manner of suspension or cancellation of certificate of registration under Section 12. Section 11 empowers the SEBI to take measures

to protect the interest of investors and to regulate the security market, inter alia by regulating and registering the working of stock progress and other intermediaries such as credit rating agencies, who may be associated with the securities market in any manner. Regulation 2(h) defines a CRA as a body corporate, which is engaged in or proposes to be engaged in the business of rating of securities offered by way of public or rights issue. Regulation 2(b) defines an associate in relation to a credit rating agency to include a person:

(i) who, directly or indirectly, by himself, or in combination with relatives, owns or controls shares carrying not less than ten percent of the voting rights of the credit rating agency, or

(ii) in respect of whom the credit rating agency, directly or indirectly, by itself, or in combination with other persons, owns or controls shares carrying not less than ten percent of the voting rights, or

(iii) majority of the directors of which, own or control shares carrying not less than ten percent of the voting rights of the credit rating agency, or

(iv) whose director, officer or employee is also a director, officer or employee of the credit rating agency;

Regulation 2(p) defines net worth as under:

"net-worth means the aggregate value of the paid up equity capital and free reserves (excluding reserves created out of revaluation), reduced by the aggregate value of accumulated losses and deferred expenditure not written off, including miscellaneous expenses not written of"

21. Regulation 3(1) provides that any person proposing to commence any activity as a credit rating agency shall make an application to the Board for the grant of a certificate of registration for the purpose. Regulation 3(3) provides that such

application shall be made to the Board in Form A of the Schedule of the Regulations. Regulations 4, 5, 6 and 7 which are relevant for the decision of the legal issue involved in this case are as under:-

"Promoter of credit rating agency

4. The Board shall not consider an application under regulation (3) unless the applicant is promoted by a person belonging to any of the following categories, namely:

(a) a public financial institution, as defined in section 4 A of the Companies Act, 1956 (1 of1956);

(b) a scheduled commercial bank included for the time being in the second schedule to the Reserve Bank of India Act, 1934 (2 of 1934);

(c) a foreign bank operating in India with the approval of the Reserve Bank of India;

(d) a foreign credit rating agency recognised by or under any law for the time being in force in the country of its incorporation, having at least five years experience in rating securities;

(e) any company or a body corporate, having continuous net worth of minimum rupees one hundred crores as per its audited annual accounts for the previous five years prior to filing of the application with the Board for the grant of certificate under these regulations.

Eligibility criteria

5. The Board shall not consider an application for the grant of a certificate under regulation 3, unless the applicant satisfies the following conditions, namely:

(a) the applicant is set up and registered as a company under the Companies Act, 1956;

(b) the applicant has, in its Memorandum of Association, specified rating activity as one of its main objects;

(c) the applicant has a minimum net worth of rupees five crores. Provided that a credit rating agency existing at the commencement of these regulations, with a net worth of less than rupees five crores, shall be deemed to have satisfied this condition, if it increases its net worth to the said minimum within a period of three years of such commencement.

(d) the applicant has adequate infrastructure, to enable it to provide rating services in accordance with the provisions of the Act and these regulations;

(e) the applicant and the promoters of the applicant, referred to in regulation 4 have professional competence, financial soundness and general reputation of fairness and integrity in business transactions, to the satisfaction of the Board;

(f) neither the applicant, nor its promoter, nor any director of the applicant or its promoter, is involved in any legal proceeding connected with the securities market, which may have an adverse impact on the interests of the investors;

(g) neither the applicant, nor its promoters, nor any director, of its promoter has at any time in the past been convicted of any offence involving moral turpitude or any economic offence;

(h) the applicant has, in its employment, persons having adequate professional and other relevant experience to the satisfaction of the Board;

(i) neither the applicant, nor any person directly or indirectly connected with the applicant has in the past been -

(i) refused by the Board a certificate under these regulations or

(ii) subjected to any proceedings for a contravention of the Act or of any rules or regulations made under the Act.

Explanation: For the purpose of this clause, the expression "directly or indirectly connected person" means any person who is an associate, subsidiary, inter-connected or group company of the applicant or a company under the same management as the applicant.

(j) the applicant, in all other respects, is a fit and proper person for the grant of a certificate;

(k) grant of certificate to the applicant is in the interest of investors and the securities market.

Applicability of Securities and Exchange Board of India (Criteria for Fit and Proper Person) Regulations, 2004.

5A. The provisions of the Securities and Exchange Board of India (Criteria for Fit and Proper Person) Regulations, 2004 shall, as far as may be, apply to all applicants or the credit rating agencies under these regulations.

Application to conform to the requirements

6. Any application for a certificate, which is not complete in all respects or does not conform to the requirement of regulation 5 or instructions specified in Form A shall be rejected by the Board: Provided that, before rejecting any

such application, the applicant shall be given an opportunity to remove, within thirty days of the date of receipt of relevant communication, from the Board such objections as may be indicated by the Board.

Provided further, that the Board may, on sufficient reason being shown, extend the time for removal of objections by such further time, not exceeding thirty days, as the Board may consider fit to enable the applicant to remove such objections.

Furnishing of information, clarification and personal representation

7. (1) The Board may require the applicant to furnish such further information or clarification as the Board may consider necessary, for the purpose of processing of the application.

(2) The Board, if it so desires, may ask the applicant or its authorised representative to appear before the Board, for personal representation in connection with the grant of a certificate."

22. Form A of the First Schedule has to be submitted by the applicant together with the supporting documents along with the application. This was duly filled and furnished by the respondent.

23. A bare perusal of the regulations makes it clear that an applicant to be eligible to be registered as a credit rating agency has to be a person/entity promoted by a person belonging to any of the categories enumerated in Regulation 4. Categories 4(a), (b) and (c) are financial institutions as defined in Section 4(a) of the Companies Act; Schedule Commercial Banks included in the Second Schedule to the Reserve Bank of India Act, 1934 and foreign banks operating in India with the approval of the Reserve Bank of India. Foreign

Credit Rating Agency recognized by or under any law for the time being in force in the country of incorporation having at least five years experience in rating securities fall within category 4(d). The respondent falls within category 4(e), which relates to any company or a body corporate having continuous net worth of minimum Rs.100 crores as per its Audited Annual Accounts for the previous five years, prior to the filing of the application with the Board for the grant of certificate under the Regulation. Regulation 5 provides for the eligibility criteria. It is provided that the Board shall not consider any application for the grant of a certificate under Regulation 3 unless the applicant satisfies the conditions set out therein. Regulation 6 provides that any application for a certificate which is not complete in all respects or does not conform to the requirements of Regulation 5 or instructions specified in Form A shall be rejected by the Board. It is, however, necessary that before rejecting any such application, the applicant shall be given an opportunity to remove, the objections indicated by the Board within a period of 30 days of the receipt of communication of the objections by the Board to the applicant. This period can be further extended at the discretion of the Board on sufficient reason being shown by the applicant for a further period not exceeding 30 days.

24. A reading of Regulations 4, 5 and 6 together leaves no manner of doubt that the SEBI has no discretion not to reject the application if it does not satisfy the conditions laid down in Regulations 4 and 5. In fact, Regulation 4 mandates that the Board *shall not consider* an application for registration under Regulation 3 unless the applicant is promoted by a person belonging to any of the categories mentioned therein. Similarly, Regulation 5 categorically mandates that the Board *shall not consider* an application for the grant of a certificate under Regulation 3 unless the applicant satisfies all the conditions which are set out under Clause 5. Regulation 6 again is mandatory in nature, which provides that an application which is not complete in all respects or does not conform to the

requirement of Regulation 5 or instructions specified in Form A shall be rejected by the Board. It appears, therefore, that the intention of the legislature, as expressed through the regulations, is to put a closure to the consideration of the application on the basis of the information submitted on the date of application. The Board has the minimal discretion to extend the period for removal of objections upon hearing the applicant firstly for 30 days and thereafter for another 30 days. In other words, Regulation 7 enables the Board to ask for further information within the extended time stipulated in Regulation 6. For the purpose of processing of the application, the information/material for removal of objections has to be provided within the time stipulated by Board. But the maximum period provided is sixty days. There is no scope under the regulations for the time to be extended any further. The information sought must be in relation to the five years preceding the date of the application. In this view of the matter, we are of the opinion that the directions issued by the SAT that the Board could not have directed the respondent to produce the Audited Accounts for the two years beyond the date of the application, are in consonance with the provisions of the regulations. Under Regulation 7, the Board would have the power to seek further information or clarification for the purpose of processing of the application. This further information would relate only to the basic information with regard to the Audited Accounts for the five years preceding the date of the application. Therefore, the observations made by SAT as noticed above are perfectly justified.

25. This now brings us to the final submission made by Mr. C.U. Singh that the Board was within its power to ask for the Audited Accounts of the applicant for the 5 years preceding the date of the application. It is true that under Regulation 4(e), an applicant has to show that it has continuous net worth of minimum Rs.100 crores as per its Audited Annual Accounts for the previous five years prior to the filing of the application with the Board. Clause 2 of Form A provides the "Eligibility Criteria".

Under Clause 2(1), the applicant has to indicate the category to which the promoters of the applicant company belong under Regulation 4, which in this case was 4(e). Clause 2(3) provides that the applicant shall "enclose a Chartered Accountant's certificate certifying the continuous net worth of Rs.100 crores for five years, in case the promoter referred to in Regulation 4(e)". As noticed above, Regulation 4(e) postulates that the proof of net worth on the basis of the audited accounts for five years prior to the filing of the application has to be given. It is not disputed before us that the applicant has submitted the Chartered Accountant's certificate certifying the continuous net worth of Rs.100 crores for five years on the basis of M/s. Coment (Mauritius) Limited bankers certificate. It is noticed by the SAT in the impugned order that the certificate was accepted by the Board and no clarification was sought from the respondent in regard to the certificate furnished by the Chartered Accountant. Mr. C.U. Singh submitted that the certificate submitted by the Chartered Accountant was issued on the basis of the certificate of ING Private bank dated 29th May, 2009 confirming that M/s. Coment (Mauritius) Limited had a continued net worth of over Rs.100 crores as per its Annual Accounts for the previous five years. It is not certified on the basis of the Audited Accounts, therefore, the certificate did not satisfy the requirements under the regulations.

26. We are of the opinion that the submission made by Mr. C.U. Singh has substance and cannot be brushed aside. The certificate actually provided by the Chartered Accountants is as under:-

"NET WORTH CERTIFICATE

We certify that for previous five years continuous Net worth of M/s. Coment (Mauritius) Limited, Les Cascade Building, Edith Cavell Street, Port Louis, Mauritius is over Rs.100 crores (Rupees One Hundred Crores).

The above information is given in strictest confidence at

the request of our client for the purpose of filing application before Securities and Exchange Board of India.

FOR M/S RAJNISH & ASSOCIATES
CHARTERED ACCOUNTANTS
Certified True Copy
Sd/-
(PARTNER)

Place : New Delhi **Membership No. 081180**
Date: 29.05.2009"

27. We are satisfied that the aforesaid certificate did not conform to the provisions contained in the regulations which requires that the certificate of the Chartered Accountant should be in confirmation of the Audited Accounts of the promoters/ applicant for the five years preceding the date of the application. We are unable to approve the observations made by SAT that "neither the regulations nor the eligibility criteria in Form A requires the applicant to produce the annual accounts of the promoter." We are also unable to approve the observations of SAT that "it is doubtful whether the Board could have asked for this information without doubting the veracity or the correctness of the certificate of the Chartered Accountant that accompanied the application." The certificate of the Chartered Accountant is evidence of the required net worth of the promoter. Therefore, it has to be in strict conformity with Regulation 4(e). Since the certificate issued by the Chartered Accountants did not categorically state that it is based on the audited accounts for the 5 years preceding the date of application, the Board certainly had the power to direct the respondent to produce the audited accounts. That being so, under Regulation 6, it was the duty of the Board to have rejected the application of the respondent.

28. Surprisingly, however, the Board continued to grant further time to the respondent to remove the objections even beyond the maximum sixty days permissible under the proviso

to Regulation 6. It appears that the enquiries continued from 20th August, 2009 till March 1, 2011 when the show cause notice was issued to the respondent. The application of the respondent is not rejected till 21st July, 2011. The delay in the rejection of the application of the respondent was wholly unwarranted. It allowed the respondent a latitude not permissible under the regulations. Taking advantage of this latitude, the respondent has provided the Audited Accounts for the five years preceding the date of application. Not only this, we are informed that by now the respondent has even produced before this Court in a sealed cover the Audited Accounts of M/ s. Coment (Mauritius) Limited for the subsequent two years upto 31st December, 2010 also.

29. Since the Board had extended the time to the respondent, even though not permissible in law, we are not inclined to modify the directions issued by the SAT. Especially in view of the submission of Mr. Suri that respondent is willing at this stage to produce the Audited Accounts of the promoter even for the subsequent two years.

30. In view of the above, we see no merit in the appeal and the same is hereby dismissed with no order as to costs.

K.K.T. Appeal dismissed.

VIPIN JAISWAL(A-I)
v.
STATE OF A.P. REP.BY PUB.PROSECUTOR
(Criminal Appeal No. 1431 of 2007)

MARCH 13, 2013

[A.K. PATNAIK AND SUDHANSU JYOTI MUKHOPADHAYA, JJ.]

Penal Code, 1860 - ss. 304B and 498A - Death of married woman -Conviction of appellant-husband u/ss.304B and 498A - Justification - Held: Not justified - Demand, if at all made by the appellant on the deceased for purchasing a computer to start a business six months after the marriage, was not in connection with the marriage and was not really a 'dowry demand' within the meaning of s.2 of the Dowry Prohibition Act, 1961 - In any case, the prosecution witnesses made general allegations of harassment by the appellant towards the deceased and did not bring in evidence any specific acts of cruelty or harassment by the appellant on the deceased - On the other hand, from the evidence of appellant (DW1), it is clear that while cleaning the house he came across a chit (Ext. D19) written in the handwriting of his wife and containing her signature - It appears from Ext. D19 that the deceased wrote the chit according to her free will saying that nobody was responsible for her death and that her parents and family members had harassed her husband and she was taking the step as she was fed up with her life because of the quarrels that were taking place - Evidence of DW1 (appellant) and Ext.D19 cast a reasonable doubt on the prosecution story that the deceased was subjected to harassment or cruelty in connection with demand of dowry - Since the prosecution was not able to prove beyond reasonable doubt the ingredient of harassment or cruelty, neither of the offences u/ss.498A and 304B, IPC has been

made out by the prosecution - Dowry Prohibition Act, 1961 - s.2.

The wife of appellant died due to burn injuries. The prosecution alleged that ever since her marriage, the deceased was subjected to physical and mental torture by her husband and in-laws and they all brutally assaulted her on innumerable occasions for not getting sufficient dowry. Charge-sheet was submitted against the appellant and his relatives under Sections 498A and 304B IPC.

The appellant took the defence that the deceased had left behind a suicide note written by her one day before her death in which she has stated that she had committed suicide not on account of any harassment by the appellant and her family members but due to the harassment by her own parents. The Trial Court, however, disbelieved the defence and convicted the appellant and his other relatives under Sections 304B and 498A, IPC holding that the deceased was subjected to torture and harassment by the accused, mainly for the reason that an amount of Rs.50,000/- was not given to the appellant by the father of the deceased (PW1). In appeal, High Court acquitted the two other relatives of the appellant (A2 and A3) but maintained the conviction of the appellant under Sections 304B and 498A, IPC and therefore the present appeal.

Allowing the appeal, the Court

HELD: 1. The evidence of the father and mother of the deceased, viz. PW1 and PW4 is that the demand of Rs.50,000/- by the appellant was made six months after the marriage and that too for purchasing a computer to start his own business. It is only with regard to this demand of Rs.50,000/- that the Trial Court has recorded a finding of guilt against the appellant for the offence

under Section 304B, IPC and it is only in relation to this demand of Rs.50,000/- for purchase of a computer to start a business made by the appellant six months after the marriage that the High Court has also confirmed the findings of the Trial Court with regard to guilt of the appellant under Section 304B, IPC. Both the Trial Court and the High Court failed to appreciate that the demand, if at all made by the appellant on the deceased for purchasing a computer to start a business six months after the marriage, was not in connection with the marriage and was not really a 'dowry demand' within the meaning of Section 2 of the Dowry Prohibition Act, 1961. [Para 6] [456-D-H]

Appasaheb & Anr. vs. State of Maharashtra **(2007) 9 SCC 721: 2007 (1) SCR 164 - referred to.**

2. In any case, to hold an accused guilty of both the offences under Sections 304B and 498A, IPC, the prosecution is required to prove beyond reasonable doubt that the deceased was subjected to cruelty or harassment by the accused. From the evidence of the prosecution witnesses, and in particular PW1 and PW4, it is found that they have made general allegations of harassment by the appellant towards the deceased and have not brought in evidence any specific acts of cruelty or harassment by the appellant on the deceased. From the evidence of the appellant (DW1), it is clear that while cleaning the house the appellant came across a chit written in the handwriting of his wife and containing her signature. This chit has been marked as Ext. D19 and the appellant has identified the handwriting and signature of the deceased in Ext. D19 which is written in Hindi. It appears from Ext. D19 that the deceased has written the chit according to her free will saying that nobody was responsible for her death and that her parents and family members have harassed her husband and she was

taking the step as she was fed up with her life and because of her quarrels were taking place. [Para 7] [457-E-G; 458-E-H; 459-A]

3. The evidence of DW1 (the appellant) and Ext.D19 cast a reasonable doubt on the prosecution story that the deceased was subjected to harassment or cruelty in connection with demand of dowry. The onus was on the prosecution to prove beyond reasonable doubt the ingredient of Section 498A, IPC and the essential ingredient of offence under Section 498A is that the accused, as the husband of the deceased, has subjected her to cruelty as defined in the Explanation to Section 498A, IPC. Similarly, for the Court to draw the presumption under Section 113B of the Evidence Act that the appellant had caused dowry death as defined in Section 304B, IPC, the prosecution has to prove besides the demand of dowry, harassment or cruelty caused by the accused to the deceased soon before her death. Since the prosecution has not been able to prove beyond reasonable doubt this ingredient of harassment or cruelty, neither of the offences under Sections 498A and 304B, IPC has been made out by the prosecution. [Para 9] [459-E-H; 460-A]

Case Law Reference:

2007 (1) SCR 164	**referred to**	**Para 6**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1431 of 2007.

From the Judgment & Order dated 11.12.2006 of the High Court of Andhra Pradesh at Hyderabad in Crl. Appeal No. 544 of 2003.

A.T.M. Ranga Ramanujam, Prabhakar Sharma, Dipankar Das, Devesh Singh, Shanti Kumar Jaisani, Anu Gupta for the Appellant.

Mayur R. Shah, D. Mahesh Babu, Suchitra Hrangkhawl, Amjid Maqbool, Amit K. Nain, M. Bala Shivudu for the Respondent.

The Judgment of the Court was delivered by

A.K. PATNAIK, J. 1. This is an appeal against the judgment dated 11th December, 2006 of the Andhra Pradesh High Court in Criminal Appeal No. 544 of 2003.

2. The facts briefly are that an FIR was lodged by Gynaneshwar Jaiswal on 4.4.1999 at 2.15 p.m. in Mangalhat Police Station, Hyderabad. In the FIR it was stated by the informant that his daughter Meenakshi Jaiswal was married to the appellant on 22.2.1996 and at the time of marriage he gave sufficient gold jewellery, silver items, furniture, electrophinic gadgets etc., worth above Rs.2,50,000/- but ever since her marriage, she was subjected to physical and mental torture by her husband Vipin Jaiswal, her husband's parents Prem Kumar Jaiswal and Yashoda Bai and her husband's sister Supriya and her husband and they all brutally assaulted her on innumerable occasions for not getting sufficient dowry. It was further stated in the FIR that on 2.4.1999 the informant received a call from the appellant and he went to the house of the appellant along with his relatives to find out what had happened as well as to give invitation for a function at his place but they all abused him and the appellant physically assaulted and pushed him out from the house but fearing the safety of his daughter and her welfare, he did not report the matter to the police. It is further stated in the FIR that on 4.4.1999 at about 1.00 p.m. when he came back home, he was informed on telephone by his son that Meenakshi had received severe burn injuries and as a result died in the house of the appellant. The police registered a Criminal Case under Section 304B, IPC and took up investigation and submitted a charge-sheet against the appellant and his other relatives under Sections 304B and 498A, IPC.

3. At the trial, besides other witnesses, the prosecution

examined the father of the deceased (informant) as PW 1, the cousin of PW 1 as PW 2 and the mother of the deceased as PW 4. The appellant volunteered to be a witness and got examined himself as DW 1 and took the defence that the deceased had left behind a suicide note written by her one day before her death in which she has stated that she had committed suicide not on account of any harassment by the appellant and her family members but due to the harassment by her own parents. The Trial Court, however, disbelieved the defence and convicted the appellant and his other relatives under Sections 304B and 498A, IPC. The Trial Court in particular held that there was material that two days prior to the death of the deceased, her father (PW1) and his relative (PW2) were called by her and told that she has been harassed by the appellant and her in laws for not being paid the amount demanded by the appellant and when PWs 1 and 2 went to the house of the appellant, they were abused by the appellant and on 4.4.1999, PW 1 and others were informed by one Suresh Kumar, a neighbour of the appellant, about the incident. From the aforesaid and other evidence, the Trial Court came to the conclusion that the deceased was subjected to torture and harassment by the accused, mainly for the reason that an amount of Rs.50,000/- was not given to the appellant by PW 1. The appellant and other relatives of the appellant carried Criminal Appeal No. 544 of 2003 before the High Court and by the impugned judgment, the High Court acquitted the two other relatives of the appellant (A2 and A3) but maintained the conviction of the appellant under Sections 304B and 498A, IPC.

4. At the hearing before us, learned senior counsel for the appellant submitted that the findings of the Trial Court and of the High Court with regard to the demand of dowry are in relation to the demand of Rs.50,000/-. He submitted that this demand of Rs.50,000/- is not mentioned in the FIR (Ext. P1). He further submitted that in any case, the evidence of PW1 and PW4 is clear that this demand of Rs.50,000/- by the appellant was not

a dowry demand but an amount which the appellant wanted from the family of the deceased to purchase a computer and set up his own business. He further submitted that the Trial Court and the High Court ought not to have disbelieved the suicide note (Ext. D19) which was in the handwriting of the deceased as proved by DW1. In this context, he explained that the signature on the suicide note (Ext. D19) purporting to be that of the deceased, tallied with the signature of the deceased in Ext. D1 which was a hall ticket issued by Dr. B.R. Ambedkar Open University for an examination which the deceased took in March, 1998.

5. Learned counsel for the State, on the other hand, submitted that both the Trial Court and the High Court have discussed the evidence of the prosecution witnesses, and in particular, the evidence of PWs 1, 2 and 4 to establish that there was demand of dowry of not only Rs.50,000/- but other items as well. He further submitted that Section 2 of the Dowry Prohibition Act, 1961 defines 'dowry' as any property or valuable security given or agreed to be given either directly or indirectly at or before or any time after the marriage in connection with the marriage of the parties to the marriage. He submitted that the expression "in connection with the marriage of the parties to the marriage" is wide enough to cover the demand of Rs.50,000/- made by the appellant for purchase of a computer. He further submitted that so far as the suicide note (Ext. D19) is concerned, the same cannot be believed to have been written by the deceased who was only a matriculate and the High Court has given good reasons in the impugned judgment why the suicide note cannot be believed to have been written by the deceased. He argued that in any case only on the basis of the evidence given by DW1, the Court cannot hold that the suicide note had been written by the deceased and not by someone else. He submitted that since the prosecution has been able to prove that the deceased had been subjected to not only a demand of dowry but also cruelty soon before her death, the Trial Court and the High Court have rightly held the

appellant guilty both under Sections 304B and 498A, IPC.

6. We have perused the evidence of PW 1 and PW 4, the father and mother of the deceased respectively. We find that PW 1 has stated that at the time of marriage, gold, silver articles, ornaments, T.V., fridge and several other household articles worth more than Rs.2,50,000/- were given to the appellant and after the marriage, the deceased joined the appellant in his house at Kagaziguda. He has, thereafter, stated that the appellant used to work in a xerox cum type institute in Nampally and in the sixth month after marriage, the deceased came to their house and told them that the appellant asked her to bring Rs.50,000/- from them as he was intending to purchase a computer and set up his own business. Similarly, PW4 has stated in her evidence that five months after the marriage, the appellant sent her away to their house and when she questioned her, she told that the appellant was demanding Rs.50,000/- and that the demand for money is to purchase a computer to start his own business. Thus, the evidence of PW1 and PW4 is that the demand of Rs.50,000/- by the appellant was made six months after the marriage and that too for purchasing a computer to start his own business. It is only with regard to this demand of Rs.50,000/- that the Trial Court has recorded a finding of guilt against the appellant for the offence under Section 304B, IPC and it is only in relation to this demand of Rs.50,000/- for purchase of a computer to start a business made by the appellant six months after the marriage that the High Court has also confirmed the findings of the Trial Court with regard to guilt of the appellant under Section 304B, IPC. In our view, both the Trial Court and the High Court failed to appreciate that the demand, if at all made by the appellant on the deceased for purchasing a computer to start a business six months after the marriage, was not in connection with the marriage and was not really a 'dowry demand' within the meaning of Section 2 of the Dowry Prohibition Act, 1961. This Court has held in *Appasaheb & Anr. Vs. State of Maharashtra* (2007) 9 SCC 721:

"In view of the aforesaid definition of the word "dowry" any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well known social custom or practice in India. It is well settled principle of interpretation of Statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning. (See *Union of India v. Garware Nylons Ltd.,* AIR (1996) SC 3509 and *Chemicals and Fibres of India v. Union of India,* AIR (1997) SC 558)."

7. In any case, to hold an accused guilty of both the offences under Sections 304B and 498A, IPC, the prosecution is required to prove beyond reasonable doubt that the deceased was subjected to cruelty or harassment by the accused. From the evidence of the prosecution witnesses, and in particular PW1 and PW4, we find that they have made general allegations of harassment by the appellant towards the deceased and have not brought in evidence any specific acts of cruelty or harassment by the appellant on the deceased. On the other hand, DW1 in his evidence has stated that on 4.4.1999, the day when the incident occurred, he went to the nearby temple along with his mother (A2) and his father (A3) went to the bazar to bring ration and his wife (deceased) alone was present at the house and at about 1.00 p.m., they were informed by somebody that some smoke was coming out from their house and their house was burning. Immediately he and

his mother rushed to their house and by that time there was a huge gathering at the house and the police was also present. He and his family members were arrested by the police and after one month they were released on bail. What DW1 has further stated is relevant for the purpose of his defence and is quoted hereinbelow:

"While cleaning our house we found a chit on our dressing table. The said chit was written by my wife and it is in her handwriting and it also contains her signature. Ex. D 19 is the said chit. I identified the handwriting of my wife in Ex. D19 because my wife used to write chits for purchasing of monthly provisions as such on tallying the said chit and Ex. D19 I came to know that it was written by my wife only. Immediately I took the Ex. D19 to the P.S. Mangalhat and asked them to receive but they refused to take the same."

From the aforesaid evidence, it is clear that while cleaning the house the appellant came across a chit written in the handwriting of his wife and containing her signature. This chit has been marked as Ext. D19 and the appellant has identified the handwriting and signature of the deceased in Ext. D19 which is written in Hindi. The English translation of Ext.D19 reproduced in the impugned judgment of the High Court is extracted hereinbelow:

"I, Meenakshi W/o Vipin Kumar, do hereby execute and commit to writing this in my sound mind, consciousness and senses and with my free will and violation to the effect that nobody is responsible for my death. My parents family members have harassed much to my husband. I am taking this step as I have fed up with his life. Due to me the quarrels are taking place here, as such I want to end my life and I beg to pardon by all."

It appears from Ext. D19 that the deceased has written the chit according to her free will saying that nobody was responsible

for her death and that her parents and family members have harassed her husband and she was taking the step as she was fed up with her life and because of her quarrels were taking place.

8. When the appellant, who is the husband of the deceased, has said in his evidence as DW1 that the aforesaid chit (Ext. D19) has been written by the deceased herself and has been signed by her and it also appears from his evidence quoted above that he was acquainted with her handwriting and signature, the Trial Court and the High Court could have recorded a finding one way or the other by comparing her handwriting and signature with some of her other handwritings and signatures under Section 73 of the Evidence Act. In the alternative, the Trial Court and the High Court could have sought for an expert's opinion under Section 45 of the Evidence Act on whether the handwriting and signature were that of the deceased. But unfortunately, neither the Trial Court nor the High Court have resorted to these provisions of the Evidence Act and instead by their own imaginary reasoning disbelieved the defence of the appellant that Ext.D19 could not have been written by the deceased.

9. In our considered opinion, the evidence of DW1 (the appellant) and Ext.D19 cast a reasonable doubt on the prosecution story that the deceased was subjected to harassment or cruelty in connection with demand of dowry. In our view, onus was on the prosecution to prove beyond reasonable doubt the ingredient of Section 498A, IPC and the essential ingredient of offence under Section 498A is that the accused, as the husband of the deceased, has subjected her to cruelty as defined in the Explanation to Section 498A, IPC. Similarly, for the Court to draw the presumption under Section 113B of the Evidence Act that the appellant had caused dowry death as defined in Section 304B, IPC, the prosecution has to prove besides the demand of dowry, harassment or cruelty caused by the accused to the deceased soon before her death.

Since the prosecution has not been able to prove beyond reasonable doubt this ingredient of harassment or cruelty, neither of the offences under Sections 498A and 304B, IPC has been made out by the prosecution.

10. We accordingly allow this appeal, set aside the impugned judgment of the High Court and that of the Trial Court and direct that the bail bond furnished by the appellant shall stand discharged.

B.B.B. Appeal allowed.

M/S RAJURESHWAR & ASSOCIATES
v.
STATE OF MAHARASHTRA & ORS.
(Special Leave Petition (Civil) No. 17688/2013)

APRIL 8, 2013

[GYAN SUDHA MISRA AND J. CHELAMESWAR, JJ.]

Contempt of Court - Judgment and order passed by a particular Court, especially the Supreme Court if alleged not to have been complied, will have to be taken care of and addressed by the Court which passed the order sought to be complied - In the instant case, the petitioner wrongly approached the High Court for initiating contempt proceedings related to a direction of the Supreme Court and the same was rightly not entertained by the High Court - Challenge to said order of High Court by special leave petition, therefore, dismissed.

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) No. 17688 of 2013.

From the Judgment and Order dated 22.12.2011 of the High Court of Judicature of Bombay Bench at Aurangabad in Contempt Petition No. 175 of 2005 in Writ Petition No. 5219 of 2001.

M.Y. Deshmukh for the Petitioner.

The following order of the Court was delivered by

O R D E R

1. Delay condoned.

2. This special leave petition is directed against the order of the High Court of Judicature at Bombay, Bench at Aurangabad passed in Contempt Petition No. 175 of 2005

arising out of Writ Petition No.5219 of 2001, which was rejected as the learned Single Judge was of the view that the contempt petition related to a direction for payment of interest at the rate of 11% p.a. since there was a mistake in the calculation for the period in which the amount was temporarily invested in pursuance to the directions of the Supreme Court.

3. It appears that the petitioner had filed a contempt petition in the High Court of Bombay alleging that the directions and order passed by this Court in Civil Appeal No. 8539 of 2002 whereby this Court had allowed interest to be claimed by the petitioner @ 11% since the sale of the property for which the petitioner was a bidder, had been wrongly cancelled with which this Court refused to interfere but maintained the order of refund amount along with 11% p.a. simple interest within a period of four months.

4. The Petitioner felt aggrieved as the amount accruing towards 11% interest as per computation of the petitioner had not been deposited by the respondent State. However, the petitioner did not move this Court which had passed the order alleging contempt but moved the High Court of Bombay stating that the Respondents have indulged in contempt as they did not deposit the amount accrued towards 11% interest which was directed by the Supreme Court in Civil Appeal No. 8539 of 2002. The learned Single Judge dismissed the contempt petition as he was of the view that the contempt petition alleging non-compliance of the judgment and order passed by the Supreme Court will have to be addressed by the Supreme Court itself and not by the High Court, especially when no such liberty was given by the Supreme Court to initiate any proceeding in the High Court alleging non-compliance of its order. Learned Single Judge has also relied upon certain authorities in support of the view that contempt petition cannot be entertained by the High Court alleging non-compliance of the order passed by the Supreme Court.

5. Having perused the reasons in the light of the submission of the counsel for the petitioner, we find no infirmity in the view taken by the High Court as it cannot be disputed that the judgment and order passed by a particular Court, especially the Supreme Court if alleged not to have been complied, will have to be taken care of and addressed by the Court which passed the order sought to be complied. The petitioner, therefore, wrongly approached the High Court for initiating contempt proceedings and the same has rightly not been entertained. Challenge to the said order by this special leave petition, therefore, is not fit to be entertained; hence the special leave petition is dismissed.

6. However, counsel for the petitioner submits that if this Court is of the view that the petitioner had approached the wrong forum for initiating contempt proceedings, he should not be deprived of the liberty to approach the appropriate forum, which is the Supreme Court, for initiating fresh contempt proceedings alleging non-compliance of the judgment and order passed by this Court in Civil Appeal No. 8539 of 2002.

7. We make it clear that we are not coming in the way of the petitioner to take any appropriate steps before any appropriate Forum for compliance of the order and judgment passed by this Court and therefore, he is at liberty to take recourse to any legal remedy that may be available to him under the law including a contempt petition which obviously will be dealt with by the appropriate Court on its own merits.

B.B.B. SLP dismissed.

RAJASTHAN STATE ROAD TRANSPORT CORPORATION & OTHERS

v

MADU GIRI (DEAD) THROUGH LRS. & ANR.

(Civil Appeal No. 5274 of 2008)

APRIL 26, 2013

[P. SATHASIVAM AND M.Y. EQBAL, JJ.]

Service Law - Pension - Respondents-employees of appellant-State Road Transport Corporation - Held: Not eligible to claim pensionary benefits under the Pension Scheme in view of non-compliance with the essential conditions stipulated in the Regulations governing the Pension Scheme - Rajasthan State Road Transport Corporation Employees Pension Regulations, 1989 - Clause 3.

The respondents-employees of the appellant-Corporation retired from service and were paid Contributory Provident Fund (CPF) including the share of employer's contribution. Subsequently, the Rajasthan State Road Transport Corporation Employees Pension Regulations, 1989 came into force in terms whereof option was given to the existing employees as well as those employees who retired before coming into force of these Regulations. However, before acceptance of option and grant of benefit, condition was placed on the employees to refund the employer's share of CPF with interest. The respondents- employees exercised their option in favour of the pension scheme under the Regulations, but did not deposit the amount of employer's share of CPF with interest in lumpsum within the stipulated time. Consequently, their claim for grant of pensionary benefit was rejected by the appellant-Corporation. Writ petitions were filed against the decision

of the Corporation. The High Court directed the Corporation to accept the option submitted by the respondents-employees with regard to grant of pension and to allow the same to them by deducting the amount of excess provident fund with interest.

The question involved in the present appeals was: Whether the employees of the appellant-Rajasthan State Road Transport Corporation are eligible to claim pensionary benefits under the Pension Scheme in view of the non-compliance with the essential conditions stipulated in the Regulations which govern the said Pension Scheme.

Allowing the appeals, the Court

HELD:1. The view taken by the High Court is not in consonance with the conditions presecribed in the said Regulations. The concerned employees retired from service in 1991 and 1992 and after retirement they were paid CPF including the share of employer's contribution. Hence, as per Clause 3 of the Regulations, no right accrued to the appellants/employees to claim pensionary benefits without first depositing the amount and complying with the Regulations. In the facts and circumstances of the case and in view of the law laid down by this Court in the Pepsu Road Transport Corporation case, impugned orders passed by the High Court cannot be sustained in law. [Paras 5, 7 and 9] [468-C; 469-A-B; 470-B]]

Pepsu Road Transport Corporation, Patiala v. Mangal Singh and Others **(2011) 11 SCC 702: 2011 (6) SCR 564 - relied on.**

Case Law Reference:

2011 (6) SCR 564	**relied on**	**Para 8**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5274 of 2008.

From the Judgment & Order dated 11.10.2006 of the High Court of Judicature for Rajasthan at Jodhpur in D.B. Civil Special Appeal (W) No. 212 of 2006.

WITH

C.A. No. 952 of 2009

Puneet Jain, Ruchika Gohil, Sushil Kumar Jain, B.K. Pal, P.N. Jha, V.K. Biju, V.K. Verma for the appearing parties.

The Judgment of the Court was delivered by

M.Y. EQBAL, J. 1. The short question involved in these appeals is : Whether the employees of the appellant-Rajasthan State Road Transport Corporation are eligible to claim pensionary benefits under the Pension Scheme in view of the non-compliance with the essential conditions stipulated in the Regulations which govern the said Pension Scheme?

2. Admittedly, the concerned employees [Madugiri and Yakub Khan, respondents (since deceased) in Civil Appeal No.5274 of 2008 and late Nathu Singh, respondent's husband in Civil Appeal No. 952 of 2009] of the appellant-Corporation retired from service respectively on 31.1.1991, 31.1.1992 and 31.3.1992 and were paid Contributory Provident Fund (CPF) including the share of employer's contribution. On 11.1.1993, the Rajasthan State Road Transport Corporation Employees Pension Regulations, 1989 (in short "the Regulations") came into force. As per clause 3(1) of the said Regulations, option was given to the existing employees as well as those employees who retired before coming into force of these Regulations but before acceptance of option and grant of benefit condition was placed on the employees to refund the employer's share of CPF with interest. The above named employees exercised their option in favour of the pension

scheme under the Regulations, but did not deposit the amount of employer's share of CPF with interest in lumpsum within the stipulated time.

3. Clause 3(1) of the said Regulations reads as under:

"`Option' means a written consent of the existing regular employees for pensionary and gratuity benefit along with the adoption of the General Provident Fund Regulations, 1989 or to continue as member of the existing CPF scheme covered under the EPF Act, 1952 within a period of 90 days from the date of publication of RSRTC Pension Regulations. Any existing employee who does not exercise the option within specified period of 90 days shall be deemed to have exercised option in favour of the Pension and CPF Regulations.

The option once exercised or deemed to have been exercised shall be considered as final and no representation in this respect shall be considered valid for any revision. It will be for the personal responsibility of the departmental officer to ensure that his option reaches timely in the office of Dy. G.M. (P&F) RSRTC, Jaipur.

xxx xxx xxx

In case any employee or his nominee obtains the final refund of CPF between 1st April 1989 and specified period for exercising option, the employer's share with accrued interest time to time shall have to be deposited in lump sum before granting the option for pension."

4. As the amount of employer's share of CPF with interest in lumpsum was not deposited by the employees within the stipulated time, their claim for grant of pensionary benefit was rejected by the appellant-Corporation. The decision of the Corporation was challenged in the High Court by filing writ petitions which were disposed of with direction to the

Corporation to accept the option submitted by the employees with regard to grant of pension and to allow the same to the employees by deducting the amount of excess provident fund with interest which is said to be granted earlier. Aggrieved by the orders passed in writ petitions, the appellants herein filed D.B. Civil Special Appeals (W) before the Division Bench of the High Court which were dismissed by the orders impugned in these appeals.

5. After hearing the learned counsel appearing for the parties and perusing the Regulations, particularly Clause 3(1) as quoted hereinabove, we are of the considered opinion that the view taken by the learned Single Judge and also the Division Bench is not in consonance with the conditions presecribed in the said Regulations.

6. The learned Single Judge disposed of the writ petition filed by Madugiri and Yakub Khan, with the following directions:

"Accordingly this petition for writ is disposed of with a direction to the respondent Rajasthan State Road Transport Corporation to accept the option submitted by the petitioners with regard to grant of pension and then the same be allowed to them by deducting the amount of excess provident fund with interest which is said to be granted earlier. The respondent Corporation shall complete all formalities with regard to grant of pension and deduction of excess provident fund amount said to be paid to the petitioners within a period of four months from the date the petitioners submit a certified copy of this order to the respondent No.3 along with a representation for acceptance of pension in terms of this order."

Similar directions were issued by the learned Single Judge in another writ petition filed by Mohini Devi.

7. The Division Bench has considered the Regulations but failed to notice that there is apparent error in the order passed

by the learned Single Judge. Indisputably, the concerned employees retired from service in 1991 and 1992 and after retirement they were paid CPF including the share of employer's contribution. Hence, as per Clause 3 of the Regulations, no right accrued to the appellants/employees to claim pensionary benefits without first depositing the amount and complying with the Regulations.

8. The matter was examined by this Court in *Pepsu Road Transport Corporation, Patiala vs. Mangal Singh and Others* (2011) 11 SCC 702 wherein it was held as under:

> "51. The common thread which runs through all these appeals canvassed before us is that the respondents have failed to comply with the terms and conditions of the Regulations, which govern the Pension Scheme. We have already considered the nature and effect of the regulations, which are made under a statute. These statutory regulations require to be interpreted in the same manner which is adopted while interpreting any other statutory provisions. The Corporation as well as the respondents are obliged and bound to comply with its mandatory conditions and requirements. Any action or conduct deviating from these conditions shall render such action illegal and invalid. Moreover, the respondents have availed the retiral benefits arising out of CPF and gratuity without any protest.
>
> **52.** The respondents in all these appeals, before us, have made a claim for pensionary benefits under the Pension Scheme for the first time only after their retirement with an unreasonable delay of more than 8 years. It is not in dispute, in some appeals, that the respondents never opted for the Pension Scheme for their alleged want of knowledge for non-service of individual notices. In other appeals, although the respondents applied for the option of the Pension Scheme but indisputably never fulfilled the

> quintessential conditions envisaged by the Regulations which are statutory in nature."

9. We are, therefore, of the opinion that, in the facts and circumstances of the case and in view of the law laid down by this Court in the judgment referred to hereinabove, impugned orders passed by the learned Single Judge and the Division Bench of the High Court cannot be sustained in law.

10. For the reasons aforesaid, these appeals are allowed and the impugned orders are set aside. However, there shall be no order as to costs.

B.B.B. Appeals allowed.

SATYAWATI
v.
RAJINDER SINGH AND ANR.
(Civil Appeal No. 4176 of 2013)

APRIL 29, 2013

[G.S. SINGHVI, ANIL R. DAVE AND RANJANA PRAKASH DESAI, JJ.]

Execution of decree:

Petition for execution of decree entitling the plaintiff to possession of a plot - Rejected on the ground that decree was not executable because of contradictory reports - Revision of plaintiff rejected by High Court - Held: Judgment in favour of plaintiff was delivered by considering a report dated 17.9.1989 and a sketch of land in question, which were made by local commissioner and both are part of record - High Court was not right while confirming the order passed by executing court, for latter had taken into account certain other reports for purpose of rejecting execution proceedings - Once decree was made in favour of plaintiff, in pursuance of judgment delivered by District Judge, executing court should not have looked into other reports which had been submitted to it afterwards - Local Commissioner's report dated 17.9.1989 along with sketch clearly describes land in question - Executing court ought to have considered it - Orders of executing court and High Court set aside - Executing court directed to do the needful for execution of decree taking into account local commissioner's report dated 17.9.1989 - Decree.

Delay/Laches:

Delay in execution of decree - Execution petition filed in 1996 - However, decree not executed till date - Held: There

should not be unreasonable delay in execution of a decree - - Executing court will do the needful at an early date so as to see that the long drawn litigation which was decided in favour of appellant is finally concluded and he gets effective justice.

Babu Lal vs. M/s. Hazari Lal Kishori Lal & Ors. **1982 (3) SCR 94 = (1982) 1 SCC 525;** *Marshall Sons & Co. (I) Ltd. vs. Sahi Oretrans (P) Ltd. & Anr.* **1999 (1) SCR 311 = (1999) 2 SCC 325;** *Shub Karan Bubna alias Shub Karan Prasad Bubna vs. Sita Saran Bubna and Ors.* **2009 (14) SCR 40 = (2009) 9 SCC 689 - referred to.**

The General Manager of the Raj Durbhnga under the Court of Wards vs. Maharajah Coomar Ramaput Sing; Kuer Jang Bahadur vs. Bank of Upper India Ltd., Lucknow **AIR 1925 Oudh 448- referred to.**

Case Law Reference:

AIR 1925 Oudh 448	**referred to**	**para 13**
1982 (3) SCR 94	**referred to**	**para 14**
1999 (1) SCR 311	**referred to**	**para 15**
2009 (14) SCR 40	**referred to**	**para 16**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4176 of 2013.

From the Judgment & Order dated 25.05.2011 of the High Court of Punjab & Haryana at Chandigarh in Civil Revision No. 2047 of 2010 (O & M)

B.S. Mor, R.C. Kaushik for the Appellant.

Lalit Trakru, Sandeep Bhalla for the Respondents.

The Order of the Court was delivered by

O R D E R

ANIL R. DAVE, J. 1. Leave granted.

2. In relation to the difficulties faced by a decree holder in execution of the decree, in 1872, the Privy Council had observed that ".…….the difficulties of a litigant in India begin when he has obtained a Decree……".

3. Even today, in 2013, the position has not been improved and still the decree holder faces the same problem which was being faced in the past. We are concerned with the case of the appellant-plaintiff who had succeeded in Civil Appeal No. 89 of 1993 in the Court of District Judge, Faridabad on 19th January, 1996. Decree was drawn in pursuance of the aforestated judgment but till today, the appellant-plaintiff is not in a position to get fruits of his success.

4. It is not in dispute that the judgment delivered in Civil Appeal No. 89 of 1993 in favour of the appellant has become final as it was not challenged before the High Court. In pursuance of the decree drawn, the appellant made several efforts to get the decree executed. His last effort, with which we are concerned, had been initiated in 1996, when he had approached the court of Additional Senior Division, Palwal with an Execution Petition for execution of the decree.

5. As the decree had already been made in favour of the appellant, we need not go into the facts of the case, however it will be worth noting that by virtue of the decree, the appellant-plaintiff is entitled to possession of land admeasuring 80 sq. yard forming part of land of Khasra No.95/24/2 situated within municipal limits of Palwal town, District Faridabad. When the Execution Petition was filed, the Executing Court rejected the Execution Petition by observing that the decree was not executable because of certain contradictory reports. It is pertinent to note that the judgment in favour of the appellant-plaintiff was delivered by considering a report dated 17th

September, 1989 and a sketch of land in question, which were made by the local commissioner and both are forming part of the record. It appears that some other reports were considered by the Executing Court and after considering all the reports, the Executing Court, by its order dated 16th March, 2009 came to the conclusion that the decree was not executable.

6. Being aggrieved by the aforestated order dated 16th March, 2009, the appellant approached the High Court by filing Civil Revision No. 2047 of 2010. The said Revision application was rejected by an order dated 25th May, 2011 and therefore, the appellant-plaintiff has approached this court by way of this Appeal.

7. While confirming the order of the Executing Court dated 16th March, 2009, the High Court took into consideration the subsequent demarcation report dated 26th July, 2010 and after discussing both the reports came to the conclusion which had been arrived at by the Executing Court.

8. We have heard the learned counsel appearing for the appellant-plaintiff as well as for the respondents.

9. Looking to the facts of the case, in our opinion, the High Court was not right while confirming the order passed by the Executing Court for the reason that the Executing Court had taken into account certain other reports for the purpose of rejecting the execution proceedings and for coming to the conclusion that the decree was not executable.

10. Looking to the facts of the case and upon hearing the learned counsel, we are of the view that the order passed by the Executing Court dated 16th March, 2009, which has been confirmed by the High Court is not correct for the reason that the Executing Court ought not to have considered other factors and facts which were not forming part of the judgment and the decree passed in favour of the appellant-plaintiff. Once the decree was made in favour of the appellant-plaintiff, in

pursuance of the judgment dated 19th January, 1996 delivered by the District Judge Faridabad, in our opinion, the Executing Court should not have looked into other reports which had been submitted to it afterwards.

11. Upon perusal of the reports, we find that the local commissioner's report clearly describes the land which admeasures 80 sq. yard and which is forming part of Khasra No. 95/24/2 and the report given by the local commissioner also gives details of the land in question by way of a sketch. In our opinion, the Executing Court ought to have looked at the sketch which was prepared by the local commissioner and which was accepted as a correct sketch by the Appellate Court while delivering the judgment dated 19th January, 1996, which has become final.

12. In our opinion, the view expressed by the Executing Court and confirmed by the High Court is not correct and therefore, we allow this appeal and quash and set aside the impugned order of the High Court passed in C.R. No. 2047 of 2010 dated 25th May, 2011, confirming the order passed by the Executing Court dated 16th March, 2009. We direct the Executing Court to do the needful for execution of the decree by taking into account the local commissioner's report and sketch prepared by him dated 17th September, 1989.

13. It is really agonizing to learn that the appellant- decree holder is unable to enjoy the fruits of her success even today i.e. in 2013 though the appellant- plaintiff had finally succeeded in January, 1996. As stated hereinabove, the Privy Council in the case of The General Manager of the Raj Durbhnga under the Court of Wards vs. Maharajah Coomar Ramaput Sing had observed that the difficulties of a litigant in India begin when he has obtained a Decree. Even in 1925, while quoting the aforestated judgment of the Privy Council in the case of *Kuer Jang Bahadur vs. Bank of Upper India Ltd., Lucknow* [AIR 1925 Oudh 448], the Court was constrained to observe that

"Courts in India have to be careful to see that process of the Court and law of procedure are not abused by the judgment-debtors in such a way as to make Courts of law instrumental in defrauding creditors, who have obtained decrees in accordance with their rights."

14. In spite of the aforestated observation made in 1925, this Court was again constrained to observe in *Babu Lal vs. M/s. Hazari Lal Kishori Lal & Ors.* [(1982) 1 SCC 525] in para 29 that "Procedure is meant to advance the cause of justice and not to retard it. The difficulty of the decree holder starts in getting possession in pursuance of the decree obtained by him. The judgment debtor tries to thwart the execution by all possible objections….."

15. This Court, again in the case of *Marshall Sons & Co. (I) Ltd. vs. Sahi Oretrans (P) Ltd. & Anr.* [(1999) 2 SCC 325] was constrained to observe in para 4 of the said judgment that "…..it appears to us, prima facie, that a decree in favour of the appellant is not being executed for some reason or the other, we do not think it proper at this stage to direct the respondent to deliver the possession to the appellant since the suit filed by the respondent is still pending. It is true that proceedings are dragged for a long time on one count or the other and on occasion, become highly technical accompanied by unending prolixity at every stage providing a legal trap to the unwary. Because of the delay, unscrupulous parties to the proceedings take undue advantage and person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. It is also a known fact that after obtaining a decree for possession of immovable property, its execution takes long time….."

16. Once again in the case of *Shub Karan Bubna alias Shub Karan Prasad Bubna vs. Sita Saran Bubna and Ors.* [(2009) 9 SCC 689] at para 27 this Court observed as under :

"In the present system, when preliminary decree for

partition is passed, there is no guarantee that the plaintiff will see the fruits of the decree. The proverbial observation by the Privy Council is that the difficulties of a litigant begin when he obtains a decree. It is necessary to remember that success in a suit means nothing to a party unless he gets the relief. Therefore, to be really meaningful and efficient, the scheme of the Code should enable a party not only to get a decree quickly, but also to get the relief quickly. This requires a conceptual change regarding civil litigation, so that the emphasis is not only on disposal of suits, but also on securing relief to the litigant."

17. As stated by us hereinabove, the position has not been improved till today. We strongly feel that there should not be unreasonable delay in execution of a decree because if the decree holder is unable to enjoy the fruits of his success by getting the decree executed, the entire effort of successful litigant would be in vain.

18. We are sure that the Executing Court will do the needful at an early date so as to see that the long drawn litigation which was decided in favour of the appellant is finally concluded and the appellant-plaintiff gets effective justice.

19. The appeal is allowed with no order as to costs.

R.P. Appeal allowed.

KHAIRUDDIN & ORS.

v

STATE OF WEST BENGAL

(Criminal Appeal No. 2036 of 2009)

MAY 7, 2013

[T.S. THAKUR AND GYAN SUDHA MISRA, JJ.]

PENAL CODE,1860

ss. 302/149,148 and 323/149 - Death of two persons and injuries to others as a result of attack by accused persons - Held: Conviction of four of the appellants who have been named in FIR and attributed specific role and the fifth appellant who though not named in FIR but attributed specific role and also stated in his statement u/s.313 about his presence at the place of occurrence and participation, upheld - Remaining appellants acquitted giving them benefit of doubt - Code of Criminal Procedure,1973 -s.313.

CONSTITUTION OF INDIA,1950:

Art.136 - Scope of - Held: The width and plenitude of powers available under Art.136 would permit a reappraisal at the apex stage in cases of manifest injuries.

Twenty six persons including 16 appellants were prosecuted for murder of two persons and causing injuries to others. The prosecution case was that there was dispute between the complanant's side and the accused-appellants over the land which was in cultivatory possession of the complainant party. On the day of the incident at about 10.00 a.m, when PW1 and others were working in the land in dispute, twenty four named accused and some others came there armed with bows and arrows, knives, daggers, lathis etc. and attacked the complainant party causing death of two

persons and injuries to others. The trial court convicted 21 accused u/ss.302/149, 148 and 323/149 and sentenced each of them to imprisonment for life. The High Court affirmed the conviction and sentence. Appellant no.11 died pending appeal.

It was contended for the appellants that out of sixteen appellants found guilty, only five were named in FIR and attributed specific roles and the remaining were not named in the FIR or, if named, no specific role was attributed to them in the evidence adduced at the trial; and that there were several contradictions in the deposition of prosecution witnesses as to the genesis of the incident and actual sequence of events which resulted in the death of two persons who participated in the incident. It was submitted that in the circumstances, the entire prosecution case was rendered suspect entitling the appellants to an acquittal

Allowing the appeal in part, the Court

HELD: 1.1. It is trite that appreciation of evidence is essentially the duty of the trial court, and the first appellate court. But in cases, where, the Courts below are shown to have faltered and ignored material aspects resulting in miscarriage of justice, this Court can and has interfered to grant relief. That is because even when this Court may not be an ordinary court of appeal, the width and the plenitude of the powers available to it under Art.136 would permit a reappraisal even at the apex stage in cases of manifest injustice. [para 9] [487-A-C]

Radha Mohan Singh v. State of U.P. **2006 (1) SCR 519 = (2006) 2 SCC 450,** *Bhagwan Singh v. State of Rajasthan* **(1976) 1 SCC 15,** *Kirpal Singh v. State of Uttar Pradesh* **1964 SCR 992 = AIR 1965 SC 712 - relied on.**

2.1. The evidence adduced at the trial comprising the

depositions of PW-1 PW-4 PW-5, PW-6 and PW-17, attributed overt acts of assault to only five of the appellants namely appellants nos. 1,3,4,9 and 11. Appellant No.11 expired during the pendency of the appeal. These appellants were not only named in the FIR but were in specific terms named even at the trial by the witnesses examined by the prosecution, some of whom were themselves injured in the incident, thereby, proving their presence on the spot beyond any doubt. The courts below have also appreciated their depositions in the right perspective and rightly held that the presence and participation of the five appellants in the incident was established by the prosecution beyond any reasonable doubt. To that extent, therefore, there is no reason to interfere with the findings recorded by the trial court and affirmed by the High Court except recording that appellant no. 11 has died pending appeal and his appeal stands abated. [para 10] [487-E-H; 488-A-B]

2.2. None of the appellants nos. 8, 12 and 16, admittedly, was named in the FIR, which was lodged by PW-1 who was present on the spot and claims to have witnessed the occurrence. Absence of the names of these three appellants from the FIR which gave details of the incident and named several others who were allegedly participating in the occurrence assumes importance and would require a cautious approach towards the evidence. That is because omission of the names of those who are alleged to have participated in the commission of the crime would be a significant circumstance which cannot be lightly ignored. Possible false implication by subsequent deliberations and consultations to cast the net wider and accuse even those who may not have been actually present on the spot, cannot be ruled out. No explanation is in any case coming forth from the witnesses for the omission of the names of these accused-appellants. [para 12] [489-B-E]

2.3. However, the statement of appellant no. 16 u/s 313 CrPC shows that he was present on the spot at the time of the occurrence according to his own admission. Not only that, he had according to his own statement, participated in the incident and even assaulted one of the deceased before fleeing from the spot, That the statement of an accused made u/s 313 Cr.P.C. can be taken into consideration is not in dispute. [para 13] [489-H; 490-A]

Sanatan Naskar and Anr. v. State of West Bengal **(2010) 8 SCC 249;** *Ashok Kumar v. State of Haryana* **2010 (7) SCR 1119 = (2010) 12 SCC 350;** *Brajendra Singh v. State of Madhya Pradesh* **2012(3) SCR 599 = (2012) 4 SCC 289 - referred to**

2.4. PW-4 has in his deposition specifically stated that appellant no. 16 was one of those who had assaulted deceased-'D'. Similarly, the injured witness, PW-5, PW-6 and PW-7 have also implicated appellant no. 16 stating that one of the deceased was assaulted by PW-16 and others. Thus, it is evident that presence of appellant no.16 on the spot and participation in the commission of the offence is proved by the evidence led by the prosecution and supported by his own statement recorded u/s 313 Cr.P.C. That is not, however, true about the remaining two appellants, namely, appellants nos. 8 and 12, who were neither named in the FIR nor is there any cogent evidence to suggest their complicity or participation in the commission of the offence, and they are also entitled to the benefit of doubt. [para 15-16] [491-G-H; 492-C-E]

2.5. Appellants no. 2,5,6,7,10,13 and 15 have no doubt been named in the FIR but, there is no evidence showing that they were either present on the spot or participated in the occurrence. The depositions of the eye-witnesses,

4. M/s. Newton Engineering and Chem, Ltd. v. Indian Oil Corporation Ltd. & Ors.: [Civil Appeal No. 7587 of 2012; Decided on 18.10.2012.

do not incriminate these appellants. At any rate, in the absence of any cogent and reliable evidence proving that the said appellants were either present on the spot or that they had committed any overt act that could show that they shared the common object of the unlawful assembly comprising those who had come to the spot armed with weapons and actually carried out the assault, it is not possible to support their conviction. There is, it is well-known, a general tendency in such incidents to implicate as many members of the opposite party as is possible. That the villagers in the vicinity of the disputed land were divided into factions is evident from the depositions of the witnesses examined at the trial. It is not, therefore, unnatural that a very large number of persons were named in the FIR but when it came to giving them a role in the incident, the prosecution witnesses fell short of words. [para 11] [488-C-G]

2.6. It is true that the commission of an overt act may not always be necessary to prove that a member of an unlawful assembly shared the common object of the assembly, but then, the minimum that the prosecution must prove is that the persons concerned were members of the unlawful assembly. There is no evidence worthy of credence to prove that requirement in the case at hand. Therefore, appellants nos. 2,5,6,7,10,13 and 15 deserve the benefit of doubt in the facts and circumstances of the case. [para 11] [488-G-H; 489-A]

2.7. In the result, conviction of appellants nos. 1, 3, 4, 9 and 16 is affirmed. The rest of the appellants are given the benefit of doubt and acquitted of the charges framed against them.[para 17] [492-E-F]

Case Law Reference:

2006 (1) SCR 519	**relied on**	**para 9**

(1976) 1 SCC 15	**relied on**	**para 9**
1964 SCR 992	**relied on**	**para 9**
(2010) 8 SCC 249	**referred to**	**para 13**
2010 (7) SCR 1119	**referred to**	**para 14**
2012 (3) SCR 599	**referred to**	**para 14**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2036 of 2009.

From the Judgment & Order dated 24.12.2008 of the High Court of Calcutta in Criminal Appeal No. 291 of 1990.

Sudhir Naagar, Chetan Chawla, for the Appellants.

Mohit Paul, Shagun Matta, Saakar Sardana, Anip Sachthey for the Respondent.

The Judgment of the Court was delivered by

T.S. THAKUR, J. 1. This appeal by special leave arises out a judgement and order dated 24th December, 2008, passed by the High Court of Calcutta, whereby Criminal Appeal No.291 of 1990 filed by the appellants has been dismissed, in the process confirming the conviction and sentence of imprisonment for life awarded to them by the trial Court for offences punishable under Section 302 read with Section 149 of the IPC, and Sections 148 and 323/149 of the IPC. A fine of Rs.2000/- was also imposed on each one of the appellants, in default of payment whereof the appellants were sentenced to undergo further imprisonment for a period of one year. Half of the amount realised towards fine was directed to be paid to the legal heirs of the deceased in equal share.

2. Facts giving rise to the commission of the offence and the registration of the case alleged against the appellants, as also their eventual conviction and sentence have been stated at length by the trial Court in its judgment and recapitulated even by the High Court in the order under appeal before us.

We need not, therefore, recount the same over again except to the extent it is absolutely necessary to do so for the disposal of this appeal.

3. The prosecution case precisely is that one Akalu was in cultivating possession of a parcel of agricultural land admeasuring 21 bighas situated in village Fatehpur, Mouza Lakhipur. Akalu, it appears, was helped by his tillers colloquially called adhiars. Some of the appellants claim to be the pattadars of the said parcel of land. A dispute regarding possession and the right to cultivate had embittered the relations between the appellant-pattadars on the one hand and Akalu and his adhiars on the other. The prosecution story is that on 3rd November, 1978, at about 10.00 a.m., Akalu, along with Budhu Md. (PW-1) and deceased Dabaru and Imamuddin, accompanied by a few others, namely, Jharu, Monglu, Bholu and Lal Khan were working in the disputed parcel of land when twenty four named persons including the appellants and some unnamed persons came to the spot, armed with sharp weapons like bows and arrows, knives, daggers, khapa-ballams and lathis. An altercation ensued between the two parties when the appellants tried to obstruct Akalu and his men from ploughing the land in question. The altercation escalated into a murderous assault by the appellants upon the persons in cultivation of the land who sustained grievous injuries with sharp edged weapons which the appellants' party was carrying with them. While Dabaru succumbed to his wounds and died on the spot, deceased-Imamuddin breathed his last within an hour thereafter. Other members of the complainant party also sustained several injuries on their bodies.

4. A First Information Report about the incident was lodged by Budhu Md. in which several persons including some of the appellants were named as the assailants. It was also alleged that apart from the persons named in the First Information Report, there were 15-16 unnamed persons who participated in the assault. C.R. Case No.1352/78, corresponding to Case

No.4 dated 3rd November, 1978 was accordingly registered by the police at Chopra P.S. and the investigation started, in the course whereof the investigating officer conducted an inquest and got the dead bodies of the deceased subjected to post-mortem examination, apart from making recoveries of the weapons of offence used by the assailants. A chargesheet was eventually filed by the police before the committal Court against as many as 26 persons including the appellants herein. The case was, in due course, committed to the Court of Additional Sessions Judge, Islampur, before whom the appellants pleaded not guilty and claimed a trial.

5. At the trial, the prosecution examined as many as 19 witnesses in support of its case. By its judgment dated 30th May, 1990, the trial Court found 21 out of 26 accused persons guilty of the offence of murder punishable under Section 302 read with Section 149 IPC, and by its order dated 31st May, 1990, sentenced each one of them to undergo imprisonment for life besides payment of fine as already indicated earlier. The trial Court also found the said 21 persons including the appellants herein guilty of commission of the offences punishable under Sections 148 and 323 read with Section 149 IPC but did not separately award any sentence for those offences in view of the fact that the accused had already been sentenced to undergo life imprisonment for the main offence punishable under Section 302/149 IPC. Out of the remaining five accused persons the trial Court acquitted Yusuf Amin, Jabbar and Abdul Rahman giving them the benefit of doubt, while the other two having died during the pendency of the trial, the case against them was held to have abated.

6. Aggrieved by the judgement and order pronounced by the trial Court, the convicts including the appellants filed Criminal Appeal No.291 of 1990 before the High Court of Judicature at Calcutta. During the pendency of the said appeal, five of the convicts passed away. The appeal qua them was accordingly held to have abated. The High Court heard the appeal on merits qua the remaining sixteen convicts/appellants before it

and upon a reappraisal of the evidence came to the conclusion that the appellants had been rightly convicted and sentenced by the trial Court to undergo imprisonment for life as the prosecution had proved the charges framed against them beyond a reasonable doubt. The present appeal by special leave assails the correctness of the said judgment and order of the High Court.

7. Learned counsel for the appellants contended that the Courts below had failed to properly appreciate certain glaring features of the prosecution case that cast a cloud over the truthfulness of the prosecution story and, thereby, resulted in gross miscarriage of justice. In particular, it was urged that out of sixteen appellants found guilty and condemned to undergo imprisonment for life, only five were named in the FIR and attributed specific roles in the incident that led to the killing of the deceased Dabaru and Imamuddin. The remaining eleven appellants were not either named in the FIR or if named no specific role was attributed to them in the evidence that was adduced at the trial. Three of the appellants viz Monglu, Hafijuddin and Motilal Motin were also not named in the FIR and yet given a role in the oral evidence adduced at the trial. This, according to the learned counsel, rendered the entire prosecution case suspect entitling the appellants to an acquittal. It was further contended that there were several contradictions in the depositions of the prosecution witnesses as to the genesis of the incident and the actual sequence of events that resulted in the death of two of those who were present and participated in the same. The appellants were on that count also entitled to the benefit of doubt arising from the deficiencies in the prosecution case, argued the learned counsel.

8. Mr. Anip Sachthey, learned counsel for the respondent, per contra, contended that the appreciation of evidence by the two Courts below was proper and did not, therefore, call for any interference, especially, when there was no demonstrable miscarriage of justice in the appraisal of the evidence by the Courts below.

9. We have given our anxious consideration to the submissions made at the Bar who have taken us through the evidence led at the trial. It is trite that appreciation of evidence is essentially the duty of the trial Court, and the first Appellate Court. But in cases, where, the Courts below are shown to have faltered and ignored material aspects resulting in miscarriage of justice, this Court can and has interfered to grant relief. That is because even when this Court may not be an ordinary Court of appeal, the width and the plentitude of the powers available to it under Article 136 would permit a reappraisal even at the apex stage in cases of manifest injustice. The legal position as to the powers of this Court under Article 136 of the Constitution is well-settled by pronouncements of this Court to which a detailed reference is in our view unnecessary. Reference can all the same be made to the decisions of this Court in *Radha Mohan Singh v. State of U.P.* (2006) 2 SCC 450, *Bhagwan Singh v. State of Rajasthan* (1976) 1 SCC 15, *Kirpal Singh v. State of Uttar Pradesh* AIR 1965 SC 712 etc.

10. Coming to the case at hand, we find that the First Information Report named as many as twenty four persons who, according to the first informant, were responsible for the commission of several offences including murder of the deceased Dabaru and Imamuddin. The evidence adduced at the trial comprising the depositions of PW-1 Budhu, PW-4 Samsul, PW-5 Monglu Mohd., PW-6 Lal Khan and PW-17 Bholu Mohd., attributed overt acts of assault to only five of the appellants viz. Khairuddin, Nazrul Haq, Nasir Md. Munshi, Bhoka @ Jarifuddin and Iswahaque only. Appellant No.11-Ishwahaque expired during the pendency of this appeal. The depositions of the above witnesses have been carefully perused by us with the assistance of learned counsel for the parties. We are of the opinion that the appellants above-mentioned were not only named in the FIR but were in specific terms named even at the trial by the witnesses examined by the prosecution, some of whom were themselves injured in the incident, thereby, proving their presence on the spot beyond any

doubt. The Courts below have also appreciated their depositions in the right perspective and in our opinion rightly held that the presence and participation of the above-mentioned five appellants in the incident was established by the prosecution beyond any reasonable doubt. To that extent, therefore, we see no reason to interfere with the findings recorded by the trial Court and affirmed by the High Court.

11. That leaves us with appellants Rahimuddin, Idrish, Nurul, Ibrahim, Khoka Md., Pasir @ Bishu, Kanchu and Asir @ Asiruddin. These appellants have no doubt been named in the FIR but, as rightly pointed out by learned counsel for the appellants, there is no evidence showing that they were either present on the spot or participated in the occurrence. The depositions of the eye-witnesses, reliance upon which was placed by Mr. Sachthey do not incriminate these appellants. At any rate, in the absence of any cogent and reliable evidence proving that the above-mentioned appellants were either present on the spot or that they had committed any overt act that could show that they shared the common object of the unlawful assembly comprising those who had come to the spot armed with weapons and actually carried out the assault, it is not possible to support their conviction. There is, it is well-known, a general tendency in incidents of the kind we are dealing with in this case, to implicate as many members of the opposite party as is possible. That the villagers in the vicinity of the disputed land were divided into factions is evident from the depositions of the witnesses examined at the trial. It is not, therefore, unnatural that a very large number of persons were named in the FIR but when it came to giving them a role in the incident, the prosecution witnesses fell short of words. It is true that the commission of an overt act may not always be necessary to prove that a member of an unlawful assembly shared the common object of the assembly, but then, the minimum that the prosecution must prove is that the persons concerned were members of the unlawful assembly. There is no evidence worthy of credence to prove that requirement in

the case at hand. We are, therefore, inclined to give to the appellants named above the benefit of doubt which in our view they deserve in the facts and circumstances of the case.

12. That brings us to the cases of three other appellants viz. Monglu, Hafijuddin and Motilal Motin. None of them admittedly was named in the FIR, which was lodged by PW-1 Budhu Md. who was present on the spot and claims to have witnessed the occurrence. Absence of the names of these three appellants from the FIR which gave details of the incident and named several others who were allegedly participating in the occurrence assumes importance and would require a cautious approach towards the evidence. That is because omission of the names of those who are alleged to have participated in the commission of the crime would be a significant circumstance which cannot be lightly ignored. Possible false implication by subsequent deliberations and consultations to cast the net wider and accuse even those who may not have been actually present on the spot, cannot be ruled out. No explanation is in any case coming forth from the witnesses for the omission of the names of these accused-appellants. Having said that, we cannot ignore the fact that out of these three appellants, appellant Monglu Md. has in his statement under Section 313 answered question No.14, as under :

> *"I am also a Pattadar. A few days (4/5) before I had sown 'Tisi' in my lands. On the day of the occurrence I heard that the gang of Akalu was ploughing our land. Then Isa Haque, myself, Hafij, Kusrat and Tamij went. We asked them not to do so. There began fighting. I was assaulted on my finger. Darbaru, Betu and Sudhu were ploughing. Kusrat (my elder brother) had a great fighting with Darbaru. Then I also hit Darbaru. Then I fled away."*

13. The above, shows that appellant Monglu Md. was present on the spot at the time of the occurrence according to his own admission. Not only that, he had according to his own statement, participated in the incident and even assaulted the

deceased Dabaru, before fleeing from the spot, That the statement of an accused made under Section 313 Cr.P.C. can be taken into consideration is not in dispute; not only because of what Section 313 (4) of the Code provides but also because of the law laid down by this court in several pronouncements. We may in this regard refer to the decision of this Court in *Sanatan Naskar and Anr.. v. State of West Bengal* (2010) 8 SCC 249, where this Court observed:

> *"21. The answers by an accused under Section 313 of the Cr.PC are of relevance for finding out the truth and examining the veracity of the case of the prosecution. …*
>
> *22. As already noticed, the object of recording the statement of the accused under Section 313 of the Cr.PC is to put all incriminating evidence to the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. … Once such a statement is recorded, the next question that has to be considered by the Court is to what extent and consequences such statement can be used during the enquiry and the trial. Over the period of time, the Courts have explained this concept and now it has attained, more or less, certainty in the field of criminal jurisprudence.*
>
> *23. The statement of the accused can be used to test the veracity of the exculpatory nature of the admission, if any, made by the accused. It can be taken into consideration in any enquiry or trial but still it is not strictly evidence in the case. The provisions of Section 313(4) of Cr.PC explicitly provides that the answers given by the accused may be taken into consideration in such enquiry or trial and put in evidence for or against the accused in any other enquiry into or trial for, any other offence for which such answers may tend to show he has committed. In*

other words, the use is permissible as per the provisions of the Code but has its own limitations. The Courts may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution, however, such statements made under this Section should not be considered in isolation but in conjunction with evidence adduced by the prosecution.

24. Another important caution that Courts have declared in the pronouncements is that conviction of the accused cannot be based merely on the statement made under Section 313 of the Cr.PC as it cannot be regarded as a substantive piece of evidence....."

14. To the same effect is the decision of this Court in *Ashok Kumar v. State of Haryana* (2010) 12 SCC 350. Reference may also be made to the decision of this Court in *Brajendra Singh v. State of Madhya Pradesh* (2012) 4 SCC 289 where this Court said :

"15. It is a settled principal of law that the statement of an accused under section 313 of Cr.P.C can be used as evidence against the accused, insofar as it supports the case of the prosecution. Equally true is that the statement under section 313 of Cr.P.C simpliciter normally cannot be made the basis for conviction of the accused. But where the statement of the accused under section 313 Cr.P.C is in line with the case of the prosecution, then certainly the heavy onus of proof on the prosecution is, to some extent, reduced."

15. Time now to examine whether Monglu's participation in the crime is proved by the prosecution evidence adduced at the trial. PW-4 Samsul has in his deposition specifically stated that Monglu was one of those who had assaulted deceased-Darbaru. Similarly, PW-5 Monglu Md., an injured witness, has also implicated Appellant no.16, and stated "Darbaru was assaulted by Yusuf, Bhaka, Monglu and Jabbar.

I also stated to the I.O. the fact regarding assault of Darbaru…" PW-6 Lal Khan is yet another injured witness who incriminates Appellant no.16-Monglu. He stated, "At first Jabbar, Yusuf Amin, Monglu assaulted Darbaru with a dagger, ballam etc. who sustained multiple injuries on his person and succumbed to such injuries…" PW-17 Bholu Md. is also an injured witness who corroborated the version given by the other eye-witnesses and stated "Sabdul, Khairuddin, Ishahaque, Nasiruddin, Monglu and others assaulted Darbaru severely."

16. It is evident from the above that the Appellant no.16-Monglu's presence on the spot and participation in the commission of the offence is proved by the evidence led by the prosecution and supported by his own statement recorded under Section 313 Cr.P.C. That is not, however, true about the remaining two appellants namely, Hafijuddin and Motilal who were neither named in the FIR nor is there any cogent evidence to suggest their complicity or participation in the commission of the offence. In the circumstances, therefore, while appeal filed by Monglu shall have to be dismissed, that filed by Hafijuddin and Motilal shall have to be allowed giving to the said two appellants also the benefit of doubt.

17. In the result, we dismiss this appeal qua Appellants No. 1-Khairuddin, No.3-Nazrul Haq, No.4-Nasir Md. Munshi, No.9-Bhoka @ Jarifuddin and No.16-Monglu. The appeal in so far as appellant No.11-Ishwahaque is concerned, shall stand dismissed as abated. The rest of the appellants are given the benefit of doubt and acquitted of the charges framed against them. The appeal qua them is allowed and the judgments and orders of the Courts below modified to that extent. The appellants No.2- Rahimuddin, No.5-Idrish, No.6-Nurul, No.7-Ibrahim, No.8- Motilal Motin, No.10 Asir @ Asiruddin, No.12-Hafijuddin, No.13-Khoka Md., No.14-Pasir @ Bishu, and No.15-Kanchu shall be released from custody forthwith, unless otherwise required in connection with any other case.

R.P. Appeal partly allowed.

NIMMAGADDA PRASAD
v.
CENTRAL BUREAU OF INVESTIGATION
(Criminal Appeal No. 728 of 2013)

MAY 9, 2013.

[P. SATHASIVAM AND M.Y. EQBAL, JJ.]

CODE OF CRIMINAL PROCEDURE, 1973:

ss.439 and 173(8) - Bail - Economic offences - Charge-sheets filed against appellant and others for offences punishable u/ss 420, 409 and 477-A IPC and s.13(2) read with s. 13(1)(c) of Prevention of Corruption Act - Further investigation u/s 173(8) pending - Held: Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail -Economic offences having deep rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting economy of the country as a whole and thereby posing serious threat to financial health of the country - In the status report, it is also claimed that CBI has to examine various persons from different Government Departments, Banks/ NBFCs, private companies/individuals involved in diversion/ misappropriation of funds, employees of the company of which the appellant was the director, its holding company and their group companies to ascertain the facts related to the case - Taking note of all these aspects, the Court is of the opinion that appellant cannot be released at this stage - However, CBI is directed to complete the investigation and file charge sheet(s) as early as possible - Thereafter, appellant is free to renew his prayer for bail before trial court.

Pursuant to the order of the High Court in a writ petition, a case for commission of offences punishable u/ss 420, 409 and 477-A IPC and 13(2) read with s.13(1)(c)

of the Prevention of Corruption Act, 1988 was registered by CBI against a Member of Parliament (A-1) and 13 others. The appellant was arraigned as A-3 in the said case. After the charge-sheet was filed, the appellant was arrested on 15.5.2012. The case related to amassing illegal wealth, conducting of media business with ill gotton money, allotment of thousands acres of lands with norms relaxed, handling the money through hawala channels, obtaining big loans violating bank guidelines, grant of mining leases on extraneous considerations, payment of illegal gratification etc. Four charge-sheets were filed and investigation was continuing u/s 173(8) CrPC in connection with certain related matters. Earlier prayers by appellant for bail were rejected with liberty to renew the prayer on completion of investigation. On 16.11.2012, the appellant filed two petitions before the Special Judge for CBI - one seeking default /statutory bail and the other seeking regular bail in CC No. 8 of 2012. Both the applications were rejected. The criminal petition before the High Court for grant of bail was also dismissed.

Dismissing the appeal, the Court

HELD: 1.1. It has been pointed out on behalf of the CBI that after filing of the charge sheet on 13.08.2012, in view of further materials, the CBI started investigation, which is permissible u/s 173(8) of the Code to look into the aspects of the involvement of the appellant in the company of which he was the Director and its group companies. In view of the same, undoubtedly, the investigating agency may require further time to collect all the materials, particularly, the nexus of the appellant with those concerns and the appellant being the beneficiary of the quantum of the amount secured. [para 25] [504-G-H; 505-A]

1.2. From the status report, it is brought to the notice

of the Court that during the year 2008-09, the Government of Andhra Pradesh alienated 8,844 acres of land in favour a newly incorporated company, with more exemptions/ subsidies, which is termed as a holding company of the company of which the appellant was a director. In the status report, it is also claimed that the CBI has to examine various persons from different Government Departments, Banks/NBFCs, private companies/ individuals involved in diversion/misappropriation of funds, employees of the company of which the appellant is the director, its holding company and their group companies to ascertain the facts related to the case. [para 18 and 20] [501-H; 502-A; 503-B-C]

1.3. The trial Judge was of the view that if the appellant is enlarged on bail, he will influence the witnesses, since some of them are on his pay rolls, and thereby investigation will suffer a set back. Even if it is accepted that the statements have been recorded from those employees, the matter is not going to end with their statements. [para 23] [504-C-D]

1.4. Considering all these developments, taking note of various details furnished in the Status Report dated 30.04.2013, this Court is of the view that though the appellant is in custody for nearly 11 months, at the same time, the claim of the premier investigating agency cannot be underestimated. In order to establish its case, it is the claim of the CBI that documents have to be obtained from different banks, other private companies/individuals, who facilitated the diversion of funds. In addition to the same, public servants involved in processing of government files have to be examined apart from private persons/companies. CBI has assured this Court that further investigation is being carried out at a faster pace and is expected to be completed within six months. [para 25] [505-B-E]

1.5. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt. [para 27] [506-D-F]

1.6. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. Economic offences having deep rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. [para 28] [506-D-H]

State of Gujarat vs. Mohanlal Jitamalji Porwal and Anr. **1987 (2) SCR 677 = (1987) 2 SCC 364 - referred to.**

1.7. This Court is, therefore, of the opinion that the appellant cannot be released at this stage. However, the CBI is directed to complete the investigation and file charge sheet(s) as early as possible. Thereafter, the appellant is free to renew his prayer for bail before the trial court. [para 29] [507-A-B]

Case Law Reference

1987 (2) SCR 677 referred to para 26

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 728 of 2013.

From the Judgment & Order dated 08.10.2012 of the High Court of A.P. at Hyderabad in CRLP No. 6732 of 2012.

H.N. Salve, Parag P. Tripathi, Mukul Gupta, Ashok Bhan, Gopal Sankaranarayan, Rajeshekar Rao, Nikhilesh Kumar, Robit Bhat, Ranjeeta R. Harsha Vardhan Reddy, Naved, Arup Banerjee, Anjali Chauhan, D.L. Chidananda, B.V. Balaram Das for the appearing parties.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. Leave granted.

2. This appeal is directed against the final judgment and order dated 08.10.2012 passed by the High Court of Judicature of Andhra Pradesh at Hyderabad in Criminal Petition No. 6732 of 2012 in R.C. 19(A)/2011-CBI-Hyderabad, whereby the High Court dismissed the petition filed by the appellant herein for grant of bail.

3. The only question posed for consideration is whether the appellant-herein has made out a case for bail.

Brief facts:

4. On the orders of the High Court of Andhra Pradesh in Writ Petition Nos. 794, 6604 and 6979 of 2011 dated 10.08.2011, the Central Bureau of Investigation (in short "the CBI"), Hyderabad, registered a case being R.C. No. 19(A)/ 2011-CBI-Hyderabad dated 17.08.2011 under Section 120B read with Sections 420, 409 and 477-A of the Indian Penal Code, 1860 (for short 'IPC') and Section 13(2) read with

Section 13(1)(c) and (d) of the Prevention of Corruption Act, 1988 (in short "the PC Act") against Y.S. Jagan Mohan Reddy (A-1), Member of Parliament and 73 others.

5. The appellant-Nimmagadda Prasad was named as an accused at Sl. No. 12 in the FIR dated 17.08.2011 (after the chargesheet was framed, he was arrayed as A-3 and hereinafter, he will be referred to as A-3). It is further seen that during the course of investigation, the appellant was arrested on 15.05.2012 for his involvement and complicity in the case and presently, he is in judicial custody.

6. After filing two successive bail applications before the trial Court which ended in dismissal, the appellant moved the High Court for enlarging him on bail on 06.09.2012 by filing Criminal Petition No. 6732 of 2012. The High Court, taking note of serious nature of the offence and having regard to personal and financial clout of the appellant (A-3) and finding that it cannot be ruled out that witnesses cannot be influenced by A-3 in case he is released on bail at this stage and also taking note of the submission of the Special Public Prosecutor that the investigation of the case is still continuing even after filing of the charge sheet(s), by impugned order dated 08.10.2012, dismissed his bail application.

7. Heard Mr. Harish N. Salve, learned senior counsel for the appellant and Mr. Ashok Bhan, learned senior counsel for the respondent-CBI.

Contentions:

8. After taking us through the entire materials commencing from the filing of FIR dated 17.08.2011, contents of charge sheet dated 13.08.2012, orders of the trial Court rejecting the bail applications twice, the stand taken by the CBI before the trial Court and the High Court, Mr. Salve, learned senior counsel, vehemently contended that the appellant is entitled to an order of bail from this Court. He also submitted that in view

of the inconsistent stand taken by the CBI at every stage and taking note of the fact that the appellant is in jail since 15.05.2012, by imposing appropriate conditions, the appellant may be released on bail.

9. Mr. Ashok Bhan, learned senior counsel for the CBI, by placing reliance on all the materials filed by the prosecution pointed out that the appellant, along with others, is involved in a serious economic offence. He also submitted that the appellant (A-3) himself is a beneficiary of land worth several crores of rupees and properties in association with Jagan Mohan Reddy (A-1), who enriched himself for more than 40,000 crores by the influence of his father who was the then Chief Minister of Andhra Pradesh. He also submitted that even after filing of the charge sheet on 13.08.2012, in view of further investigation under Section 173(8) of the Code of Criminal Procedure, 1973 (in short "the Code"), the CBI is looking into all the aspects of investment of the appellant in M/s Indus Projects and its group of companies, has collected a number of files from different departments of the Government of Andhra Pradesh, Banks/NBFCs and other private companies/ individuals. He finally concluded that in view of the Status Report dated 30.04.2013 filed by the DIG of Police, CBI, Hyderabad, stating that a further period of 4-6 months is required for completing the investigation under Section 173(8) of the Code, it would not be proper to release him on bail at this juncture.

10. We have carefully considered the rival submissions and perused all the relevant materials relied on by both the sides.

Discussion:

11. In the Status Report dated 30.04.2013, it is stated that the allegations in the FIR against the appellant is that the Government of Andhra Pradesh awarded VANPIC (Vodarevu and Nizampatnam Port Industrial Corridor) Project to the

present appellant (A-3) and allotted more than 15,000 acres of land in Prakasam and Guntur Districts to the companies promoted by the appellant in violation of all the laws, rules and norms and granted several concessions. As a quid pro quo, the appellant invested in the following companies, viz., M/s Carmel Asia Holdings Pvt. Ltd., M/s Bharathi Cements, M/s Jagathi Publications Pvt. Ltd., M/s Silicon Builders, M/s Sandur Power Company etc. belonging to Y.S. Jagan Mohan Reddy, s/o the then Chief Minister, late Dr. Y.S. Rajasekhara Reddy.

12. It is also brought to our notice that the investigation into the above said allegations revealed that during the period between 2006 and 2009, the Government of Andhra Pradesh, led by the then Chief Minister late Dr. Y.S. Rajasekhara Reddy extended many undue favours to the appellant by abusing his official position and thereby, an extent of 18878 acres was allotted in his favour, in return, A-3 paid illegal gratifications amounting to Rs. 854.50 crores to Y.S. Jagan Mohan Reddy (A-1) and his group of companies for exercising personal influence over his father, the then Chief Minister of Andhra Pradesh. It is the claim of the CBI that illegal gratifications were paid in the guise of investments/share application money to give them corporate colour in order to escape the criminal liability.

13. It is also the claim of the prosecution that the appellant acted as a conduit to Y.S. Jagan Mohan Reddy (A-1) to channelize the bribe amounts paid by other individuals/ companies as a quid pro quo for the undue benefits received by him from the Government of Andhra Pradesh led by late Dr. Y.S. Rajasekhara Reddy.

14. It is also pointed out that based on the available oral and documentary evidence, a charge sheet was filed against the appellant and other accused (A-1 to A-14) on 13.08.2012 before the Court of Principal Special Judge for CBI cases, Hyderabad which was numbered as CC No. 14 of 2012. Thereafter, according to the CBI, based on various materials,

further investigation under Section 173(8) of the Code is still continuing in respect of other aspects of the case.

15. It is highlighted by the CBI that during further investigation in CC No. 14 of 2012, the role of A.J. Jagannathan and Dr. Khater Massaad, who represented on behalf of the Government of Ras Al Khaima (RAK) - UAE has to be ascertained in view of various dubious transactions revealed. It is the stand of the CBI that A.J. Jagannathan, alleged Advisor to the Government of RAK-UAE had been a Director on the Board of Directors of M/s Indus Projects Ltd., along with the present appellant. According to the CBI, the further investigation has revealed that Rs. 140 crores, out of Rs. 525 crores, the money of the appellant flown from Mauritius based companies into India under Automatic Route have been diverted and invested in M/s Jagathi Publications Pvt. Ltd. and M/s Bharathi Cements Corporation Pvt. Ltd., hence, the source of this money ought to be ascertained and investigated which is likely to take some time.

16. According to the CBI, the appellant (A-3) had been a Director in M/s Indus Projects Ltd., which was awarded many projects/contracts by the Government of Andhra Pradesh during the period between 2004 and 2009.

17. The CBI has also projected the order dated 05.10.2012 passed by this Court in Special Leave Petition (Criminal) No. 5902 of 2012 filed by Y.S. Jagan Mohan Reddy (A-1), directing A-1 to apply for bail only after completion of the investigation in seven issues including Indus Projects Ltd. and Lepakshi Knowledge Hub Private Ltd. Mr. Ashok Bhan, by drawing our attention to the said order submitted that those directions are also applicable to Nimmagadda Prasad (A-3) - appellant herein, who was also a Director in M/s Indus Projects Ltd. which is under active investigation.

18. From the status report, it is also brought to our notice that during the year 2008-09, the Government of Andhra

Pradesh alienated 8,844 acres of land in Ananthapur District in favour of M/s Lepakshi Knowledge Hub Private Limited, a newly incorporated company, with more exemptions/subsidies at a cost ranging between Rs. 50,000 to Rs. 1,75,000 per acre. It is also highlighted that files were processed despite serious objections by the Finance Department about (i) the financial implications of the proposed concessions proposed on the State exchequer, (ii) company's financial standing; lack of credibility in terms of their past experience of the fledging company incorporated in July, 2008; and (iii) absence of safety clauses in the proposed Memorandum of Agreement (MoA) to resume land in case of violation/failure to implement the project. However, the Government of Andhra Pradesh led by late Dr. Y.S. Rajasekhara Reddy went ahead and entered into the MoA and alienated the said land by passing various Government Orders between 22.09.2008 and 21.02.2009.

19. In the status report, it is also mentioned that M/s Indus Projects Limited suddenly came into picture claiming to be the holding company of M/s Lepakshi Knowledge Hub Private Limited and availed loans amounting to Rs. 790 crores from different banks/NBFCs by mortgaging about 4,397 acres of land. It is the assertion of the prosecution that all the funds were misappropriated by M/s Indus Projects Ltd. for their real estate activities and other business needs. According to the CBI, so far, the investigation has revealed that at least Rs. 88 crores out of the above funds have come back to M/s Indus Projects Ltd. through hawala channels/fake work orders/forged RA bills. It is the grievance of the CBI that the investigation so far has revealed that after more than four and a half years, the project has failed to take off and no job has been generated so far. It is also the allegation of the CBI that the Banks/NBFCs adopted an average market value of Rs. 20 lakh per acre while disbursing loans to M/s Indus Projects Ltd. which were given to the company at a price ranging between Rs. 50,000 to Rs. 1,75,000 lakh per acre. According to the CBI, the value of 8,844 acres of land dishonestly alienated to a private company

would be around Rs. 1,768 crores approx. Though they secured loan documents from various banks, yet they are awaiting similar documents from Punjab National Bank, Bank of India, UCO Bank, Kotak Mahindra Bank and State Bank of India.

20. In the status report, it is also claimed that the CBI has to examine various persons from different Government Departments, Banks/NBFCs, private companies/individuals involved in diversion/misappropriation of funds, employees of M/s Indus Projects Ltd., M/s Lepakshi Knowledge Hub Pvt. Ltd., and their group companies to ascertain the facts related to the case.

21. In addition to the same, it is also highlighted that M/s Indus Projects Ltd., who did not fulfil the technical and financial criteria, submitted an application stating that they would develop the project through a consortium consisting of IDFC (Financial Member) and M/s Embassy Group (Technical Member) and would form a Special Purpose Vehicle (SPV). In this regard, it is pointed out that M/s Indus Techzone Pvt. Ltd., projected as SPV, is fully owned by M/s Indus Projects Ltd. While allotting 250 acres of prime land at Shamshabad, near new International Airport of Hyderabad, several exemptions such as stamp-duty and registration expenses, subsidized power, all external infrastructures up to the boundary of SEZ, tax exemptions/holiday were provided under ICT Policy and SEZ Act, 2005 justifying that the project would create 45,000 new jobs. In addition, land worth about Rs. 1 crore per acre was given at a price of Rs. 20 lakh per acre. It is further pointed out that the said project has to be completed within five years of allotment of land which ended in the year 2011-2012, however, except developing a skeleton structure of about 7.50 lakh SFT against 45 lakh SFT, M/s Indus Techzone Pvt. Ltd. has failed to develop the project and has not created any new employment so far.

22. It is also pointed out that M/s Indus Techzone Pvt. Ltd., availed Rs. 175 crores of loans by mortgaging about 75 acres

of land which is shown to have been spent for the development of project. The investigating agency is of the opinion that a major chunk of the funds was diverted/misappropriated by way of fake work orders/RA bills.

23. No doubt, Mr. Salve, learned senior counsel for the appellant pointed out the different stand of the CBI from court to court, he also commented upon the reasoning and the ultimate conclusion of the trial Judge, namely, the Principal Special Judge for CBI Cases, Hyderabad for rejecting the bail application of the appellant. It is true that after highlighting the stand taken by the prosecution as well as the right of the accused and taking note of the various aspects, the trial Judge was of the view that if the appellant is enlarged on bail, he will influence the witnesses, since some of them are on his pay rolls, and thereby investigation will suffer a set back. Even if it is accepted that the statements have been recorded from those employees, as rightly pointed out by the counsel for the CBI, the matter is not going to end with their statements.

24. Mr. Salve, after taking us through various documents/ correspondences from the Government of Ras Al Khaima submitted that in view of the contents of the same and the specific stand of the Government of Andhra Pradesh, there is no basis for the claim made by the CBI. Though we were taken through all those details, it is not proper for this Court to make a comment about the acceptability or otherwise at this juncture and those materials ought to be considered only at the trial.

25. As pointed out by Mr. Ashok Bhan, learned senior counsel for the CBI, after filing of the charge sheet on 13.08.2012, in view of further materials, the CBI started investigation which is permissible under Section 173(8) of the Code to look into the aspects of the involvement of the appellant in M/s Indus Projects Ltd. and its group companies, viz., M/s Lepakshi Knowledge Hub Private Ltd. as well as M/s Indus Techzone Private Limtied. In view of the same, undoubtedly, the investigating agency may require further time

to collect all the materials, particularly, the nexus of the appellant with those concerns and the appellant being the beneficiary of the quantum of the amount secured. In the course of the arguments, it is also brought to our notice by learned senior counsel for the CBI that a sitting Minister in-charge of the Ports had nexus with those transactions. Considering all these developments, taking note of various details furnished in the Status Report dated 30.04.2013, we are of the view that though the appellant is in custody for nearly 11 months, at the same time, the claim of the premier investigating agency cannot be underestimated. As pointed out by the CBI, if ultimately it is established, it is a grave economic offence of alienating prime lands to selected private companies/individuals under the garb of development using deceptive means resulting in wrongful ownership and control of material resources detrimental to the common good. Further, in order to establish all those events, it is the claim of the CBI that documents have to be obtained from different banks, other private companies/individuals, who facilitated the said diversion of funds. In addition to the same, public servants involved in processing of government files have to be examined apart from private persons/companies. A higher officer of the investigating agency, namely, DIG of Police, CBI assured this Court that further investigation is being carried out at a faster pace and is expected to be completed within six months.

26. Unfortunately, in the last few years, the country has been seeing an alarming rise in white-collar crimes, which has affected the fiber of the country's economic structure. Incontrovertibly, economic offences have serious repercussions on the development of the country as a whole. In *State of Gujarat vs. Mohanlal Jitamalji Porwal and Anr.* (1987) 2 SCC 364 this Court, while considering a request of the prosecution for adducing additional evidence, inter alia, observed as under:-

> "5.....The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest…."

27. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the Court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

28. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

29. Taking note of all these aspects, without expressing any opinion on the merits of the case and also with regard to the claim of the CBI and the defence, we are of the opinion that the appellant cannot be released at this stage, however, we direct the CBI to complete the investigation and file charge sheet(s) as early as possible preferably within a period of four months from today. Thereafter, the appellant is free to renew his prayer for bail before the trial Court and if any such petition is filed, the trial Court is free to consider the prayer for bail independently on its own merits without being influenced by dismissal of the present appeal.

30. With the above direction, the appeal is dismissed.

R.P. Appeal dismissed.

ARUN KUMAR AGRAWAL
v.
UNION OF INDIA & OTHERS
(Writ Petition (Civil) No. 69 of 2012)

MAY 09, 2013

[K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]

CONSTITUTION OF INDIA, 1950:

Art. 32 - Writ petition challenging approval granted by Government of India for acquisition of majority stake in CIL and for a direction to ONGC to exercise its right of pre-emption over sale of shares of CIL - Held: The decision taken by ONGC not to exercise its RoFR was taken after elaborate and due deliberations - ONGC and Government of India have considered various commercial and technical aspects flowing from PSC and also its advantages that ONGC would derive if the Cairn and Vedanta deal was approved - Court cannot sit in judgment over the commercial or business decision taken by parties to the agreement after evaluating and assessing its monetary and financial implications, unless the decision is in clear violation of any statutory provisions or perverse or for extraneous considerations or improper motives -On facts, as well as on law, ONGC and Government of India have taken a prudent commercial and economic decision in public interest - It cannot be said that the decision is mala fide or actuated by any extraneous or irrelevant considerations or improper motive - Public interest litigation.

Arts. 298 and 299 - Power of Union or States to carry on trade and to enter into contracts - Held: State and its instrumentalities can enter into various contracts which may involve complex economic factors - State or State undertaking being a party to a contract, have to make various decisions which they deem just and proper - There is always

an element of risk in such decisions - But if the decision is taken bona fide and in public interest, the mere fact that decision has ultimately proved to be a wrong one, that itself is not a ground to hold that the decision was mala fide or taken with ulterior motives.

Art. 151 - Reports of Comptroller and Auditor General of India - Status of - Explained - In the instant case, it is factually and legally incorrect to suggest that any exploration carried out beyond the stated date was beyond the provision of PSC - CAG's views on that aspect cannot be accepted - Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971 - ss. 10, 13 and 16.

PUBLIC INTEREST LITIGATION:

Writ petition - Held: In the instant case, writ petition was filed without appreciating or understanding the scope of the decision or the decision making process concerning economic and commercial matters which gives liberty to State and its instrumentalities to take appropriate decision after weighing advantages and disadvantages of the same - Constitution of India, 1950 - Art.32.

In the instant petition filed in public interest, the petitioner challenged the approval granted by the Government of India on 24.1.2012 for acquisition of majority stake in Cairn India Limited (CIL) and for a direction to Oil and Natural Gas Corporation of India (ONGC) to exercise its right of pre-emption over of shares of CIL on the same terms without causing any loss or profit to Cairn Energy as also for a direction to CBI to investigate the reasons for ONGC in not exercising its rights under Right of First Refusal (RoFR) and giving clearance to CAIRN-Vedanta Deal on the basis of the existing right to share the royalty and cess on pro-rata basis. It was contended for the appellant that, but for the decision, the State Exchequer would have benefited to

the tune of Rs.1,00,000 crores. It was also contended that the Government has unlawfully granted extension to CIL for carrying out exploration activities beyond the period framed by Rajasthan Block Production Sharing Contract (PSC), which was commented upon by the Comptroller and Auditor General of India (CAG).

Dismissing the writ petition, the Court

HELD: 1. State and its instrumentalities can enter into various contracts which may involve complex economic factors. State or the State undertaking being a party to a contract, have to make various decisions which they deem just and proper. If the decision is taken bona fide and in public interest, the mere fact that decision has ultimately proved to be a wrong, that itself is not a ground to hold that the decision was mala fide or done with ulterior motives. [Para 38] [535-G-H; 536-A-B]

State of M.P. and Others v. Nandlal Jaiswal and others **1987 (1) SCR 1 = (1986) 4 SCC 566;** *Life Insurance Corporation of India v. Escorts Ltd. and Others* **1985 (3) Suppl. SCR 909 = (1986) 1 SCC 264;** *Liberty Oil Mills and Others v. Union of India and Others* **1984 (3) SCR 676 = (1984) 3 SCC 465;** *Villianur Iyarkkai Padukappu Maiyam v. Union of India* **2009 (9) SCR 225 = (2009) 7 SCC 561;** *Bajaj Hindustan Limited v. Sir Shadi Lal Enterprises Limited And Another* **2010 (15) SCR 156 = (2011) 1 SCC 640;** *Bhavesh D. Parish and Others v. Union of India and Another* **(2005) 5 SCC 471; and** *Centre for Public Interest Litigation and Another v. Union of India and Others* **(2000) 8 SCC 606 - referred to.**

Morey vs. Dond **354 US 457; and** *Metropolis Theatre Co. v. State of Chicago* **57 L Ed 730 referred to.**

2.1. ONGC had pre-emptive rights in relation to participating interest of Cairn and/or its affiliates. Under the

various agreements with the Government of India and ONGC and Cairn and/or its affiliates consent of ONGC was required besides other governmental approval to consummate the proposed transaction. [para 34] [533-G-H]

2.2. The question whether the CEIL, the operator of the block, has to include Royalty "as recoverable cost" and whether it is commercially viable for the ONGC to exercise its RoFR were elaborately considered by the ONGC Board in its meetings held on 29.1.2011 and 27.9.2011. The Board after due deliberations and considering the offered right at Rs.405/- per share vis-à-vis the internal assessed value of Rs.290/- per share, noticed that acquisition stake offered by Vedanta Cairn for the proposed transaction of sale of shares of CEIL was much above the ONGC evaluated value of the proposed transaction, and, therefore, it was not advisable for the ONGC to acquire shares. Further, there was an ongoing issue/dispute relating to cost recovery of Royalty being paid by ONGC for the entire crude oil producing field - RJ-0A-90/1 block, pursuant to provisions of accounting procedure of PSC. There was also a dispute between CEIL and CEHL and ONGC as to the liability of cess under the PSC for the Rajasthan Block. CEIL and CEHL had initiated arbitration proceedings in respect of the same. It was noticed that a large sum, running into several million US $ would have been payable by ONGC had CEIL and CEHL were successful in the arbitration. [para 35] [534-B-F]

2.3. Due to the various agreements/decisions taken by the Union of India and ONGC, the arbitration against Union of India and ONGC in relation to the cess was withdrawn since the Government of India and ONGC had accorded their consent for the deal with Cairn and Vedanta. Further, CEIL and its affiliates had also agreed to treat royalty paid as cost recoverable by ONGC as

contract costs. ONGC had already derived financial benefit to the tune of US $970,881,838 towards royalty paid by it till June 2012 and would continue to derive similar benefits during the currency of the contract i.e. upto 2020. [para 35] [534-F-G]

2.4. The decision taken by the ONGC not to exercise its RoFR was taken after an elaborate and due deliberations. The report of SBI Caps, after making a detailed financial analysis also supported the decision taken by the ONGC. The decision to grant no objection to the transfer of shares of CEIL from Cairn to Vedanta was also on the basis that the proposed share price of share at Rs.355 per share, was well in excess of its intrinsic value as was evaluated by SBI Caps. SBI Caps report evaluated each share of CEIL at Rs.291 with the highest production profile under normal circumstances. It was concluded that even considering various other scenario makes possible value at Rs.331 per share. [para 36] [534-H; 535-A-C]

2.5. The Union of India also endorsed the decision taken by the ONGC after due deliberations. The matter was finally placed before the Cabinet Committee of Economic Affairs, which placed the matter before the Group of Ministers and the latter, on 27.5.2011 granted its approval, based on certain conditions. The same was conveyed to the parties and the Vedanta Resources conveyed its acceptance to the conditions imposed by CCEA. Cairn also indicated to ONGC that CEIL Board had also accepted the conditions imposed upon it and that the cess arbitration, which had been initiated by Cairn against ONGC was also withdrawn. [para 37] [535-C-E]

2.6. The ONGC and the Government of India have considered various commercial and technical aspects flowing from the PSC and also its advantages that ONGC

would derive if the Cairn and Vedanta deal was approved. This Court sitting in the jurisdiction cannot sit in judgment over the commercial or business decision taken by parties to the agreement after evaluating and assessing its monetary and financial implications, unless the decision is in clear violation of any statutory provisions or perverse or for extraneous considerations or improper motives. [para 38] [535-E-G]

2.7. Consequent to the agreement dated 30.11.2011, ONGC received Rs.5000 crores approximately towards CEIL and CEHL's share of royalty for the period from 29.8.2009 to 30.7.2012 besides CAIRN and Vedanta agreeing to pay their share of royalty and cess in future involving huge financial implications. [para 41] [539-F-G]

2.8. ONGC in its wisdom decided not to acquire any shares of CEIL at a high premium of Rs.335 per share plus Rs.50 per share as not to compete fee, which would have come to ONGC at a hefty cost of 4.44 billion US $ about Rs.6,20,600 crores rupees, i.e. even if ONGC had exercised its RoFR it would be a 30% share holder of CEIL and the control of CEIL would have, in any event, remained with Cairn and Vedanta which would have then altogether 50% in CEIL, thus, with the acquisition of 30% shares in CEIL, Rajasthan Block would remain unchanged and, as such, ONGC could not have got any increase in shares in the profits much-less any increase in profits by 40%. [para 42] [539-G-H; 540-A-B]

2.9. This Court is of the view that on facts, as well as on law, ONGC and the Government of India have taken a prudent commercial and economic decision in public interest. It cannot be said that the decision is mala fide or actuated by any extraneous or irrelevant considerations or improper motive. [para 43] [540-C]

3.1. The CAG's report is always subject to parliamentary debates and it is possible that PAC can accept the ministry's objection to the CAG report or reject the report of the CAG. The CAG, indisputably is an independent constitutional functionary, however, it is for Parliament to decide whether after receiving the report i.e. PAC to make its comments on the CAG's report. However, it may be pointed out that since the report is from a constitutional functionary, it commands respect and cannot be brushed aside as such, but it is equally important to examine the comments what respective ministries have to offer on the CAG's report. The ministry can always point out, if there is any mistake in the CAG's report or the CAG has inappropriately appreciated the various issues. [para 55-56] [545-G-H; 546-A-B]

3.2. In the instant case, Article 2.6 of PSC permits extension of the exploration period for three years from the end of the seven year period prescribed in Article 2.2. The period extended in pursuance to Article 2.6 expired on 14.5.2005. The CAG has assumed that any exploration carried out beyond the period was beyond the provision of PSC. Article 2.6 specifically contemplates extension of the exploration phase pursuant to the terms of the PSC. The last part of Article 2.6 to Article 2.9, however, permits further extension of the exploration period for a period of 30 months, therefore, it is factually and legally incorrect to suggest that any exploration carried out beyond 14.5.2005 was beyond the provision of PSC. CAG's views on that aspect cannot be accepted. [para 57] [546-C-E]

Commentary on the Constitution of India **(8th Edn. 2009 p. 6058) by Durga Das Basu; and** *Practice of Public Accounts Committee* **(in the website of Lok Sabaha - referred to.**

4. The writ petition was filed without appreciating or understanding the scope of the decision or the decision

making process concerning economic and commercial matters which gives liberty to States and its instrumentalities to take appropriate decision after weighing advantages and disadvantages of the same and this Court sitting in this jurisdiction, is not justified in interfering with those decisions, especially when there is nothing to show that those decisions are contrary to law or actuated by mala fide or irrelevant considerations. [para 58] [546-E-G]

M.C. Mehta v. Kamal Nath & Others **1996 (10) Suppl. SCR 12 = (1997) 1 SCC 388;** *Meerut Development Authority v. Association of Management Studies and Another* **2009 (6) SCR 663 = (2009) 6 SCC 171;** *Centre for Public Interest Litigation and Others v. Union of India and Others* **2012 (3) SCR 147= (2012) 3 SCC 1;** *Balco Employers' Union (Regd.) v. Union of India and Others* **2001 (5) Suppl. SCR 511= (2002) 2 SCC 333;** *Bajaj Hindustan Limited v. Sir Shadi Lal Enterprises Ltd. and Another* **2010 (15) SCR 156 = (2011) 1 SCC 640 and** *Life Insurance Corporation of India v. Escorts Limited and Others* **1985 (3) Suppl. SCR 909 = (1986) 1 SCC 264;** *Vodafone International Holdings v. Union of India* **2012 (1) SCR 573 = (2012) 6 SCC 613 - cited.**

Case Law Reference:

1996 (10) Suppl. SCR 12	**cited**	**para 23**
2009 (6) SCR 663	**cited**	**para 23**
2012 (3) SCR 147	**cited**	**para 23**
2001 (5) Suppl. SCR 511	**cited**	**para 26**
2010 (15) SCR 156	**cited**	**para 26**
1985 (3) Suppl. SCR 909	**cited**	**para 26**
2012 (1) SCR 573	**cited**	**para 29**
1987 (1) SCR 1	**referred to**	**para 39**
354 US 457	**referred to**	**para 39**
57 L Ed 730	**referred to**	**para 39**
1985 (3) Suppl. SCR 909	**referred to**	**para 39**
1984 (3) SCR 676	**referred to**	**para 39**
2009 (9) SCR 225	**referred to**	**para 39**
2010 (15) SCR 156	**referred to**	**para 39**
(2005) 5 SCC 471	**referred to**	**para 39**
2000 (8) SCC 606	**referred to**	**para 39**

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 69 of 2012.

Under Article 32 of the Constitution of India.

Prashant Bhushan, Pranav Sachdeva for the Petitioner.

Siddharth Luthra, ASG, Harish Salve, Mukul Rohatgi, B.K. Prasad, Rohit Sharma, Supriya Juneja, Pranay Agarwala, Anuradha Dutt, Ekta Kapil, Anish Kapur, Mehak Khanna, Vijayalakshmi Menon, R.R. Sasiprabhu, Rajat Nair, Somiran Sharma, Pradeep Mishra, Ritin Rai, Niti Dixit, Samiksha Godiyal, E.C. Agrawala for the Respondents.

The Judgment of the Court was delivered by

K.S. RADHAKRISHNAN, J. 1. Petitioner, through this Public Interest Litigation, has challenged the approval granted by the Government of India dated 24.1.2012 for the acquisition of majority stake in Cairn India Limited (CIL) for US $8.48 billion and also for a direction to the Oil and Natural Gas Corporation of India (ONGC) to exercise its right of pre-emption over sale of shares of CIL on the same terms without causing any loss or profit to the Cairn Energy, and also for a direction to CBI to investigate the reasons for ONGC, a Government of India Undertaking, in not exercising their legal rights under the Right of First Refusal (RoFR) and giving clearance to the CAIRN

- Vedanta Deal on the basis of the existing right to share the royalty and cess on pro-rata basis and also for the consequential reliefs.

FACTS

2. Government of India had, earlier, retained the exclusive privilege for mining of hydrocarbons, which was carried out on nomination basis through the statutory corporations like ONGC. The need for maximising domestic exploration of production of oil led to the Government of India encouraging private sector participation in the exploration of oil and natural gas from the year 1980. Rajasthan Block (RJ-ON-90/1) was one of the Pre-New Energy Licensing Policy (Pre-NELP) exploration block offered by a Competitive Building Mechanism. The said block was offered in the 4th round of Pre-NELP regime to M/s. Shell India in execution of a Production Sharing Contract (PSC) on 15.5.1995. Since the exploration licence for Rajasthan Block was held by ONGC, the PSC had three parties, (a) Government of India, (b) the bidder, M/s. Shell India Production Development BV (Shell) and (c) the licensee ONGC. PSC was entered into for the exploration and exploitation of crude oil and natural gas. As per the PSC, ONGC is holding 30% of the participating interest (PI) in the development or within the contract area since 13.1.2005.

3. Shell failed to make any commercial discovery even after investing US$ 9 million and was contemplating to part with its interest in the PSC. Consequently, Cairn Energy India Pvt. Ltd. (CEIL) acquired 27.5% of Shell's interest under the contract with effect from 27.1.1999 and a further 22.5% with effect from 20.12.1999. Cairn Energy Hydrocarbons Ltd. (CEHL) acquired Shell's remaining 50% interest under the contract with effect from 23.6.2003. CEIL and CEHL, subsidiary companies of CAIRN, have accordingly succeeded Shell as parties to the aforementioned contract and together became the holder of the 70% of the PI.

4. CIL is a company incorporated under the laws of India and listed on the Bombay Stock Exchange and the National Stock Exchange. CAIRN Energy PLC UK (CAIRN) is incorporated under the laws of UK, listed on London Stock Exchange and is a majority shareholder in CIL having 62.4% equity stake in it through its wholly owned subsidiary, CAIRN UK Holdings Limited. Upon its acquisition of 50%, Shell's interest under the contract, CEIL became the operator under the operating agreement with effect from 1.1.2000.

5. CIL and its subsidiary have interests in the seven exploratory blocks (out of which Block VN-ONN-2003/1 has already been relinquished) and three producing fields in India and another exploration block in Sri Lanka as per the following details:

- 70% Participating Interest (PI) & operatorship in producing Development Areas of RJ-ON-90/1 (ONGC 30%),
- 22.50% PI in producing Ravva Field & Operatorship (ONGC 40%),
- 40% IP & Operatorship in producing fields of CB-OS/2 Block & (ONGC 50%); and
- PI in eight other Blocks in India and Sri Lanka where there is currently no production; out of these ONGC has PI in 5 Blocks.

6. CAIRN, vide its letter dated 16.8.2010, informed ONGC that it had announced disposal of its substantial shareholding in CIL to Vedanta. ONGC had a PI in number of blocks/fields where CAIRN is operating through CIL (and/or its affiliates) and it was felt that the proposed transaction might have implications on operations of these blocks/fields. ONGC was of the view that its, inter alia, pre-emptive rights in relation to PI of CAIRN and/or its affiliates under the various agreements with the

Government of India and ONGC, and that CAIRN and/or its affiliates required consent of ONGC besides other governmental approvals, to consummate the proposed transaction. ONGC, later, by its letter dated 30.8.2010, requested CAIRN to provide full details of the proposed transaction along with copies of the agreements and other arrangements entered into between CAIRN and/or its affiliates and the proposed buyer and/or its affiliates. CAIRN on 10.9.2010 provided the details of the proposed transaction to ONGC, the operative portion of which reads as follows:

> ".. the Transaction is a sale of shares in Cairn India Limited, rather than an assignment of any Participating Interest under the various Production Sharing Contracts (PSCs) and Joint Operating Agreements (JOAs). We believe that the various pre-emption rights under each of the JOAs only apply when there is an assignment, by a party to that PSC, of part or all of that party's Participating Interest.
>
> However, in this case, as the contract with Vedanta Resources Plc is at shareholder level of Cairn India involving sale of shares - there is no change to the Participating Interest in any of the PSCs to which the Cairn India Group is party. Consequently, under the terms of the relevant PSCs and JOAs, no pre-emptive right or requirement for ONGC consent, as claimed in the Letter, is triggered by the Transaction".

Consequently, CAIRN took up the stand that various pre-emption rights under each of JOA will apply only when there is an assignment, by a party to a PSC, of its PI in part or full. According to CAIRN, under the proposed transaction, there will be no change to the PI in any of the PSCs to which CIL groups is party and, consequently, under the terms of the relevant PSCs and JOAs, no pre-emptive right or requirement for ONGC's consent would be triggered by the transaction, as claimed by ONGC.

7. ONGC again wrote a letter dated 21.10.2010 requesting CAIRN to provide copies of all agreements and other arrangements entered into between CAIRN and Vedanta in relation to the proposed transaction, including, without limitation, the value assigned to PI in each PSC, to enable ONGC to decide on its future course of action.

8. CAIRN vide its letter dated 29.10.2010 provided a copy of the share purchase deed for the proposed transaction and reiterated its position that the provisions of the JOA do not apply in respect of the proposed sale of shares in CIL.

9. ONGC's, later, sought the opinion of the Solicitor General of India, who vide his letter dated 5.10.2010 opined that the Government of India's consent would be required as the acquisition of majority stake and consequent change in control of CIL would amount to an indirect transfer of the PI.

10. The Government of India, it may be noticed, had signed 28 PSCs in respect of pre-NELP exploratory blocks prior to the implementation of NELP. Under the terms of such PSCs, depending on the bargain amongst the parties, statutory levies (royalty and/or cess) on the entire production of oil and gas, including on the share of other partners, are to be borne by National Oil Companies, who are sole licenses in respect of the PEL/ML under those contracts. In view of the above contractual provisions, ONGC has been paying royalty and/or cess on the share of other partners in respect of above blocks awarded under the regime for pre-NELP exploratory blocks. Under the provisions of PSC of RJ-ON-90/1 Block, the cost incurred for petroleum operation is recovered as per the mechanism laid down in Article 14 of the PSC. Section 3.1.9 of the Accounting Procedure stipulates that the royalty payments shall be allowable as 'Cost Oil' without further approval of the Government. ONGC, then, vide its letter dated 14.7.2010 proposed to CEIL, the Operator of the Block, to include 'Royalty' as 'Recoverable Cost' in the calculations of entitlement interest submitted by the Operator to the Operating

Committee vide letter dated 1.7.2010. CEIL, however, took up the stand that the same was not cost recoverable.

11. ONGC Board in its 215th meeting held on 29.1.2011 considered the issue regarding treating royalty as cost recoverable and the option of ONGC going for acquisition of the stake in CIL. Board, after taking into account the offered rate of Rs.405/- per share (including non-compete fee of Rs.50/- per share), vis-à-vis internal assessed value of Rs.290/- per share, decided that the following recommendation be forwarded to the Ministry of Petroleum and Natural Gas (MoPNG) for their consideration:

i. Acquisition cost offered by Vedanta to CAIRN for the proposed transaction of sale of the shares of CIL is much above the ONGC evaluated value of the proposed transaction. Therefore, ONGC does not find merit in the acquisition on commercial considerations.

ii. To request MoPNG for allowing the recovery of royalty being paid by ONGC for entire crude oil produced from RJ-ON-90/1 block as "Cost Oil" from the total revenue accrued from the block. ONGC may further request MOPNG to decide on the CAIRN Vedanta deal, only after reaching an agreement in this regard between the parties and

iii. ONGC, being the licensee and also a participant in the Block, has the right to ensure that the operator has the necessary credentials in carrying out E&P activities.

12. Apart from the above issue, there was a dispute between CEIL and CEHL, parties to the Rajasthan Block and Union of India and ONGC as to the liability of Cess under the PSC for the Rajasthan Block, and CEIL and CEHL had initiated arbitration proceedings in respect of the same. Consequently,

CEIL and CEHL were paying their part of the Cess under protest.

13. ONGC received a letter dated 16.8.2011 from CEIL in which it was stated that the Government of India vide its letter dated 26.7.2011 had granted a conditional consent for the proposed sale of shareholding to the extent of 51% to 60% in CAIRN India Ltd. by CAIRN Energy Plc to Vedanta Resources Plc in respect of the NELP and pre-NELP blocks. The Government of India, however, insisted that CIL and its affiliates shall provide No Objection Certificate (NOC) obtained from their consortium partners. MoPNG granted the approval for the proposed transaction on the following conditions:

(a) Parent financial and Performance Guarantees furnished by CAIRN Energy Plc in pursuance of relevant applicable Article(s) of abovementioned 7 NELP PSCs and 3 pre-NELP PSCs, shall be substituted by Parent Financial and Performance Guarantees to be furnished by Vedanta Resources Plc. which needs to be acceptable to the Government and should be in a form and substance set out in the PSC.

(b) Vedanta Resources Plc to guarantee that the technical capability of CAIRN India is and shall be kept undisturbed and ensure continued production of oil and gas as per approved Field Development Plan (FDP) from time to time. In case Vedanta Resources Plc. fails to perform as guaranteed then GOI shall be entitled to stipulate additional conditions, as deemed fit, including change in operatorship of blocks.

(c) Vedanta Resources Plc. Also shall give an undertaking that they shall ensure adherence to the approved field development plans and work programs.

(d) Cairn India and its affiliates shall provide the No objection certificate (NOC) obtained from their consortium partner(s) for each abovementioned blocks (except for Ravva (PKMG-1) and CB-OS/2 blocks) for the proposed transaction under the respective PSCs.

(e) Necessary approval from other regulatory bodies such as SEBI, on the proposed transaction to be obtained and submitted by Vedanta Resources Plc.

(f) Necessary Security Clearance from Ministry of Home Affairs in favour of the assignee i.e. Vedanta Resources Plc. to acquire the shareholding shall be obtained and submitted by the said assignee.

(g) In respect to RJ-ON-90/1 block, the parties, CAIRN India Ltd., CAIRN Energy Pty Limited (CEIL), CAIRN Energy Hydrocarbon Ltd. (CEHL) and any other affiliate company of CIL and Vedanta Resources Plc. and any other affiliate company of Vedanta Resources Plc. shall agree and give an undertaking that Royalty paid by ONGC is cost recoverable by ONGC as contract costs, as per the provisions of PSC.

(h) In respect to RJ-ON-90/1 block, CAIRN Energy Pty Limited and CAIRN Energy Hydrocarbon Ltd. shall withdraw the arbitration case relating to dispute raised by them on payment of Cess under the PSC."

14. CIL, later, by its letter 15.9.2011 informed ONGC that based on the result of postal ballot by their shareholders, the Board of Directors of CIL has passed a Resolution for

acceptance of the conditions (g) to (h) mentioned earlier with regard to cost recovery of royalty and dropping of arbitration proceedings on Cess.

15. ONGC had, earlier, forwarded the entire details to SBI Caps vide their letter dated 1.6.2011 for a detailed financial valuation/analysis of the viability of ONGC entering into the said transaction and SBI Caps validated the financial valuation carried out by ONGC. SBI Caps valued Cairn India's offer under various scenarios. Considering CIL's valuation under the MC approved production profile of 175 kbopd, its valuation worked out to be US$ 6948 million and the share price if Rs.165. Details of production capex, opex, crude oil reads as follows:

Case-I	As per Approved JV case for Brent Crude Price of US$100/bbl and WACC o 12%, Cess Rs.2626.50/MT					
MC Approved JV case-Peak Production	PSC Term	Recoverable Reseves (MMBBLS)	Capex US$ Million	Opex US$ Million	NPV US$ Million	CAIRN India Share Price - Rs. / Share
175 kbopd	2020	372	4625	2467	6414	153
	2025	458	4625	3434	6768	161
	2040	579	4625	6027	6948	165

16. SBI Caps also worked out valuation of CIL based on futuristic estimated production profile keeping other assumptions i.e. price, royalty rate, cess, WACC same as above. It was opined, under the most likely case, i.e. production profile of 228 kbopd which includes EOR also, the NPV of CIL valuation till 2040 works out to be $10695 MM and the share price is Rs.254. The details of Production, CAPEX,

OPEX, Crude Price considered are as under:

CIL-Likely Case

Case-IV	As per 2P CIL Production cases for Brent Crude Price of US$100/bbl and WACC o 12%, Cess Rs. 2626.50/MT					
CIL Profile - Peak Produ-ction 228 kbopd WF+EOR	PSC Term	Reco-verable Reseves (MMBBLS)	Capex US$ Million	Opex US$ Million	NPV US$ Million	CAIRN India Share Price - Rs. / Share
	2020	737	6055	5482	9820	234
	2025	902	6055	7234	10483	249
	2040	1037	6055	10550	10695	254

17. It was also noticed that, in the High Case, where production profile of 257 kbopd was estimated considering 2P profile with WF including EOR, Barmer Hill and estimated production from 20 other small fields also, the economic valuation of the CIL is $12239 MM and the share price is Rs.291. The details of Production, CAPEX, OPEX, Crude Price etc. considered are as under:

CIL-High Case

Case-IV	As per 2P CIL Production cases for Brent Crude Price of US$100/bbl and WACC o 12%, Cess Rs. 2626.50/MT					
CIL Profile - Peak Production 228 kbopd WF+ EOR+	PSC Term	Reco-verable Reseves (MMBBLS)	Capex US$ Million	Opex US$ Million	NPV US$ Million	CAIRN India Share Price - Rs./ Share
Bh-20	2020	811	7618	6664	11272	268
Small	2025	998	7698	8818	11985	285
Fields	2040	1167	7698	12922	122239	291

18. The Royalty paid on behalf of CEIL & CEHL which has been recovered for the period since inception till September,

2011 and from 1.10.2011 to 30.6.2012 is as under:

RJ-ON-OP-1	**100%**	**70%**
Royalty since inception till Sep'11	784,833,924	549,383,747
Royalty from Oct' 11 to June'12	602,140,130	421,498,091
Total	**1,386,974,054**	**970,881,838**

19. SBI Caps, therefore, on the basis of the above given statistics, opined that under the highest profile case with base assumptions, the value of these shares works out to Rs.291/- and even considering higher CAPEX (130% incremental) and lower OPEX (-30% total) and increase in crude price from US$ 100/bbl to US$ 110/bbl, the value of share increases to Rs.328. Amongst the various scenarios, it was opined that the value of shares is maximum at Rs.331, considering CAPEX at 100% and OPEX at 70%, with crude price at $110 per bbl. In both the scenarios, the value of share remained below the offered rate of Rs.355.

20. We notice that the above report of the SBI Caps was placed before the 109th Project Appraisal Committee meeting held on 27.9.2011, wherein after detailed deliberations, the PAC resolved for consideration and approval of the ONGC Board that ONGC might not exercise its pre-emptive rights with reference to the offer made by CAIRN and its associates to Vedanta and its associates, for the proposed transaction of sale of shares of CIL at the rate of Rs.355/- per share as the same was more than the value estimated by SBI Caps. It further resolved that the NOC to the proposed transaction be granted to CAIRN with a condition that CAIRN, Vedanta and their associates should enter into an agreement with ONGC to protect ONGC's interest so that royalty and cess in respect of block RJ-ON-90/1 would be binding on Cairn, Vedanta and their future assignees etc. in alignment with MoPNG direction dated 26.7.2011.

21. ONGC Board then met on 27.9.2011 and, after due consideration of the Agenda item, the recommendations of the PAC as well as presentation made by M/s SBI Caps, approved the proposal and passed the following resolutions:

> "RESOLVED that ONGC may not exercise its pre-emptive rights with reference to the offer made by CAIRN and its associates to Vedanta and its associates, for the Proposed Transaction of sale of shares of CIL at the rates of Rs.355/- per share as the same is more than the value evaluated by SBI CAPs.
>
> RESOLVED FURTHER that NOC to the Proposed Transaction be granted to CAIRN and its associates for the five blocks as mentioned in Para 5 above with a condition that CAIRN, Vedanta and their associates should enter into an agreement with ONGC to protect ONGC's interest so that royalty and Cess are binding on CAIRN, Vedanta and their future assignee etc.
>
> RESOLVED FURTHER that CMD, ONGC be and is hereby authorized to finalize the draft agreement/letter and Company Secretary, ONGC be and is hereby authorized to sign the agreement/letter on behalf of ONGC."

22. The Cabinet Committee of Economic Affairs (CCEA), as already indicated, had on 30.6.2011 given its approval to CEIL for selling its Indian unit to Vedanta subject to the new owner agreeing to share royalty and pay oil cess on mainstay Rajasthan oilfields. Union Cabinet also, on 24.1.2012, gave its final approval to London-based mining group Vedanta Resources Plc's acquisition of a majority stake in Cairn India for $8.48 billion. It was noticed that Cairn and Vedanta had complied with all the pre-conditions stipulated by the Government of India and ONGC and the transaction between them stood concluded.

ARGUMENTS

23. Shri Prashant Bhushan, learned counsel appearing for the petitioner, questioned the decision of the Government of

India in giving clearance to CAIRN-Vedanta deal, without ONGC exercising the RoFR, but for which it was submitted that the State Exchequer would have benefited to the tune of Rs.1,00,000/- crore rupees. Learned counsel submitted that petrol and natural gas is held by the State in public interest and cannot be given away without due exercise of power and discretion guided by clear and cogent policy, because the natural resources should not be subject to private ownership or private commercial exploitation. Reliance was placed on the judgments of this Court in *M. C. Mehta v. Kamal Nath & Others* (1997) 1 SCC 388, *Meerut Development Authority v. Association of Management Studies and Another* (2009) 6 SCC 171 and *Centre for Public Interest Litigation and Others v. Union of India and Others* (2012) 3 SCC 1.

24. Shri Bhushan submitted that the Government has unlawfully granted extension to Cairn India Limited for carrying out exploration activities beyond the period framed by the Rajasthan Block PSC, which has been commented upon by the Comptroller and Auditor General (CAG).

25. Shri Mukul Rohatgi, learned senior counsel appearing for the respondent, assisted by Shri R. R. Sasiprabhu explained to the Court in detail the main features of PSC dated 15.5.1995 as well as the transaction entered into between Cairn and Vedanta. Learned senior counsel pointed out that ONGC has, inter alia, pre-emptive rights in relation to Cairn-UK's PI under various agreements with the Government of India and ONGC, and that Cairn UK and/or its affiliates required consent of ONGC, besides other governmental approval to consummate the proposed transaction. Cairn UK took up the stand that the transaction was only a sale of shares of CIL rather than assignment of any PI under various PSCs and JOAs and that there would be no change to PI in any of the PSCs in which Cairn India group was a party. ONGC had two disputes in RJ-ON-90-1 block, between ONGC and CEIL/CEHL which had huge financial implications for ONGC with regard to royalty and cess. Further, there was another dispute under the PSC on the issue of liability of cess. CEIL and CEHL took the stand

that they were not liable for payment of cess and hence had initiated arbitration proceedings in London against Union of India and ONGC. All these issues were placed before the ONGC Board on 29.1.2011 and also on 27.9.2011 and after due consideration of the Agenda item and noticing the presentation made by SBI caps, finally decided to go for the proposed transaction between Cairn UK and Vedanta UK. Learned senior counsel submitted that the above decision was taken by ONGC in public interest and taking into consideration its financial implications and on-going disputes between ONGC and CEIL/CEHL.

26. Learned senior counsel also submitted that the Courts have consistently restrained from interfering with economic decisions and that wisdom and advisabilities of economic policies are ordinarily not amenable to Judicial Review. Reference was made to the judgment of this Court in *Balco Employers' Union (Regd.) v. Union of India and Others* (2002) 2 SCC 333, *Bajaj Hindustan Limited v. Sir Shadi Lal Enterprises Ltd. and Another* (2011) 1 SCC 640 and *Life Insurance Corporation of India v. Escorts Limited and Others* (1986) 1 SCC 264.

27. Shri Siddharth Luthra, learned Additional Solicitor General appearing for the Union of India, submitted that the ONGC Board forwarded its request to MoPNG to ensure that royalty for Rajasthan Block be treated as cost recoverable. MoPNG on 26.3.2011 submitted the recommendations before the Cabinet Committee for Economic Affairs (CCEA) for decision of the Cabinet Committee on the issue of proposed transaction between Cairn-Vedanta. CCEA referred the matter to the Group of Ministers (GOM) and GOM on 25.11.2011 recommended grant of approval based on certain conditions. Union of India took the stand that there was no commercial viability for ONGC to purchase CIL share at the value being offered by Vedanta. Shri Luthra submitted that this decision was taken by ONGC in public interest and after taking into

consideration all commercial and technical aspects of the matter and that this Court, in exercise of its powers under Article 32 of the Constitution of India, shall not interfere with the economic decision taken by the Union of India and ONGC.

28. Shri Ritin Rai, learned counsel appearing for the third respondent, referring to the reply affidavit filed on 3.10.2012, explained the circumstances under which the transaction was entered into by it with Vedanta. Learned counsel submitted that the third respondent is not a party to any of the PSCs and, prior to the completion of the transaction, had taken all reasonable steps to ensure that CEIL and its subsidiaries comply with all applicable laws and contractual obligations in India.

29. Shri Harish Salve, learned senior counsel appearing for the fourth respondent, submitted that it was up to the competitive bidding operator who was granted the right to explore the oil and natural gas making huge investment and that exploration costs would be recoverable only if oil was discovered. Shri Salve pointed out, initially, Shell had 100% IP in the PSC, but it failed to make any commercial discovery even after investing US$ 9 million and, then, CAIRN took up the challenge. Learned counsel submitted that Cairn gave up two of its rights to secure government permission, that is, it had agreed to make royalty cost recoverable and withdrew its claim that the burden of cess would be borne by the Government of India. Learned senior counsel submitted that assigning of a PI is a well defined concept and, referring to the judgment of this Court in *Vodafone International Holdings v. Union of India* (2012) 6 SCC 613, learned senior counsel submitted that the transfer of a share does not result in transfer of underlying assets. Learned senior counsel submitted that various decisions taken in this case either from the side of Union of India, ONGC or by respondent nos. 3 and 4, were commercial decisions based on which the parties have acted and this Court, sitting in its jurisdiction, shall not interfere with such commercial decisions. Referring to the report of CAG, learned senior

counsel submitted that this Court shall not place any reliance on the report of the CAG and grant any relief to the petitioner based on the CAG report, since in case of any dispute between the Ministry and CAG, that is to be resolved by the Parliament and not this Court, sitting in this jurisdiction under Article 32 of the Constitution of India.

DISCUSSION

30. The question that falls for consideration in this case is whether this Court sitting in this jurisdiction is justified in interfering with a complex economic decision taken by a State or its instrumentalities in the absence of violation of any statutory provision or proof of mala fide or on extraneous and irrelevant considerations.

31. The Government had initially the exclusive privilege of exploration of mineral ore resources in India. The Parliament felt the need to provide for the regulation of oil fields and for the development of mineral resources and enacted The Oil Fields (Regulation and Development) Act, 1948 (Act 53 of 1948) and later The Petroleum and Natural Gas Rules, 1958 were framed for the regulation of petroleum operations and the grant of licenses and leases for exploration and development of petroleum in India. The Rules provide for the grant of exploration licenses and mining leases in respect of lands vested in State Government by that State Government with the previous approval of the Central Government, and ONGC had been duly granted an exploration license to carry out exploration operations in association with other companies in the concerned area.

32. The Government of India, ONGC and Shell on 15.5.1995 entered into a PSC in respect of the Rajasthan Block RJ-ON-90/1 for the exploration and exploitation of crude oil and natural gas, details of which have already been stated in the earlier part of the Judgment. The Rajasthan Block, which is the subject matter of the present writ petition, was offered in

the 4th round of pre NELP (New Exploration Licensing Policy) by competitive bidding mechanism which culminated in the execution of PSC Contract on 15.5.1995. Shell was a party to the agreement to the PSC dated 15.5.1995 and even after seven years of Contract Shell could not make any commercial discovery, though large amounts were invested between 1999 and 2003. Consequently, it had to transfer its Participating Interest (PI) to CEIL and CEHL. The following chart produced by ONGC would give a broad picture of the share holding of the various companies prior to transfer and after its transfer:

33. The above chart will indicate that CEIL and CEHL, subsidiaries of Cairn, have succeeded Shell as parties to the PSC and together they became holder of 70% of the PI and later Vedanta Resource Ltd. purchased CIL's shares through CAIRN.

34. CEIL is a company incorporated under the laws of India and listed at Bombay Stock Exchange and National Stock Exchange. Cairn Energy is incorporated under the laws of (UK) and listed in London Stock Exchange and the majority share-holders in CEIL having a 64.2% equity stake in it through its wholly owned subsidiary, Cairn UK Holdings Limited. Upon acquisition of 50% of the Shell's interest under the contract CEIL became the operator under the operating agreement w.e.f. 1.1.2000. Cairn later announced on 16.8.2010 a disposal of its substantial shareholding in CEIL to Vedanta. ONGC had reviewed the various agreements signed by Cairn and/or its affiliates with the Government of India and inter se with ONGC as one of the participating companies in various oil blocks/ fields. ONGC had pre-emptive rights in relation to participating interest of Cairn and/or its affiliates. Under the various agreements with the Government of India and ONGC and Cairn and/or its affiliates required consent of ONGC besides other governmental approval to consummate the proposed transaction. The various decisions taken by the ONGC and the Government of India subsequently, as well as steps taken by

the ONGC referring to SBI Caps of its financial implications has already been noticed in the earlier part of this Judgment.

35. The question whether the CEIL, the operator of the block has to include Royalty "as recoverable cost" and whether it is commercially viable for the ONGC to exercise its RoFR were elaborately considered by the ONGC Board in its various meetings held on 29.1.2011, 27.9.2011. The Board after due deliberations and considering the offered right at Rs.405/- per share vis-à-vis the internal assessed value of Rs.290/- per share, noticed that acquisition stake offered by Vedanta Cairn for the proposed transaction of sale of shares of CEIL was much above the ONGC evaluated value of the proposed transaction, and hence was not advisable for the ONGC to acquire shares. Further there was an ongoing issue/dispute relating to cost recovery of Royalty being paid by ONGC for the entire crude oil producing field - RJ-0A-90/1 block pursuant to provisions of accounting procedure of PSC. Further there was a dispute between CEIL and CEHL and ONGC as to the liability of cess under the PSC for the Rajasthan Block. CEIL and CEHL had initiated arbitration proceedings in respect of the same. It was noticed that a large sum, running into several million US $ would have been payable by ONGC had CEIL and CEHL were successful in the arbitration. Now due to the various agreements/decisions taken by the Union of India and ONGC, the arbitration against Union of India and ONGC in relation to the cess was withdrawn since the Government of India and ONGC had accorded their consent for the deal with Cairn and Vedanta. Further CEIL and its affiliates had also agreed to treat royalty paid as cost recoverable by ONGC as contract costs. ONGC had already derived financial benefit to the tune of US $970,881,838 towards royalty paid by it till June 2012 and would continue to derive similar benefits during the currency of the contract i.e. upto 2020.

36. We notice the decision taken by the ONGC not to exercise its RoFR was taken after an elaborate and due

deliberations. The report of SBI Caps, after making a detailed financial analysis also supported the decision taken by the ONGC. The decision to grant no objection to the transfer of shares of CEIL from Cairn to Vedanta was also on the basis that the proposed share price of share was at Rs.355 per share, was well in excess of its intrinsic value as were evaluated by SBI Caps. SBI Caps report evaluated each share of CEIL at Rs.291 with the highest production profile under normal circumstances. It was concluded that even considering various other scenario makes possible value at Rs.331 per share.

37. The Union of India also endorsed the decision taken by the ONGC after due deliberations. The matter was finally placed before the Cabinet Committee of Economic Affairs, which placed the matter before the Group of Ministers and Group of Ministers on 27.5.2011 granted its approval, based on certain conditions. The same was conveyed to the parties and the Vedanta Resources conveyed its acceptance to the conditions imposed by CCEA. Cairn also indicated to ONGC that CEIL Board had also accepted the conditions imposed upon it and that the cess arbitration, which had been initiated by Cairn against ONGC was also withdrawn.

38. We notice that the ONGC and the Government of India have considered various commercial and technical aspects flowing from the PSC and also its advantages that ONGC would derive if the Cairn and Vedanta deal was approved. This Court sitting in the jurisdiction cannot sit in judgment over the commercial or business decision taken by parties to the agreement, after evaluating and assessing its monetary and financial implications, unless the decision is in clear violation of any statutory provisions or perverse or for extraneous considerations or improper motives. States and its instrumentalities can enter into various contracts which may involve complex economic factors. State or the State undertaking being a party to a contract, have to make various decisions which they deem just and proper. There is always

an element of risk in such decisions, ultimately it may turn out to be a correct decision or a wrong one. But if the decision is taken bona fide and in public interest, the mere fact that decision has ultimately proved to be a wrong, that itself is not a ground to hold that the decision was mala fide or done with ulterior motives.

39. Matters relating to economic issues, have always an element of trial and error, so long as a trial and error are bona fide and with best intentions, such decisions cannot be questioned as arbitrary, capricious or illegal. This Court in *State of M.P. and Others v. Nandlal Jaiswal and Others* (1986) 4 SCC 566 referring to the Judgment of Frankfurter J. in *Morey vs. Dond* 354 US 457 held that "we must not forget that in complex economic matters every decision is necessarily empiric and it is based on experimentation or what one may call "trial and error method" and, therefore, its validity cannot be tested on any rigid "a priori" considerations or on the application of any straight jacket formula." In *Metropolis Theatre Co. v. State of Chicago* 57 L Ed 730 the Supreme Court of the United States held as follows:

> "The problem of government are practical ones and may justify, if they do not require, rough accommodation, illogical, if may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not discernible, the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void."

In *Life Insurance Corporation of India v. Escorts Ltd. and Others* (1986) 1 SCC 264 this Court held

> "that the Court will not debate academic matters or concern itself with intricacies or trade and commerce. The Court held that when the State or its instrumentalities of the State ventures into corporate world and purchases the

shares of the company, it assumes to itself the ordinary role of shareholder, and dons the robes of a shareholder, with all the rights available to such a shareholders and there is no reason why the State as a shareholder should be expected to state its reasons when it seeks to change the management by a resolution of the company, like any other shareholder."

In *Liberty Oil Mills and Others v. Union of India and Others* (1984) 3 SCC 465, this Court held that expertise in public and political, national and international economy is necessary, when one may engages in the making or in the criticism of an import policy. Obviously, courts do not possess the expertise and are consequently, incompetent to pass judgments on the appropriateness or the adequacy of a particular import policy.

In *Villianur Iyarkkai Padukappu Maiyam v. Union of India* (2009) 7 SCC 561, this Court held as follows:

"It is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. Wisdom and advisability of economic policy are ordinarily not amenable to judicial review. In matters relating to economic issues the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within the limits of the authority. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts."

In *Bajaj Hindustan Limited v. Sir Shadi Lal Enterprises Limited And Another* (2011) 1 SCC 640, this Court held "that economic and fiscal regulatory measures are a field where

Judges should encroach upon very wearily as Judges are not expert in those matters".

This Court in *Bhavesh D. Parish and Others v. Union of India and Another* (2005) 5 SCC 471, took the view that, in the context of the changed economic scenario, the expertise of people dealing with the subject should not be lightly interfered with. The consequences of such interdiction can have large-scale ramifications and can put the clock back for a number of years. The process of rationalisation of the infirmities in the economy can be put in serious jeopardy and, therefore, it is necessary that while dealing with economic legislations, this Court, while not jettisoning its jurisdiction to curb arbitrary action or unconstitutional legislation, should interfere only in those few cases where the view reflected in the legislation is not possible to be taken at all. In *Centre for Public Interest Litigation and Another v. Union of India and Others* (2000) 8 SCC 606, this Court held as follows:

"20. It is clear from the above observations of this Court that it will be very difficult for the courts to visualise the various factors like commercial/technical aspects of the contract, prevailing market conditions, both national and international and immediate needs of the country etc. which will have to be taken note of while accepting the bid offer. In such a case, unless the court is satisfied that the allegations levelled are unassailable and there could be no doubt as to the unreasonableness, mala fide, collateral consideration alleged, it will not be possible for the courts to come to the conclusion that such a contract can be prima facie or otherwise held to be vitiated so as to call for an independent investigation, as prayed for by the appellants……."

40. The MoPNG on 26.7.2011 conveyed to Cairns UK and its affiliates and Vedanta UK that the Government of India was pleased to grant its consent for the Cairn -Vedanta -- subject to fulfilment of the certain conditions i.e. they had to give an undertaking that in the royalty paid in the ONGC was cost

recoverable by ONGC as contract cost and to withdraw the arbitration case relating to cess. The dispute on royalty and cess was bothering ONGC for quite some time and ONGC was facing a claim running into several million US Dollars in an arbitration proceeding in London. Union of India and ONGC, in their wisdom could make Cairn agree to those conditions, it gave an undertaking that in the royalty paid in the ONGC would cost recoverable by ONGC as contract cost and to withdraw the arbitration case relating to cess. Union of India and ONGC, in their wisdom could make Cairn agree to those conditions which was clearly a business commercial decision taken with good intention, since the fate of the arbitration proceedings could not be predicted. ONGC also in its business prudence decided not to go for shares in CEIL, first of all it was equated at a very high premium, secondly it guaranteed no return either in the way of dividend or any other profits. Further, it might lead to huge liability of investment and with a minimum work programme and the remaining PSC's help by CEIL which involved exploitation operations with no guarantee of any commercial discovery. The result of CEIL and its affiliates agreeing to treat royalty paid by ONGC as cost recoverable by ONGC as contract cost, and ONGC has derived benefits to the tune of US $ 970,881,838 towards royalty paid by till June 2012 and would continue to derive similar benefits till the currency of the contract i.e. till June 2020.

41. Consequent to the agreement dated 30.11.2011, ONGC received Rs.5000 crores approximately towards CEIL and CEHL's share of royalty for the period from 29.8.2009 to 30.7.2012 besides CAIRN and Vedanta agreeing to pay their share of royalty and cess in future involving huge financial implications.

42. ONGC in its wisdom decided not to acquire any shares of CEIL at a high premium of Rs.335 per share plus Rs.50 per share as not to compete fee, which would have come to ONGC at a hefty cost of 4.44 billion US $ about Rs.6,20,600 crores

rupees, i.e. even if ONGC had exercised its ROFR it would be a 30% share holder of CEIL and the control of CEIL would have, in any event, remained with Cairn and Vedanta which would have then altogether 50% in CEIL , in other words, with the acquisition of 30% shares in CEIL, State of Rajasthan Block would remain unchanged and hence ONGC could not have got any increase in shares in the profits much-less any increase in profits by 40%.

43. We are of the view that on facts, as well as on law, the ONGC and the Government of India have taken a prudent commercial and economic decision in public interest. We are not prepared to say that the decision is mala fide or actuated by any extraneous or irrelevant considerations or improper motive.

C A G Report

44. The petitioner has placed considerable reliance on the Comptroller and Auditor General ("CAG") Report. Some of the comments in the CAG Report were highlighted by counsel appearing for the petitioner to contend that the declaration of fresh discoveries during the appraisal/development phases within delineated discovery/development areas amounted to irregular extension of exploration activities, which is not in consonance with the terms of the PSC.

45. The petitioner has also sought a direction to CAG/ Government of India to calculate the alleged losses from payment of 100% royalty and cess by ONGC before the Cairn-Vedanta deal and for a direction to ONGC/Government to recover the excess royalty paid by ONGC from Cairn India.

46. CAG may be right in pointing out that public monies are to be applied for the purposes prescribed by Parliament and that extravagance and waste are minimized and that sound financial practices are encouraged in estimating and contracting, and in administration generally.

47. We have come across several instances where considerable reliance has been placed on the CAG Report and projecting it as gospel truth. Let us examine the role of the CAG under our Constitutional scheme.

48. The Comptroller and Auditor General ("CAG") is appointed under the provisions of Chapter 5 of the Constitution of India. Article 149 provides thus:

> "Article 149. **Duties and powers of the Comptroller and Auditor General -** The Comptroller and Auditor General shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by the Parliament and, until provision in that behalf is so made, shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States as were conferred on or excisable by the Auditor General of India immediately before the commencement of this Constitution in relation to the accounts of the Dominion of India and of the Provinces respectively."

49. The CAG earlier functioned under the Government of India (Audit and Accounts) Order, 1936 as adopted by the India (Provisional Constitution) Order, 1947, which was repealed by Section 26 of the Act of 1971. The Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971 was enacted by the Parliament in the year 1971. Section 10 of the Act states that in relation to the Government, the CAG shall compile the accounts of the Union and the States. The CAG on the basis of these accounts, prepares the annual accounts which are submitted to the President of India or the Governor of the State or the Administrator of the Union Territory. The audit of the Union and the States is under Section 13 of the Act. The scope of the audit extends to the audit of all expenditure so as to ascertain whether the monies shown in

the accounts as having been disbursed were legally available for such disbursement and whether the expenditure conforms to the authority which governs it. The CAG has to satisfy himself that the rules and procedures designed to secure an effective check on the assessment, collection and proper allocation of revenue are being duly observed under Section 16. The CAG also has to examine decisions which have financial implications including the propriety of the decision making.

50. The Reports of the CAG are required to be submitted to the President, who shall cause them to be laid before each House of Parliament, as provided under Article 151(1). In relation to the States, reports are submitted to the Governor, who shall cause them to be laid before the Legislature of the State, as per Article 151(2) of the Constitution. When reports are received in the Parliament, they are scrutinized by the Public Accounts Committee ("PAC"). The PAC is established in accordance with Rule 308 of the Rules of Procedure and Conduct of Business in Lok Sabha. The function of the PAC is to examine the accounts of the Union and the report of the CAG. The PAC shall be principally concerned whether the policy is carried out efficiently, effectively and economically, rather than with the merits of government policy. Its main functions are to see that public monies are applied for the purposes prescribed by the Parliament, that extravagance and waste are minimized and that sound financial practices are encouraged in estimating and contracting, and in administration generally. The PAC also has the power to receive evidence, the power to send for persons, papers and record and can receive oral evidence on solemn affirmation. Once the report is prepared, the report of the PAC is presented to the House.

51. Durga Das Basu in Commentary on the Constitution of India 8th Edition 2009 at page 6058 says:

> "that the Public Accounts Committee is to examine the report of the Comptroller and Auditor General, in order to

satisfy itself on certain points:

Firstly, it has to verify that the moneys shown in the accounts as spent have actually been spent for the purpose for which Parliament granted them.

Secondly, it has to satisfy itself that the moneys granted by Parliament have been spent by the Government 'within the scope of the demands'. This means that no expenditure should exceed the amount granted without fresh parliamentary approval, nor should the grant be appropriated for a new service not contemplated in the demand. Even if there is a surplus of a grant under one vote, it cannot be appropriated to another vote without sanction of Parliament.

The exercise of this function gives the Committee a comprehensive power of survey over the entire scheme of expenditure of the government as well as the administration. Though the Committee has nothing to question the policies of the government, it has to scrutinise the implementation of the policies through its review of the expenditure. Both in England ……. as well as in India, it has been acknowledged that the present function includes a criticism of extravagant or wasteful expenditure of public money, in general, and in this connection, it is entitled to point out the weak points in the administration of the departments concerned, and also to ensure that proper action has been taken against delinquents guilty of irregularity or breach of the rules, though it has no power to enforce its comments by any direct administrative action.

Thirdly, the audit of the accounts of the State corporations is another important function entrusted to the Public Accounts Committee. Its importance is increasing with the ever-expanding State activity in the sphere of industry and enterprise."

52. In this connection is useful to refer to the practice of the PAC, as set out in a note found in the website of the Lok Sabha which states as follows:

"Selection of Subject for Examination:

As the work of the Committee is normally confined to the various matters referred to in the Audit Reports, and Appropriation Accounts, its work normally starts after the Reports of the Comptroller and Auditor General on the accounts of the Government are laid on the Table of the House. As soon as the Committee for a year is constituted, it selects paragraphs from the reports of the Comptroller and Auditor General that were presented after the last selection of subjects by the Committee for in-depth examination during its term of office.

Assistance by Comptroller and Auditor General

The Committee is assisted by the Comptroller and Auditor General in the examination of Accounts and Audit Reports.

……

Calling for Information from Government

The Committee calls for, in the first instance, background note and advance information from the Ministries/ Departments concerned in regard to subjects selected by it for examination.

….

Evidence of Officials

The Committee later takes oral evidence of the representatives of the Ministries/Departments concerned with the subjects under examination.

……

Report and Minutes

The conclusions of the Committee on a subject are contained in its Report which, after its adoption by the Committee, is presented by the Chairman to the Lok Sabha. Minutes of the sittings of the Committee form Part II of the Report. A copy of the Report is also laid on the Table of Rajya Sabha. The Reports of the Committee are adopted by consensus among members. Accordingly, there is no system of appending minute of dissent to the Report."

53. Action Taken Reports (ATRs) are then required to be made out by the ministries. Speaker has the power to issue directions under the rule and procedure. Direction 102 requires the Government to, as early as possible, furnish the PAC with a statement showing the action taken on the recommendations of the PAC report. The Parliament has before it not only the report of the CAG, the report of the PAC in the first instance drawn up after hearing the view of the ministries, the Action Taken Report including the replies of the Government and the further comments of the PAC on the replies of the Government.

54. We have referred to the report of the CAG, the role of the PAC and the procedure followed in the House, only to indicate that the CAG report is always subject to scrutiny by the Parliament and the Government can always offer its views on the report of the CAG.

55. The question that is germane for consideration in this case is whether this Court can grant reliefs merely placing reliance on the CAG's report. The CAG's report is always subject to parliamentary debates and it is possible that PAC can accept the ministry's objection to the CAG report or reject the report of the CAG. The CAG, indisputably is an independent constitutional functionary, however, it is for the Parliament to decide whether after receiving the report i.e. PAC to make its comments on the CAG's report.

56. We may, however, point out that since the report is from a constitutional functionary, it commands respect and cannot be brushed aside as such, but it is equally important to examine the comments what respective ministries have to offer on the CAG's report. The ministry can always point out, if there is any mistake in the CAG's report or the CAG has inappropriately appreciated the various issues. For instance, we cannot as such accept the CAG report in the instance case.

57. Article 2.6 of PSC permits extension of the exploration period for three years from the end of the seven year period prescribed in Article 2.2. The period extended in pursuance to Article 2.6 expired on 14.5.2005. The CAG, it is seen, has assumed that any exploration carried out beyond the period was beyond the provision of PSC. Article 2.6 specifically contemplates extension of the exploration phase pursuant to the terms of the PSC. The last part of Article 2.6 to Article 2.9, however, permits further extension of the exploration period for a period of 30 months, therefore, it is factually and legally incorrect to suggest that any exploration carried out beyond 14.5.2005 was beyond the provision of PSC. CAG views on that aspect cannot be accepted.

58. In such circumstances, we find no merits in the writ petition which was filed without appreciating or understanding the scope of the decision or the making process concerning economic and commercial matters which gives liberty to States and its instrumentalities to take appropriate decision after weighing advantages and disadvantages of the same and this Court sitting in this jurisdiction, as already indicated, is not justified in interfering with those decisions, especially when there is nothing to show that those decisions are contrary to law or actuated to mala fide or irrelevant considerations. The writ petition, therefore, lacks merits. Hence, the same is dismissed.

R.P. Writ Petition dismissed.

Y.S. JAGAN MOHAN REDDY
v.
CENTRAL BUREAU OF INVESTIGATION
(Criminal Appeal No. 730 of 2013)

MAY 9, 2013

[P. SATHASIVAM AND M.Y. EQBAL, JJ.]

Code of Criminal Procedure, 1973:

ss.439 and 173(8) - Bail - Economic offences -- Factors to be taken into consideration while granting bail - Explained - Charge-sheets filed against appellant and others for offences punishable u/ss 420, 409 and 477-A IPC and s.13(2) read with s. 13(1)(c) of Prevention of Corruption Act - Charges relating to amassing of huge ill-gotten wealth, allotment of lands on relaxed norms, abuse of public office, laundering bribe money through investment in bogus companies etc. - Further investigation in progress - Held: Economic offences having deep rooted conspiracies and involving huge loss of public funds, need to be viewed seriously and considered as grave offences affecting economy of the country as a whole and thereby posing serious threat to financial health of the country, and being a class apart, they need to be visited with a different approach in the matter of bail - On going through Status Report furnished by CBI and counter affidavit sworn by Deputy Inspector General of Police and Chief Investigating Officer, release of appellant at this stage would hamper investigation as it may influence the witnesses and tamper with the material evidence - However, CBI is directed to complete the investigation expeditiously and file the charge sheet(s) - Thereafter, appellant is free to renew his prayer for bail before trial court.

On the orders of the High Court, CBI registered a case for various offences under the Penal Code and

Prevention of Corruption Act, 1988 relating to amassing of huge ill-gotton wealth, conducting media business with such money, floating bogus companies with benami share holders and laundering the bribe money through investment in such companies, allotment of lands, abuse of public office, contracts of irrigation projects, special relaxations/permissions for real estate ventures, mines etc. The appellant, the son of a former Chief Minister, was arraigned as accused no. 1 in the case along with 73 others. Four charge-sheets in the case were filed respectively on 31.3.2012, 23.4.2012, 7.5.2012 and 13.8.2012. The appellant was arrested on 29.5.2012. His bail applications filed from time to time were rejected. The appellant on 16.11.2012 again unsuccessfully moved an application before the Special Court for default/ regular bail. The High Court also declined his prayer.

Dismissing the appeal, the Court

HELD: 1.1. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. Such offences having deep rooted conspiracies and involving huge loss of public funds, need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. [para 15] [561-D-E]

1.2. In the instant case, in the Status Report, the CBI has assured that the investigation is being carried out expeditiously as directed by this Court. It is stated that among 7 issues as referred to in the earlier order dated 5.10.2012 of this Court, the CBI has completed the investigation with respect to one matter and investigation is progressing with regard to other 6 issues also and is in the final stage with respect to three of them wherein charge sheet/final report is likely to be filed shortly. [para 10] [556-F-H]

1.3. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. [para 16] [561-F-G]

1.4. On going into all the details furnished by CBI in the form of Status Report and the counter affidavit dated 06.05.2013 sworn by the Deputy Inspector General of Police and Chief Investigating Officer, the huge magnitude of the case and also the request of the CBI asking for further time for completion of the investigation in filing the charge sheet(s), this Court is of the opinion that the release of the appellant at this stage may hamper the investigation. The apprehension raised by CBI cannot be lightly ignored considering the claim that the appellant is the ultimate beneficiary and the prime conspirator in huge monetary transactions. However, the CBI is directed to complete the investigation expeditiously and file the charge sheet(s). Thereafter, the appellant is free to renew his prayer for bail before the trial court. [para 14 and 17] [561-B, G-H; 562-A-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 730 of 2013.

From the Judgment & Order dated 24.01.2013 of the High Court of A.P. at Hyderabad in CRLP No. 8750 of 2012.

Harish N. Salve, Mukul Rohatgi, Sushil Kumar, K.V. Vishwanathan, Gopal Sankaranarayan, Neeranjan Reddy, Sriram, Subash Reddy, Senthil Jagadeesan for the Appellant.

Ashok Bhan, Mukul Gupta. D.L. Chidananda, Anjali Chauhan, B.V. Balramdas for the Respondent.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. Leave granted.

2. This appeal is directed against the final judgment and order dated 24.01.2013 passed by the High Court of Judicature of Andhra Pradesh at Hyderabad in Criminal Petition No. 8750 of 2012 in R.C. 19(A)/2011-CBI-Hyderabad, whereby the High Court dismissed the petition filed by the appellant herein for grant of bail.

3. The only question posed for consideration is whether the appellant-herein has made out a case for bail.

Brief facts:

4. (a) On the orders of the High Court of Andhra Pradesh in Writ Petition Nos. 794, 6604 and 6979 of 2011 dated 10.08.2011, the Central Bureau of Investigation (in short "the CBI"), Hyderabad, registered a case being R.C. No. 19(A)/ 2011-CBI-Hyderabad dated 17.08.2011 under Section 120B read with Sections 420, 409 and 477-A of the Indian Penal Code, 1860 (for short 'IPC') and Section 13(2) read with Section 13(1)(c) and (d) of the Prevention of Corruption Act, 1988 (in short "the PC Act") against Y.S. Jagan Mohan Reddy (A-1), Member of Parliament and 73 others.

(b) The appellant-Y.S. Jagan Mohan Reddy was named as an accused at Sl. No. 1 in the FIR dated 17.08.2011 (after the chargesheet was framed, he was arrayed as A-1 and hereinafter, he will be referred to as A-1).

(c) During investigation, it was revealed that Y.S. Jagan Mohan Reddy (A-1), son of Late Dr. Y.S. Rajasekhara Reddy, the then Chief Minister of Andhra Pradesh, has adopted several ingenious ways to amass illegal wealth which resulted in great public injury. The then Chief Minister of the State abused his

public office to the benefit of his son Y.S. Jagan Mohan Reddy (A-1). Since May, 2004, A-1 started floating a number of companies including M/s Jagathi Publications Pvt. Ltd., which was originally incorporated as a private limited company on 14.11.2006 and later converted into a public limited company on 12.01.2009. At the relevant time, Y.S. Jagan Mohan Reddy (A-1) was designated as the Authorised Signatory to operate the Bank accounts of the said Company. He was appointed as a Director and Chairman with effect from 21.06.2007. It is alleged that A-1 floated M/s Jagathi Publications Pvt. Ltd. with an objective of conducting media business with the ill-gotten wealth. Most of the shareholders were alleged to be the benamis of Y.S. Jagan Mohan Reddy (A-1). Further, as a quid pro quo to these investments, the benefits were received by various investors including the companies/individuals from the decisions of the State Government in allotment of lands for Special Economic Zones (SEZs), contracts for irrigation projects, special relaxations/permissions for real estate ventures, mines etc. It is further revealed that Y.S. Jagan Mohan Reddy (A-1) laundered the bribe money by routing it through various individuals and companies and getting investments made by them in his companies at a high premium.

(d) On 31.03.2012, 23.04.2012 and 07.05.2012, the CBI filed first, second and third charge sheet(s) respectively before the Special Judge for CBI Cases, Hyderabad and the appellant was arrayed as A-1 in all the charge sheets. The Principal Special Judge for CBI Cases took cognizance of the charge sheet dated 31.03.2012 which was numbered as CC No. 8 of 2012. The appellant was arrested on 27.05.2012 for his involvement and complicity in the case and presently, he is in judicial custody. On 29.05.2012 and 30.05.2012, the Principal Special Judge for CBI Cases took cognizance of second and third charge sheet(s) which were numbered as CC Nos. 9 and 10 of 2012 respectively.

(e) On 29.05.2012, the appellant filed Crl. M.P. No. 1055/

2012 in CC No. 8 of 2012 before the Court of the Special Judge for CBI Cases at Hyderabad for grant of regular bail under Section 437 of the Code of Criminal Procedure, 1973 (in short 'the Code'). The Special Judge, by order dated 01.06.2012, dismissed his application for bail.

(f) The CBI filed Criminal Petition Nos. 4743 and 4744 of 2012 before the High Court for the remand of A-1 for a period of 5 days. The High Court, by order dated 02.06.2012, allowed the petitions and remanded A-1 to the custody of the CBI from 03.06.2012 to 07.06.2012. By further orders dated 08.06.2012 in Crl. M.P. No. 4785 of 2012 in Criminal Petition No. 4743 of 2012, the custody was extended to a further period of 2 days.

(g) Being aggrieved, the appellant moved the High Court for enlarging him on bail in Criminal Petition No. 5211 of 2012. The High Court, taking note of serious nature of the offence and having regard to personal and financial clout of the appellant (A-1) and finding that it cannot be ruled out that witnesses cannot be influenced by him in case he is released on bail at this stage, by impugned order dated 04.07.2012, dismissed his bail application.

(h) Being aggrieved by the orders dated 02.06.2012 and 04.07.2012, the appellant preferred two special leave petitions being Nos. 5901 and 5902 of 2012 before this Court. This Court, by order dated 09.08.2012, issued notice in SLP (Crl.) No. 5902 of 2012 and dismissed SLP (Crl.) No. 5901 of 2012.

(i) On 13.08.2012, the CBI filed fourth charge sheet in the Court of Principal Special Judge for CBI Cases, Hyderabad which was numbered as CC No. 14 of 2012.

(j) This Court, on coming to know that the investigation is continuing in connection with 7 matters, dismissed the special leave petition being SLP (Crl.) 5902 of 2012 by order dated 05.10.2012 with a direction to the CBI to complete the investigation as early as possible and to file a consolidated

charge sheet on the remaining 7 issues. This Court also directed the appellant to renew his prayer for bail before the trial court on completion of the investigation by the CBI.

(k) On 16.11.2012, the appellant filed Crl. M.P. No. 1938 of 2012 before the Special Judge for CBI Cases, Hyderabad, seeking default/statutory bail. On the same day, the appellant filed Crl. M.P. No. 1939 of 2012 in CC No. 8 of 2012 before the Special Judge for CBI Cases, Hyderabad, seeking regular bail. By orders dated 28.11.2012 and 04.12.2012, the Special Judge rejected the bail applications filed by the appellant herein in Crl. M.P. No. 1938 of 2012 and Crl. M.P. No. 1939 of 2012 respectively.

(l) The appellant preferred Criminal Petition No. 8576 of 2012 before the High Court for grant of bail which came to be dismissed on 24.12.2012. Being aggrieved, the appellant preferred Criminal Petition No. 8750 of 2012 before the High Court. The High Court, by order dated 24.01.2013, dismissed the petition filed by the appellant herein.

(m) Being aggrieved by the order of the High Court, the appellant herein has preferred this appeal by way of special leave.

5. Heard Mr. Harish N. Salve, Mr. Mukul Rohatgi and Mr. K.V. Vishwanathan, learned senior counsel for the appellant-accused and Mr. Ashok Bhan and Mr. Mukul Gupta, learned senior counsel for the respondent-CBI.

6. The CBI has filed a counter affidavit dated 06.05.2013, sworn by a senior officer, namely, Deputy Inspector General of Police and Chief Investigating Officer in RC No. 19(A)/2011-CBI-HYD and has furnished various information such as allegations against the appellant, companies/persons involved, investigation conducted so far and progress of the investigation with regard to certain companies/persons. During the course of hearing, the CBI also circulated the Status Report in respect

of the FIR being No. 19(A)/2011-CBI-HYD regarding 7 issues mentioned in the order of this Court dated 05.10.2012. Learned senior counsel appearing for the appellant, by drawing our attention to various materials/details including the fact that the appellant is in custody nearly for a period of 1 year and many persons alleged to have been involved in those transactions are not in custody and no steps have been taken by the CBI for their arrest, submitted that the appellant may be enlarged on bail after imposing appropriate conditions.

7. In order to appreciate the rival contentions, particularly, the stand of the CBI, it is useful to refer the earlier order passed by this Court on 05.10.2012 which reads as under:

"SLP (Crl.)No. 5902 of 2012

Heard Mr. Gopal Subramaniam, learned senior advocate appearing for the petitioner at some length.

Mr. Mohan Parasaran, learned ASG appearing on behalf of the CBI, submitted before us a report from which it appears that the investigation is still going on in connection with seven matters. In paragraph 9 of the report, it is stated as under:

".....The matters which are pending investigation also involved investigation into various serious economic offences involving hundreds of crores of rupees. The major matters which are now under investigation relating to conspiracies distinctly involving the following entities which by themselves are independent to each other and are, therefore, distinct conspiracies.

(i) Sandur Power Co. Ltd.

(ii) Grant of mining lease to Bharti Cements/Raghuram Cements which are companies none other than own companies of A1, Mr. JMR.

(iii) Penna Cements and Group companies

(iv) Dalmia Cements

(v) India Cements

(vi) Investment through paper companies based in Kolkata and Mumbai, popularly known as suit case companies.

(vii) Indu Projects, Lepakshi knowledge Hub

The amounts involved and which is subject matter of investigation in the above cases as per estimates exceed Rs.3000 crores."

(emphasis in the original)

Mr. Parasaran stated that the CBI is making investigation without wasting any time and he assured the Court that the investigation will be completed as early as possible and on completion of the investigation the CBI shall submit one final charge-sheet.

On hearing counsel for the parties and on going through the report submitted by the CBI, we are not inclined to interfere in the matter at this stage.

The special leave petition is, accordingly, dismissed.

It will be, however, open to the petitioner to renew his prayer for bail before the trial court on completion of the investigation by the CBI on the issues as indicated above and submission of the final charge-sheet.

In case, such a prayer is made, the Court shall consider the prayer for bail independently, on its own merits, without being influenced by the dismissal of the special leave petition.

SLP(Crl.)No.5946 of 2012

Put up after two weeks."

8. Mr. Ashok Bhan, learned senior counsel for the CBI, by pointing out the penultimate paragraph in the order dated 05.10.2012, i.e., "It will be, however, open to the petitioner to renew his prayer for bail before the trial Court on completion of the investigation by the CBI on the issues as indicated above and submission of the final charge-sheet", submitted that in view of the fact that the investigation is still continuing in respect of the transaction(s) with certain companies/persons, the present application for bail is not maintainable.

9. It is relevant to note that in the order dated 05.10.2012, this Court noted the statement made by learned ASG, who appeared for the CBI, that the investigation relating to conspiracies distinctly involving 7 entities which by themselves are independent to each other requires further time. According to learned senior counsel for the CBI, they require 4-6 months' time to complete the investigation in respect of the 7 entities as mentioned in the order dated 05.12.2012 and to file a charge sheet. In support of the above claim, the CBI pointed out various instances from the counter affidavit as well as from the Status Report justifying their stand for the dismissal of the bail application.

10. In the Status Report, the CBI has assured that the investigation is being carried out expeditiously as directed by this Court. It is stated that among 7 issues, the CBI has completed the investigation with respect to M/s Dalmia Cements and consequently filed the charge sheet in the Court of Special Judge for CBI Cases, Hyderabad on 08.04.2013. According to the CBI, presently, the investigation is progressing with regard to other 6 issues also and the CBI is in the final stages of investigation with respect to the following, viz., M/s India Cements, Penna Cements and Investments through Kolkata companies. It is also assured to this Court that the CBI is likely to file charge sheet/final reports in the above said three issues shortly.

11. The CBI in its Status Report has elaborated the progress with regard to the investigation in the remaining issues which are as under:-

M/s Dalmia Cements (Bharat) Ltd.

(a) The investigation has revealed that M/s Dalmia Cements (Bharat) Ltd. invested an amount of Rs. 95 crores into M/s Raghuram Cements Ltd. represented by Y.S Jagan Mohan Reddy. In quid pro quo to the investments, A-1, through his influence over his father Late Dr. Y.S. Rajasekhara Reddy facilitated the grant and transfer of mining lease to the extent of 407 hectares in Kadapa District of Andhra Pradesh to M/s Dalmia Cements. The CBI has highlighted the amount involved and the facilities provided by the father of the appellant. It is further highlighted in the Status Report that the searches were conducted by the Income Tax Department, New Delhi at the offices of M/s Dalmia Cements (Bharat) Ltd. and the residential premises of their employees.

(b) It is also highlighted that as per the pre-arranged agreement between Y.S. Jagan Mohan Reddy (A-1), V. Vijay Sai Reddy (A-2) and Puneet Dalmia, M/s Dalmia Cements (Bharat) Ltd. sold of their stake in M/s Raghuram Cements Ltd. to M/s PARFICIM, France, for a total consideration of Rs. 135 crores out of which, an amount of Rs. 55 crores was paid to Y.S. Jagan Mohan Reddy (A-1) between 16.05.2010 and 13.06.2011, in cash through hawala channels, and the details of the said payments were found in the material seized by the Income Tax Department, New Delhi.

(c) The CBI has further alleged that M/s Dalmia Cements (Bharat) Ltd. have returned the alleged sale proceeds to Y.S. Jagan Mohan Reddy (A-1) in cash through hawala channels which clearly establish that the initial payment of Rs. 95 crores was only illegal gratification for the undue benefits received by them from the Government of Andhra Pradesh and was not genuine investments. It is further submitted that the charge

sheet has already been filed with regard to the same on 08.04.2013 against A-1 and 12 others under various sections of the IPC and the PC Act.

M/s Sandur Power Company Ltd.

(a) Regarding the investigation relating to M/s Sandur Power Company Ltd., it is stated by the CBI that Y.S. Jagan Mohan Reddy (A-1) was the Director of this Company from 16.06.2001 to 11.01.2010. M/s Sandur Power Company Ltd. was incorporated on 23.10.1998 by M.B. Ghorpade and subsequently, Y.S. Jagan Mohan Reddy (A-1) joined the company during June 2001 along with the Board of Directors, viz., Harish C. Kamarthy and JJ. Reddy. It is alleged by the CBI that the Company is closely held by Y.S. Jagan Mohan Reddy (A-1). The CBI also highlighted various share transactions amounting to Rs. 124.60 crores with two Mauritius based companies, viz., M/s 2i Capital and M/s Pluri Emerging Company by M/s Sandur Power Company Ltd. It is projected by the CBI that the above said amount is of A-1 which was routed through the Mauritius based companies. It is also highlighted that the role of Nimmagadda Prasad (A-3), who is currently under judicial custody is also being investigated for the same. Vijay Sai Reddy (A-2), along with Y.S. Jagan Mohan Reddy (A-1), was the brain behind this conspiracy inasmuch as A-2 had floated fictitious companies in Chennai so as to enable round tripping or routing monies into M/s Sandur Power Company Ltd. from India and foreign countries through companies falsely created in Chennai as well as in certain foreign countries.

(b) It is also pointed out by the CBI that notice has also been issued to one Maiank Mehta, who is suspected to be the person who handled the routing of money of Y.S. Jagan Mohan Reddy (A-1) and notice has been issued for his presence in India for examination and interrogation. The said person is presently based in Hong Kong and is refusing to come to India

citing frivolous reasons. It is suspected that he is being influenced by Y.S. Jagan Mohan Reddy (A-1) and Vijay Sai Reddy (A-2) which amply prove that the witnesses are being influenced by these persons in this case.

Grant of Mining Lease to Bharti Cements/Raghuram Cements:

It is pointed out by the CBI that investigation is under progress regarding grant of mining lease of limestone to Bharti Cements/ Raghuram Cements which are the companies owned by Y.S. Jagan Mohan Reddy (A-1). It is claimed by the CBI that during the period under review, they have collected nearly 400 documents running into thousands of pages from various Departments/Banks including Oriental Bank of Commerce, Jubilee Hills, Hyderabad, Koramangala, Bangalore, Head Office, Gurgaon etc. for disbursement of loan of Rs. 200 crores violating the bank guidelines and rules. It is also stated that the investigation disclosed the payment of illegal gratification of Rs. 30 crores to Y.S. Jagan Mohan Reddy (A-1) by Nimmagadda Prasad (A-3) for the wrongful gain obtained by A-3 from the Government of Andhra Pradesh in connection with awarding a project consisting of development of two Sea Ports and an Industrial Corridor as VANPIC Project and falsification of documents to cover up the said payment etc.

M/s Indu Projects Ltd. (M/s Lepakshi Knowledge Hub Pvt. Ltd. and M/s Indus Tech Zone Pvt. Ltd.)

The CBI has pointed out that the investigation is in progress in respect of the above said group of companies. In the Status Report, the CBI has highlighted a number of details about the nexus of the appellant along with those companies. Since the investigation is still under progress in respect of those companies, we are not highlighting all those details furnished by the CBI in the Status Report.

M/s India Cements Ltd.

The CBI has highlighted the investigation relating to M/s India Cements Ltd. and the various amounts exchanged between the parties. In respect of the above, according to the CBI, they had made illegal quid pro quo investments to the tune of Rs.140 crores into the group companies of Y.S. Jagan Mohan Reddy (A-1) and had received several benefits in the form of permissions granted for utilization/additional quantity of water from Kagna and Krishna Rivers and lease of land. It is also pointed out that the investigation in the case is almost complete except few more crucial witnesses have to be examined. The CBI also pointed out the details of investigation relating to investment through paper companies based in Kolkata and Mumbai, popularly known as suit case companies. Since investigation is on a half way, we are not referring all those details mentioned in the Status Report.

12. It is further pointed out that during investigation, a total number of 140 witnesses including IAS officers and concerned Ministers have been examined and 352 documents were collected. According to the CBI, out of these, some more crucial witnesses have to be examined.

13. Learned senior counsel appearing for the appellant pointed out that after the order dated 05.10.2012, the CBI is not justified in prolonging the same just to continue the custody of the appellant. It was also highlighted that even according to the CBI, several Ministers and IAS officers are involved, but no one has been arrested so far. As far as those allegations are concerned, it is the claim of the CBI that considering the huge magnitude of transactions, various beneficiaries, companies/ persons involved with A-1 and his associates, the CBI is taking effective steps for early completion of the same. Though learned senior counsel for the appellant submitted that in view of non-compliance of Section 167 of the Code the appellant is entitled to statutory bail, in view of enormous materials placed in respect of distinct entities, various transactions etc. and in the light of the permission granted by this Court in the order

dated 05.10.2012, we are unable to accept the argument of learned senior counsel for the appellant.

14. On going into all the details furnished by the CBI in the form of Status Report and the counter affidavit dated 06.05.2013 sworn by the Deputy Inspector General of Police and Chief Investigating Officer, Hyderabad, without expressing any opinion on the merits, we feel that at this stage, the release of the appellant (A-1) would hamper the investigation as it may influence the witnesses and tamper with the material evidence. Though it is pointed out by learned senior counsel for the appellant that since the appellant is in no way connected with the persons in power, we are of the view that the apprehension raised by the CBI cannot be lightly ignored considering the claim that the appellant is the ultimate beneficiary and the prime conspirator in huge monetary transactions.

15. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

16. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.

17. Taking note of all these facts and the huge magnitude of the case and also the request of the CBI asking for further time for completion of the investigation in filing the charge sheet(s), without expressing any opinion on the merits, we are

of the opinion that the release of the appellant at this stage may hamper the investigation. However, we direct the CBI to complete the investigation and file the charge sheet(s) within a period of 4 months from today. Thereafter, as observed in the earlier order dated 05.10.2012, the appellant is free to renew his prayer for bail before the trial Court and if any such petition is filed, the trial Court is free to consider the prayer for bail independently on its own merits without being influenced by dismissal of the present appeal.

18. With the above observation, the appeal is dismissed.

R.P. Appeal dismissed.

GURNAIB SINGH
v.
STATE OF PUNJAB
(Criminal Appeal No. 744 of 2013)

MAY 10, 2013.

[K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]

CONSTITUTION OF INDIA, 1950:

Art. 136 - Scope of -- Held: When a conclusion is arrived at by courts below which is manifestly erroneous and unsupported by evidence on record, Supreme Court, in exercise of power under Art. 136, can re-evaluate evidence and interfere.

PENAL CODE, 1860:

s.304-B, s.306 read with s.498-A - 'Cruelty' - Abetment of suicide - Death of a young bride in her matrimonial home - Conviction and sentence of 7 yrs. RI u/s 304-B by courts below - Held: Trial court as well as High Court has accepted the evidence of prosecution witnesses that there was demand of dowry - But, an examination of their evidence makes it evident that they have only made a bald statement that accused persons were not satisfied with the dowry and were asking the bride to bring the stated amount a sum of Rs.50,000/- - Thus, on the base of such sketchy evidence, it is difficult to concur with the finding that there was demand of dowry by accused-husband and harassment pertained to such a demand - The conclusion on this score is based on certain a priori notions - However, it has come out in evidence that there was ill-treatment by mother-in-law and husband - Bride was in her early twenties - She was turned out of matrimonial home on certain occasions - This aspect has been established beyond doubt - Considering the evidence

of prosecution witnesses, it is a case where the bride was totally insensitively treated with cruelty and harassed because of which she put an end to her life.

s.304-B, s.306 read with s.498-A - Held: Though charge has not been framed u/s 306 yet, it is evident that accused were aware that they were facing a charge u/s 304B IPC which related not to administration of poison but to consumption of poison by deceased because of demand of dowry and harassment - It is major offence in comparison to s.306 which deals with abetment to suicide by a bride in the context of clause (a) of s. 498A - Thus, basic ingredients of offence u/s 306 have been established by prosecution inasmuch as death has occurred within seven years in an abnormal circumstance and deceased was meted out with mental cruelty - Accordingly, conviction from one u/s 304B is converted to that u/s 306 - As accused has spent almost five years in custody, sentence is limited to period already undergone - Code of Criminal Procedure, 1973 - s.313.

CRIMINAL TRIAL:

Conducting of trial - Adjournments - Held: A criminal trial has its own gravity and sanctity -- Trial courts shall keep in mind the statutory provisions and their interpretation by Supreme Court -- They should not become mute spectators when a trial is being conducted by allowing the control to counsel for parties - They are required to monitor - Besides, dispensation of criminal justice is not only a concern of the Bench but has to be the concern of the Bar as well - Administration of justice reflects its purity when the Bench and the Bar perform their duties with utmost sincerity - An advocate cannot afford to bring any kind of disrespect to fairness of trial by taking recourse to subterfuges for procrastinating the same - In the instant case, trial was conducted in an extremely haphazard and piecemeal manner - Adjournments were granted on a mere asking - Cross-examination of witnesses

were deferred without recording any special reason and dates were given after a long gap - Court expresses its concern about the manner in which trial had been conducted - Administration of justice - Criminal justice - Code of Criminal Procedure, 1973 - s. 309 - Advocates.

The appellant, his mother and the brother were prosecuted for commission of offence u/s 304-B IPC, on the allegation that the young bride, the wife of the appellant, was harassed and tortured for dowry by the accused so much so that she consumed insecticides and committed suicide. The post mortem report confirmed the death because of consuming poison. The trial court convicted all the three accused u/s 304-B IPC and sentenced each of them to 7 years RI and a fine of Rs.10,000/-. The accused filed an appeal against their conviction whereas the informant filed a criminal revision seeking enhancement of sentence. The mother of the appellant died pending appeal and his brother was acquitted by the High Court. However, appellant's conviction was affirmed, but the fine was set aside.

In the instant appeal, the question for consideration before the Court was: "whether the deceased was driven to commit suicide because of the harassment meted out to her in connection with demand of dowry."

Allowing the appeal in part, the Court

HELD: 1.1 When a conclusion is arrived at by courts below which is manifestly erroneous and unsupported by the evidence on record, this Court, in exercise of power under Art. 136 of the Constitution, can re-evaluate and interfere. [para 16] [578-D-E]

Alamelu v. State **2011 (2) SCR 147 = 2011 (2) SCC 385,** *Heinz India (P) Ltd. v. State of U.P.* **2012 (3) SCR 898 = 2012 (5) SCC 443; and** *Vishwanath Agrawal v. Sarla Vishwanath*

Agrawal **2012 (7) SCR 607 = 2012 (7) SCC 288 - relied on**

1.2. The trial court as well as the High Court has accepted the evidence of the brother(PW-1), the father (PW-4) and Numberdar of the village (PW-5) that there was demand of dowry. However, PW-1 has only made a bald statement that the accused persons were not satisfied with the dowry and were asking his sister to bring a sum of Rs.50,000/-. Similar is the testimony of PWs-4 and 5 and nothing else has been stated by the witnesses. Thus, on the base of such sketchy evidence, in the considered opinion of this Court, it is difficult to concur with the finding that there was demand of dowry by the accused-husband and the harassment pertained to such a demand. The conclusion on this score is based on certain a priori notions. [para 16] [577-G-H; 578-A-D]

Satvir Singh and Others v. State of Punjab and Another **2001 (3) Suppl. SCR 353 = 2001 (8) SCC 633; and** *Hira Lal and Others v. State (Govt. of NCT),* **Delhi 2003 (1) Suppl. SCR 734 = 2003 (8) SCC 80 - referred to.**

1.3. However, s.498A IPC deals with husband or relative of husband of a woman subjecting her to cruelty. Clause (a) of the Explanation to s. 498-A defines "cruelty" to mean "any willful conduct which is of such a nature as is likely to drive the woman to commit suicide". Clause (a) can take in its ambit mental cruelty. There can be no dispute that in a family life, there can be differences, quarrels, misgivings and apprehensions but it is the degree which raises it to the level of mental cruelty. It has come out in evidence that there was ill-treatment by the mother-in-law and the husband. The bride was in her early twenties. She was turned out of matrimonial home on certain occasions. This aspect has been established beyond doubt. Considering the evidence of the prosecution witnesses, it is a case where the bride was

totally insensitively treated and harassed. The defence had tried to prove that she was suffering from depression and because of such depression, she extinguished the candle of her own life. The testimony of the doctors cited by the defence has not been accepted by the trial Judge as well as by the High Court. They have not been able to bring in adequate material on record that she was suffering from such depression as would force her to commit suicide. On a perusal of the evidence of the said witnesses, the finding recorded on that score is absolutely impeccable. In view of the same, the evidence brought on record that the bride was treated with cruelty and harassed deserves to be given credence. [para 17-18] [578-F; 579-A-C and D-F; 580-B-C]

2.1. There is no dispute that no charge was framed for an offence u/s 306 IPC. However, from the question that has been put u/s 313 CrPC, it is clear as crystal that the accused were aware that they were facing a charge u/s 304B IPC which related not to administration of poison but to consumption of poison by the deceased because of demand of dowry and harassment. It is major offence in comparison to s.306 IPC which deals with abetment to suicide by a bride in the context of clause (a) of s. 498A IPC. [para 19] [580-D-E]

Gurbachan Singh v. State of Punjab **AIR 1957 SC 623;** *Shamnsaheb M. Multtani v. State of Karnataka* **2001 (1) SCR 514 = 2001 (2) SCC 577,** *Narwinder Singh v. State of Punjab* **2011 (1) SCR 110 = 2011 (2) SCC 47,** *K. Prema S. Rao and another v. Yadla Srinivasa Rao and others* **2002 (3) Suppl. SCR 339 = 2003 (1) SCC 217 - relied on.**

2.2. In the case at hand, the basic ingredients of the offence u/s 306 IPC have been established by the prosecution inasmuch as the death has occurred within seven years in an abnormal circumstance and the deceased was meted out with mental cruelty. Thus, the

conviction from one u/s 304B IPC is converted to that u/s 306 IPC. As the accused has spent almost five years in custody, the sentence is limited to the period already undergone. [para 23] [582-F-G]

Conducting of criminal trial:

3.1. A criminal trial has its own gravity and sanctity. In the instant case, the manner in which the trial was conducted, depicts a very disturbing scenario. As is demonstrable from the record, the trial was conducted in an extremely haphazard and piecemeal manner. Adjournments were granted on a mere asking. Cross-examinations of witnesses were deferred without recording any special reason and dates were given after a long gap. The mandate of the law and the views expressed by this Court from time to time appears to have been totally kept at bay. Dispensation of criminal justice casts a heavy burden on the trial Judge to have control over the proceedings. It has to be placed on a proper pedestal and it cannot be left to the whims and fancies of the parties or their counsel. [para 24 and 27] [583-A-C; 584-G-H]

Ambika Prasad and Another v. State (Delhi Admn., Delhi) **2000 (1) SCR 342 = 2000 AIR 718;** *State of U.P. v. Shambhu Nath Singh and Others* **2001 (2) SCR 854 = 2001 (4) SCC 667,** *Mohd. Khalid v. State of W.B.* **2002 (2) Suppl. SCR 31 = 2002 (7) SCC 334;** *Akil @ Javed v. State of Delhi* **2012 (11) SCALE 709 - relied on**

Talab Haji Hussain v. Madhukar Purshottam Mondkar and Another **1958 SCR 1226 =AIR 1958 SC 376;** *Krishnan and Another v. Krishnaveni and Another* **AIR 1997 SC 987 = 1997 (1) SCR 511;** *Swaran Singh v. State of Punjab* **2000 (3) SCR 572 = AIR 2000 SC 2017 - referred to.**

3.2. It is reiterated that the trial courts shall keep in

mind the statutory provisions and the interpretation placed by this Court and should not become mute spectators when a trial is being conducted, by allowing the control to the counsel for the parties. They have their roles to perform. They are required to monitor. They cannot abandon their responsibility. It should be borne in mind that the whole dispensation of criminal justice at the ground level rests on how a trial is conducted. It needs no special emphasis to state that dispensation of criminal justice is not only a concern of the Bench but has also to be the concern of the Bar. The administration of justice reflects its purity when the Bench and the Bar perform their duties with utmost sincerity. An advocate cannot afford to bring any kind of disrespect to fairness of trial by taking recourse to subterfuges for procrastinating the same. This Court expresses its anguish, agony and concern about the manner in which the trial in the instant case has been conducted. [para 34] [588-B-E]

Case Law Reference:

2001 (3) Suppl. SCR 353	**referred to**	**para 12**
2003 (1) Suppl. SCR 734	**referred to**	**Para 15**
2011 (2) SCR 147	**relied on**	**para 16**
2012 (3) SCR 898	**relied on**	**para 16**
2012 (7) SCR 607	**relied on**	**para 16**
AIR 1957 SC 623	**relied on**	**para 19**
2001 (1) SCR 514	**relied on**	**para 20**
2011 SCR 110	**relied on**	**para 21**
2002 (3) Suppl. SCR 339	**relied on**	**para 22**
1958 SCR 1226	**referred to**	**para 24**

1997 (1) SCR 511	**referred to**	**para 25**
2000 (3) SCR 572	**referred to**	**para 26**
2000 (1) SCR 342	**relied on**	**para 28**
2001 (2) SCR 854	**relied on**	**para 29**
2002 (2) Suppl. SCR 31	**relied on**	**para 32**
2012 (11) SCALE 709	**relied on**	**para 33**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 744 of 2013.

From the Judgment & Order dated 15.11.2011 of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 1472 of 2001.

Abhay Kumar, Pardeep Singh Mirpur, U.P. Singh, Neetu Jain for the Appellant.

V. Madhukar, AAG, Sarajita Mathur, Kuldip Singh for the Respondent.

The Judgment of the Court was delivered by

DIPAK MISRA, J. 1. Leave granted.

2. Respect of a bride in her matrimonial home glorifies the solemnity and sanctity of marriage, reflects the sensitivity of a civilized society and, eventually, epitomizes her aspirations dreamt of in nuptial bliss. But, the manner in which sometimes the brides are treated in many a home by the husband, in-laws and the relatives creates a feeling of emotional numbness in the society. It is a matter of great shame and grave concern that brides are burnt or otherwise their life-sparks are extinguished by torture, both physical and mental, because of demand of dowry and insatiable greed and sometimes, sans demand of dowry, because of the cruelty and harassment meted out to the nascent brides treating them with total

insensitivity destroying their desire to live and forcing them to commit suicide a brutal self-humiliation of "Life".

3. Amarjeet Kaur, a young incipient lady, slightly more than two scores, daughter of an agriculturist, entered into wedlock with the appellant sometime in the early part of the year 1996. At the time of marriage, gifts were given as per the social customs. Sometime after the marriage, the matrimonial home, as the allegation of the prosecution unfurls, turned out to be an abode of indifference and harassment because of the demand of dowry of Rs.50,000/- by the husband and his family from her parents which could not be met due to their financial condition. Shattering the dreams that were harboured in her heart, she was turned out of her husband's house on many an occasion and, she was asked to return only if she could bring an amount of Rs.50,000/- from her parents. On 18.7.1998, Gurlab Singh, brother of the deceased, mustering courage and expecting that his sister would be treated with affection, took her to her matrimonial home and beseeched the husband and his mother to keep her as they were not in a position to give more dowry. Though she was allowed to remain in the matrimonial home, yet instead of show of affection even by affectation, she was showered with taunts and ridicules. On 27.7.1998, about 6.00 p.m., the anxious father, Sukhdev Singh, and the brother went to the house of the deceased to enquire about the well-being of the deceased and found her dead body kept in the courtyard of the house. They were convinced that she had committed suicide because of the cruelty meted out to her by the husband and his relatives and, accordingly, lodged an FIR at Joga Police Station. After the criminal law was set in motion, the Investigating Officer carried out the investigation and got the autopsy conducted on the dead body by a board of doctors consisting of three members. The doctors who conducted the post mortem on the dead body sent the viscera for chemical examination and, eventually gave their opinion that the cause of death of the deceased was due to consumption of Organo Phosphorus, a group of insecticides, which was detected in the

viscera and blood of the deceased. The investigating agency, after examining the witnesses and completing other formalities laid the charge-sheet before the competent court, and in due course, the appellant along with two other accused persons, namely, Mohinder Kaur, mother of the husband, and Ajaib Singh, brother, were sent up for trial for the offence punishable under Section 304B IPC.

4. The accused persons abjured their guilt and claimed to be tried. The prosecution, in order to bring home the charges, examined Gurlab Singh, PW-1, the brother of the deceased, Sukhdev Singh, PW-4, the father of the deceased, and PW-5, Numberdar of the village who have deposed about the ill treatment and demand of dowry. Dr. Rajinder Kumar Garg, PW-2, Dr. Vijay Sidhana, PW-3, and Dr. Asha Kiran, who had conducted the post mortem on the dead body of the deceased were examined to support the cause of death. That apart, certain other formal witnesses and the Investigating Officer were examined to substantiate the prosecution case.

5. The accused persons, in their statements under Section 313 of the Code of Criminal Procedure, denied all the incriminating circumstances and took the stand that the deceased was suffering from mental depression since marriage as she could not conceive and further she used to suffer fits. On the date of the incident, she suffered fits and was taken to the hospital but on the way, she breathed her last and, accordingly, her body was brought back home. It was also the stand of the accused persons that the parents of the deceased were informed and under their pressure, the police had been compelled to register a case. To substantiate the stance in the defence, it examined nine witnesses including Dr. Rajinder Arora, DW-1 and Dr. J.S. Dhillon, DW-6, who had, as stated, treated the deceased for mental illness. Other witnesses were examined to establish the general behavioural pattern of the deceased.

6. The learned Additional Sessions Judge, by judgment

and order dated 27.11.2001, convicted all the accused persons under Section 304B of IPC and sentenced each of them to undergo rigorous imprisonment for seven years and to pay a fine of Rs.10,000/- each, in default of fine, to suffer further rigorous imprisonment for one year.

7. Being dissatisfied, the convicts preferred Criminal Appeal No. 1472-SB of 2001 and the informant preferred Criminal Revision No. 1807 of 2002 seeking enhancement of sentence. During the pendency of appeal before the High Court, the appellant No. 3, Mohinder Kaur, the mother-in-law, expired, as a consequence of which the appeal stood abated as against her. The High Court discarded the defence version that the deceased was suffering from any depression or mental illness. Appreciating the evidence, it came to hold that the deceased had committed suicide by consuming poison and hence, the death was otherwise other than normal circumstances; that the deceased was subjected to cruelty in connection with demand of dowry soon before her death and the said aspect had been established beyond doubt by the prosecution; and that the testimonies of Gurlab Singh, PW-1, Sukhdev Singh, PW-4, and Santokh Singh, PW-5, had remained unimpeached despite roving cross-examination; that Ajaib Singh, the brother of the husband, was a young boy prosecuting his studies in Class X at the time of the incident and, therefore, it could not be said that he could have been involved in any kind of demand of dowry or treating his sister-in-law with cruelty. Being of this view, the High Court acquitted Ajaib Singh but as far as the husband was concerned, it modified the sentence by setting aside the fine component. As a fall out of the aforesaid opinion, the appeal was allowed in part and the revision preferred by the informant paved the path of dismissal.

8. We have heard Mr. Abhay Kumar, learned counsel for the appellant, and Mr. V. Madhukar, learned counsel for the respondent-State.

9. Questioning the defensibility of the conviction, it is submitted by the learned counsel for the appellant that the prosecution has not been able to prove that there has been any demand of dowry or any torture in connection with such demand and, therefore, the conviction under Section 304B IPC could not have been recorded against the husband. It is urged by him that the principal ingredients of Section 304B IPC have not been brought home inasmuch the prosecution has failed to establish that soon before the death of the deceased, she had been subjected to cruelty and harassment by her husband and his relatives and such harassment was in connection with the demand of dowry. It is his further submission that the High Court as an Appellate Court has not scrutinized the evidence in proper perspective and has returned a finding that there was a demand of dowry and, hence, the judgment of conviction warrants a reversal.

10. Mr. V. Madhukar, learned counsel for the State-respondent, resisting the aforesaid submissions, has contended that marshalling of the evidence by the trial Court and the reappraisal by the High Court withstand close scrutiny and there is no justification to interfere with the concurrent finding of guilt. Alternatively, it is put forth by him that assuming that the offence under Section 304B IPC is not brought home, still the material on record would justify a conviction under Section 306 IPC which would not impel this Court to interfere with the quantum of sentence.

11. To appreciate the rival proponements advanced at the Bar, we think it apposite to refer to Section 304B IPC which deals with dowry death. It reads as follows:-

> **"304B. Dowry Death.-** (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any

demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.- For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

12. To get the said provision attracted, certain ingredients are to be satisfied. Scanning the said provision, this Court in *Satvir Singh and Others v. State of Punjab and Another*[1] has stated thus:-

"The essential components of Section 304B are: (i) Death of a woman occurring otherwise than under normal circumstances, within 7 years of marriage. (ii) Soon before her death she should have been subjected to cruelty and harassment in connection with any demand for dowry. When the above ingredients are fulfilled, the husband or his relative, who subjected her to such cruelty or harassment, can be presumed to be guilty of offence under Section 304B. To be within the province of the first ingredient the provision stipulates that "where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances". It may appear that the former limb which is described by the words "death caused by burns or bodily injury" is a redundancy because such death would also fall within the wider province of "death caused otherwise than under normal circumstances". The former limb was inserted for highlighting that by no means death caused by burns or bodily injury should be treated as falling outside the ambit of the offence."

1. (2001) 8 SCC 633

13. In this context, it is apposite to refer to Section 113A of the Evidence Act, 1872. The said provision is extracted below: -

"113A. Presumption as to abetment of suicide by a married woman. - When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband."

14. Section 113B, which provides for presumption as to dowry death, was inserted with a view to fight against the plague of dowry death. The said provision is as follows: -

"113B. Presumption as to dowry death. - When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation. - For the purpose of this section, "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code."

15. Interpreting the aforesaid provisions in juxtaposition with Section 304B IPC, this Court, in *Hira Lal and Others v. State (Govt. of NCT), Delhi*[2], has expressed thus: -

"A conjoint reading of Section 113B of the Evidence Act

2. (2003) 8 SCC 80.

and Section 304B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where Section 113B of the Evidence Act and Section 304B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by the prosecution."

The learned Judges, while proceeding further and interpreting the expression "soon before", opined thus: -

"The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence."

16. Keeping in view the aforesaid principles, it is to be seen whether the deceased was driven to commit suicide because of the harassment meted out to her in connection with demand of dowry. The learned trial Judge as well as the High Court has accepted the evidence of the brother, PW-1, the father, PW-4, and PW-5, Numberdar of the village that there was demand of dowry. The learned counsel for the appellant would submit that the finding recorded on this score is not based on the material on record but founded on surmises. To test the

acceptation of the said submission, we have thought it apt to scrutinize the evidence of PWs-1, 4 and 5. PW-1, brother of the deceased, has only made a bald statement that the accused persons were not satisfied with the dowry and were asking his sister to bring a sum of Rs.50,000/-. Similar is the testimony of PWs-4 and 5. That apart, nothing has been stated by the witnesses. It has been deposed by the father that the deceased had written two to three letters stating about the demand of dowry but the said letters have not brought in evidence. That apart, the brother, PW-1, in cross-examination, has refuted the same. It is also noticeable that PW-4 had not told his other daughters about the demand of dowry which is expected of a father. Thus, on the base of such sketchy evidence, in our considered opinion, it is difficult to concur with the finding that there was demand of dowry by the accused-husband and the harassment pertained to such a demand. The conclusion on this score, we are inclined to think, is based on certain a priori notions. When such a conclusion is arrived at which is manifestly erroneous and unsupported by the evidence on record, needless to say, this Court, in exercise of power under Article 136 of the Constitution, can re-evaluate and interfere. This has been so stated in *Alamelu v. State*[3], *Heinz India (P) Ltd. v. State of U.P.*[4] and *Vishwanath Agrawal v. Sarla Vishwanath Agrawal*[5].

17. Presently we shall dwell upon the other limb of cruelty as engrafted under Section 498A. Section 498A deals with husband or relative of husband of a woman subjecting her to cruelty. The said provision along with the explanation reads as follows: -

"498A. Husband or relative of husband of a woman subjecting her to cruelty. - Whoever, being the husband or the relative of the husband of a woman, subjects such

3. (2011) 2 SCC 385.
4. (2012) 5 SCC 443.
5. (2012) 7 SCC 288.

woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation. - For the purpose of this section, "cruelty" means -

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

18. Clause (a) of the Explanation to the aforesaid provision defines "cruelty" to mean "any willful conduct which is of such a nature as is likely to drive the woman to commit suicide". Clause (b) of the explanation pertains to unlawful demand. Clause (a) can take in its ambit mental cruelty. It has come out in evidence that there was ill-treatment by the mother-in-law and the husband. The bride was in her early twenties. She was turned out of matrimonial home on certain occasions. This aspect has been established beyond doubt. There can be no dispute that in a family life, there can be differences, quarrels, misgivings and apprehensions but it is the degree which raises it to the level of mental cruelty. A daughter-in-law is to be treated as a member of the family with warmth and affection and not as a stranger with despicable and ignoble indifference. She should not be treated as a housemaid. No impression should be given that she can be thrown out of her matrimonial home at any time. In the case at hand, considering the evidence of the prosecution witnesses, we are disposed to think that it is a case where the bride was totally insensitively treated and harassed. It is not that she has accidentally consumed the

poison. She had deliberately put an end to her life. The defence had tried to prove that she was suffering from depression and because of such depression, she extinguished the candle of her own life. The testimony of the doctors cited by the defence has not been accepted by the learned trial Judge as well as by the High Court. They have not been able to bring in adequate material on record that she was suffering from such depression as would force her to commit suicide. On a perusal of the evidence of the said witnesses, we find that the finding recorded on that score is absolutely impeccable. In view of the same, the evidence brought on record that she was treated with cruelty and harassed deserves to be given credence to and, accordingly, we do so.

19. There is no dispute that no charge was framed under Section 306 IPC. Though the charge has not been framed under Section 306 yet on a question that has been put under Section 313, it is clear as crystal that they were aware that they are facing a charge under Section 304B IPC which related not to administration of poison but to consumption of poison by the deceased because of demand of dowry and harassment. It is major evidence in comparison to Section 306 IPC which deals with abetment to suicide by a bride in the context of clause (a) of Section 498A IPC. The test is whether there has been failure of justice or prejudice has been caused to the accused. In *Gurbachan Singh v. State of Punjab*[6], this Court examined the question of prejudice and held as under: -

> "In judging a question of prejudice, as of guilt, courts must act with a broad vision and look to the substance and not to technicalities, and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself."

6. AIR 1957 SC 623.

20. In *Shamnsaheb M. Multtani v. State of Karnataka*[7], a three-Judge Bench, while dealing with the concept of "failure of justice", has opined thus:-

> "23. We often hear about "failure of justice" and quite often the submission in a criminal court is accentuated with the said expression. Perhaps it is too pliable or facile an expression which could be fitted in any situation of a case. The expression "failure of justice" would appear, sometimes, as an etymological chameleon (the simile is borrowed from Lord Diplock in *Town Investments Ltd. v. Deptt. of the Environment*[8]). The criminal court, particularly the superior court should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage.
>
> 24. One of the cardinal principles of natural justice is that no man should be condemned without being heard, (audi alteram partem). But the law reports are replete with instances of courts hesitating to approve the contention that failure of justice had occasioned merely because a person was not heard on a particular aspect. However, if the aspect is of such a nature that non-explanation of it has contributed to penalising an individual, the court should say that since he was not given the opportunity to explain that aspect there was failure of justice on account of non-compliance with the principle of natural justice."

21. In *Narwinder Singh v. State of Punjab*[9], while accepting the finding of the High Court that the prosecution has not been able to establish the charge under Section 304B IPC and had, therefore converted the punishment to one under Section 306 IPC, this Court observed that cruelty or harassment sans demand of dowry which drives the wife to

7, (2001) 2 SCC 577.

8. (1977) 1 All ER 813.

9. (2011) 2 SCC 47.

commit suicide attracts the offence of abetment of suicide under Section 306 IPC. The Court further observed that mere omission or defect in framing charge would not disable the court from convicting the accused for the offence which has been found to be proved on the basis of the evidence on record. In such circumstances, the matter would fall within the purview of Sections 221(1) and (2) CrPC.

22. In *K. Prema S. Rao and Another v. Yadla Srinivasa Rao and Others*[10], the Court, analyzing the evidence, ruled thus:-

> "The same facts found in evidence, which justify conviction of the appellant under Section 498A for cruel treatment of his wife, make out a case against him under Section 306 IPC of having abetted commission of suicide by the wife. The appellant was charged for an offence of higher degree causing "dowry death" under Section 304B which is punishable with minimum sentence of seven years' rigorous imprisonment and maximum for life. Presumption under Section 113A of the Evidence Act could also be raised against him on same facts constituting offence of cruelty under Section 498A IPC. No further opportunity of defence is required to be granted to the appellant when he had ample opportunity to meet the charge under Section 498A IPC."

23. In the case at hand, the basic ingredients of the offence under Section 306 IPC have been established by the prosecution inasmuch as the death has occurred within seven years in an abnormal circumstance and the deceased was meted out with mental cruelty. Thus, we convert the conviction from one under Section 304B IPC to that under Section 306 IPC. As the accused has spent almost five years in custody, we limit the period of sentence to the period already undergone.

24. In spite of our modifying the conviction, we are

10. (2003) 1 SCC 217.

compelled to proceed to reiterate the law and express our anguish pertaining to the manner in which the trial was conducted as it depicts a very disturbing scenario. As is demonstrable from the record, the trial was conducted in an extremely haphazard and piecemeal manner. Adjournments were granted on a mere asking. The cross-examination of witnesses were deferred without recording any special reason and dates were given after a long gap. The mandate of the law and the views expressed by this Court from time to time appears to have been totally kept at bay. The learned trial Judge, as is perceptible, seems to have ostracized from his memory that a criminal trial has its own gravity and sanctity. In this regard, we may refer with profit to the pronouncement in *Talab Haji Hussain v. Madhukar Purshottam Mondkar and Another*[11] wherein it has been stated that an accused person by his conduct cannot put a fair trial into jeopardy, for it is the primary and paramount duty of criminal courts to ensure that the risk to fair trial is removed and trials are allowed to proceed smoothly without any interruption or obstruction.

25. In *Krishnan and Another v. Krishnaveni and Another*[12], it has been observed that the object behind criminal law is to maintain law, public order, stability as also peace and progress in the society. The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The Court further proceeded to state that the recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement and these malpractices need to be curbed.

26. In *Swaran Singh v. State of Punjab*[13], Wadhwa, J., in his concurring opinion, expressed his anguish pertaining to the adjournments sought in a criminal case which is built on the

11. AIR 1958 SC 376.,

12. AIR 1997 SC 987.

13. AIR 2000 SC 2017.

edifice of evidence that is admissible in law and the plight of witnesses in a criminal trial in the following manner: -

> "It has become more or less a fashion to have a criminal case adjourned again and again till the witness tires and he gives up. It is the game of unscrupulous lawyers to get adjournments for one excuse or the other till a witness is won over or is tired. Not only that a witness is threatened; he is abducted; he is mained; he is done away with; or even bribed. There is no protection for him. In adjourning the matter without any valid cause a Court unwittingly becomes party to miscarriage of justice."

27. In the present case, as the documents brought on record would reveal, in the midst of examination of PW-1, learned counsel for the defence stated that he was not feeling well and was unable to stand in the court and the court adjourned the matter to 8.5.1999 for a period of four weeks. The said witness was not examined on the adjourned date but on 7.2.2000 and on that day, after the examination-in-chief was over, cross-examination was deferred at the instance of the learned counsel for the defence. Similarly, when PW-4 was examined, the case was adjourned on a prayer being made by the learned counsel for the defence. It is interesting to note that cross-examination of PW-2 eventually took place on 2.8.2000. On a perusal of the dates of examination-in-chief and cross-examination and the adjournments granted, it neither requires Solomon's wisdom nor Aurgus-eyed scrutiny to observe that the trial was conducted in an absolute piecemeal manner as if the entire trial was required to be held at the mercy of the counsel. This was least expected from the learned trial Judge. The criminal dispensation system casts a heavy burden on the trial Judge to have control over the proceedings. The criminal justice system has to be placed on a proper pedestal and it cannot be left to the whims and fancies of the parties or their counsel. A trial Judge cannot be a mute spectator to the trial being controlled by the parties, for it is his primary duty to

monitor the trial and such a monitoring has to be in consonance with the Code of Criminal Procedure.

28. In this context, a useful reference may be made to the decision in *Ambika Prasad and Another v. State (Delhi Admn., Delhi)*[14]. This Court, while commenting on the threat meted out to the informant in that case and adjournment sought by the counsel for the defense to cross-examine the said witness, opined as follows:-

> "At this stage, we would observe that the Sessions Judge ought to have followed the mandate of Section 309 CrPC of completing the trial by examining the witnesses from day to day and not giving a chance to the accused to threaten or win over the witnesses so that they may not support the prosecution."
>
> [Emphasis supplied]

Thereafter, the Court took note of the fact that after examination-in-chief of PW 4 was over on 6-2-1984, the counsel representing the accused requested the Court that because of his uncle's demise, he would not be in a position to cross-examine the witness and, therefore, recording of further cross-examination might be adjourned. Thereafter, the witness was cross-examined in the month of July, 1985. This Court observed that it was highly improper and even if the request for adjournment of the learned counsel for the accused was accepted, the cross-examination ought not to have been deferred beyond two or three days.

29. In *State of U.P. v. Shambhu Nath Singh and Others*[15], the Court, while not appreciating the practice of a Sessions Court adjourning the case in spite of the presence of the witnesses willing to be examined fully, ruled thus:-

14. AIR 2000 SC 718.

15. (2001) 4 SCC 667.

> "We make it abundantly clear that if a witness is present in court he must be examined on that day. The court must know that most of the witnesses could attend the court only at heavy cost to them, after keeping aside their own avocation. Certainly they incur suffering and loss of income. The meagre amount of bhatta (allowance) which a witness may be paid by the court is generally a poor solace for the financial loss incurred by him. It is a sad plight in the trial courts that witnesses who are called through summons or other processes stand at the doorstep from morning till evening only to be told at the end of the day that the case is adjourned to another day. This primitive practice must be reformed by the presiding officers of the trial courts and it can be reformed by everyone provided the presiding officer concerned has a commitment towards duty."

30. In the said case, the Court referred to the conditions laid down by the legislature under Section 309 of the Code of Criminal Procedure which deals with the power to postpone or adjourn proceedings and proceeded to state that the first sub-section of Section 309 of the Code mandates on the trial courts that the proceedings shall be held expeditiously but the words "as expeditiously as possible" have provided some play at the joints and it is through such play that delay often creeps in the trials. Even so, the second limb of the sub-section warrants for a more vigorous stance to be adopted by the court at a further advanced stage of the trial. That stage is when the examination of the witnesses begins. The legislature which diluted the vigour of the mandate contained in the initial limb of the sub-section by using the words "as expeditiously as possible" has chosen to make the requirement for the next stage (when examination of the witnesses has started) to be quite stern. Once the case reaches that stage, the statutory command is that such examination "shall be continued from day to day until all the witnesses in attendance have been examined". The solitary exception to the said stringent rule is, if the court finds that adjournment "beyond the following day to be necessary" the

same can be granted for which a condition is imposed on the court that reasons for the same should be recorded. Even this dilution has been taken away when the witnesses are in attendance before the court. After so stating, the Court held that in such situations, the court is not given any power to adjourn the case except in extreme contingency for which the second proviso to sub-section (2) has imposed another condition by providing further that when the witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing.

31. It is apt to note here that this Court expressed its distress that it has become a common practice and regular occurrence that the trial Courts flout the legislative command with impunity.

32. In *Mohd. Khalid v. State of W.B.*[16], a three-Judge Bench did not approve the deferment of the cross-examination of the witness for a long time and, deprecating the said practice, it observed as follows:-

> "Unnecessary adjournments give a scope for a grievance that the accused persons get a time to get over the witnesses. Whatever be the truth in this allegation, the fact remains that such adjournments lack the spirit of Section 309 of the Code. When a witness is available and his examination-in-chief is over, unless compelling reasons are there, the trial court should not adjourn the matter on the mere asking."

33. Recently, in *Akil @ Javed v. State of Delhi*[17], the Court, after surveying the earlier pronouncements, has stressed on the compliance of the procedure and expressed its anguish that the trials are not strictly adhering to the procedure prescribed

16. (2002) 7 SCC 334.

17. 2012 (11) SCALE 709.

under the provisions contained in Section 231 along with Section 309 of the CrPC, and further emphasised that such adherence can ensure speedy trial of cases and also rule out the possibility of any maneuvering taking place by granting undue long adjournment for mere asking.

34. We have expressed our anguish, agony and concern about the manner in which the trial has been conducted. We hope and trust that the trial courts shall keep in mind the statutory provisions and the interpretation placed by this Court and not be guided by their own thinking or should not become mute spectators when a trial is being conducted by allowing the control to the counsel for the parties. They have their roles to perform. They are required to monitor. They cannot abandon their responsibility. It should be borne in mind that the whole dispensation of criminal justice at the ground level rests on how a trial is conducted. It needs no special emphasis to state that dispensation of criminal justice is not only a concern of the Bench but has to be the concern of the Bar. The administration of justice reflects its purity when the Bench and the Bar perform their duties with utmost sincerity. An advocate cannot afford to bring any kind of disrespect to fairness of trial by taking recourse to subterfuges for procrastinating the same.

35. Consequently, the appeal is partly allowed and the appellant be set at liberty if his detention is not required in connection with any other case.

R.P. Appeal partly allowed.

M/S TODAY HOMES & INFRASTRUCTURE PVT. LTD.
v.
LUDHIANA IMPROVEMENT TRUST & ANR.
(Civil Appeal No. 4596 of 2013 etc.)

MAY 10, 2013.

[ALTAMAS KABIR, CJI AND SURINDER SINGH NIJJAR, J.]

ARBITRATION AND CONCILIATION ACT, 1996:

ss. 11(1)(b) and (6) - Existence of arbitration agreement even if main agreement is illegal and void - Held: An arbitration agreement could stand independent of the main agreement and did not necessarily become otiose, even if the main agreement, of which it is a part, is declared void -- By virtue of s. 16(1)(b), the arbitration clause continues to be enforceable, notwithstanding a declaration that the contract was null and void.

s. 11(6) - Application for appointment of arbitrator - Issues to be decided by Chief Justice or his designate - Explained - Held: Designated Judge was not required to undertake a detailed scrutiny of merits and de-merits of the case, almost as if he was deciding a suit -- He was only required to decide preliminary issues such as jurisdiction to entertain the application, existence of a valid arbitration agreement, whether a live claim existed or not, for the purpose of appointment of an arbitrator -- By the impugned order, much more than what is contemplated u/s 11(6) was sought to be decided, without any evidence being adduced by the parties - Impugned order of designated Judge is set aside, and matter remitted to be considered de novo in the light of the instant judgment and the decision of the Court.

Disputes having arisen between the developers and

Ludhiana Improvement Trust with respect to the agreement dated 24.5.2005, in an arbitration application u/s 11(6) of the Arbitration and Conciliation Act, 1996, filed by the developers, the Chief Justice of the High Court by order dated 4.4.2008 appointed the arbitrator. The said order was challenged before the Supreme Court contending that since the main agreement which contained the arbitration agreement, was itself void, the arbitration agreement could not survive independent of the main agreement, and the question was required to be left to the arbitrator in terms of s.16 of the Act. Having regard of the 7-Judge Bench decision in SBP & Co. , the Supreme Court set aside the order of the Chief Justice of the High Court and remitted the matter for a fresh decision in keeping with the decision in SBP & Co.

The instant appeals arose out of the order of the designate of the Chief Justice of the High Court, dismissing the arbitration application and holding that the agreement dated 24.5.2005 was not legal and valid and, therefore, the disputes between the parties arising out of the said agreement could not be referred to arbitrator. It was contended that the designate Judge treated the matter as if he was deciding a suit, but without adducing evidence.

Disposing of the appeals, the Court

HELD: 1.1. The issue regarding the continued existence of the arbitration agreement, notwithstanding the main agreement itself being declared void, was considered by the 7-Judge Bench in SBP & Co. and it was held that an arbitration agreement could stand independent of the main agreement and did not necessarily become otiose, even if the main agreement, of which it is a part, is declared void. Further, in Reva

H SBP & Co. vs. Patel Engineering Ltd. and Another 2005 (4) Suppl. SCR. 688.

Electric Car Company Private Limited, it has been held that s.16(1)(a) of the 1996 Act presumes the existence of a valid arbitration clause and mandates the same to be treated as an agreement independent of the other terms of the contract. By virtue of s. 16(1)(b), the arbitration clause continues to be enforceable, notwithstanding a declaration that the contract was null and void. [para 13-14] [598-C-E-H; 599-A-B]

SBP & Co. Vs. Patel Engineering Ltd. and Another **2005 (4) Suppl. SCR 688 = (2005) 8 SCC 618; and** *Reva Electric Car Company Private Limited Vs. Green Mobil,* **2011 (13) SCR 359 = 2012 (2) SCC 93 - relied on**

1.2. In the instant case, the designated Judge misunderstood the scope of the order dated 14.10.2008, passed in the earlier proceedings and the provisions of s.16 of the 1996 Act in going into a detailed examination regarding the merits of the case and the existence of an arbitration agreement and in holding that once the main agreement between the parties was declared void, the entire contents thereof, including any arbitration clause that may have been incorporated in the main agreement, were rendered invalid. The designated Judge was not required to undertake a detailed scrutiny of the merits and de-merits of the case, almost as if he was deciding a suit. He was only required to decide preliminary issues such as jurisdiction to entertain the application, existence of a valid arbitration agreement, whether a live claim existed or not, for the purpose of appointment of an arbitrator. By the impugned order, much more than what is contemplated u/s 11(6) of the 1996 Act was sought to be decided, without any evidence being adduced by the parties. [para 13 and 15] [598-B-D; 599-B-D]

1.3. In SBP & Co., regarding what the Chief Justice is really required to decide on an application u/s 11(6) of the 1996 Act, it has been stated that obviously the Chief

Justice has to first decide his own jurisdiction and whether the party concerned has approached the right High Court. He also has to decide whether there is an arbitration agreement and as to whether the person who has made the request before him, is a party to such agreement. It was further indicated that it was necessary to mention that the arbitrator could also decide the question as to whether the claim was a dead one or a long-barred claim, that was sought to be resurrected. [para 16] [599-D-G]

1.4. Therefore, the impugned judgment and the order of the designated Judge is once again set aside and the matter is directed to be again considered de novo in the light of the observations made in the instant judgment and the various decisions of this Court. [para 17] [600-B-C]

Case Law Reference:

2005 (4) Suppl. SCR 688	**relied on**	**para 7**
2011 (13) SCR 359	**relied on**	**para 14**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4596 of 2013.

From the Judgment & Order dated 08.10.2009 of the High Court of Punjab and Haryana at Chandigarh in Arbitration Case No. 76 of 2007.

WITH

C.A. Nos. 4597, 4598 and 4595 of 2013.

Salil Sagar, Uday U. Lalit, Ajay Pal, Kapil Chaudhary, H. Devarajan, P.N. Gupta, D. Ashok Rajagopalan, Bharti Gupta. Lalit Chauhan, Vivek Sibal, Somesh, Pallavi Sharma (for Parekh & Co.), Sumesh Dhawan, P.N. Puri, Vatsala Kak Panda, Ruhi, Kuldip Singh, Jagjit Chhabra for the Appearing parties.

The Judgment of the Court was delivered by

ALTAMAS KABIR, CJI. 1. Special Leave Petition (Civil) No.7334 of 2010 and Special Leave Petition (Civil) No.11778 of 2010 have been filed by M/s Today Homes and Infrastructure Pvt. Ltd. and Mapletree Properties Pvt. Ltd. respectively, against a common judgment and order dated 08.10.2009, passed by the Punjab & Haryana High Court in Arbitration Case No.76 of 2007. Special Leave Petition (Civil) No.10795 of 2010 has been separately filed by M/s Mapletree Properties Pvt. Ltd. against the judgment and order dated 26.03.2010, passed by the aforesaid High Court in R.A. No.49-CII/2010 (of M) in Arbitration Case No.76 of 2007. In addition I.A. No.2 of 2010 has been filed by M/s Mapletree Properties Pvt. Ltd. in Special Leave Petition (Civil) No.26173 of 2010 filed by Ludhiana Improvement Trust for vacating the interim order of stay passed on 15.09.2010, or modification thereof. I.A. No.3 of 2010 has been filed by Ludhiana Improvement Trust in the said Special Leave Petition to bring on record certain additional documents. Both the said IAs have been taken up for hearing along with the four Special Leave Petitions, as referred to hereinabove. Leave granted in all the Special Leave Petitions.

2. The Ludhiana Improvement Trust, hereinafter referred to as "the Trust", the Appellant in the appeal arising out of SLP(C) No. 26173 of 2010, was constituted under the Punjab Town Improvement Act, 1922, hereinafter referred to as "the 1922 Act", for the planned development of the city of Ludhiana. For the purpose of construction of the City Centre in Ludhiana, the Trust invited bids by a Request of Proposal document dated 15.03.2005, with the intention of entering into a Joint-Venture with developers in the private sector. After evaluation of the bids, M/s. Today Homes and Infrastructure Pvt. Ltd., the Appellant in the appeal arising out of SLP(C) No. 7334 of 2010, was found to be the highest bidder and a Letter of Intent was issued in its favour on 18.05.2005, for development of the City Centre, Ludhiana.

3. The records indicate that after the Letter of Intent was issued in its favour, M/s. Today Homes and Infrastructure Pvt. Ltd. deposited Rs. 3.72 crores with the Trust as Performance Security. According to the agreement arrived at between the parties, the successful bidder would ultimately be required to pay to the Trust Rs.371.12 crores. The records further reveal that possession of an area measuring 25.59 acres was handed over to the successful bidder by the Trust on 24.05.2005 by way of Concession Agreement. A Tripartite Agreement was signed on 25.04.2005, between M/s. Today Homes and Infrastructure Pvt. Ltd., the Trust and the HDFC Bank. In terms of the said agreement, the entire proceeds from booking of the saleable areas were required to be deposited in the Joint Escrow Account of the Company and the Trust with the HDFC Bank, of which 30% was to be credited directly to the account of the Trust and 70% was to be deposited to the account of the Company. Disputes arose regarding the deposits made in the Escrow Account and on 12.09.2006, the Trust issued a letter to the Company seeking an explanation regarding the allegations. On the very next day, a reply was sent on behalf of the Company denying the allegations and indicating that its accounts could be scrutinised, and, if the explanation was not found to be satisfactory, the dispute could be referred to arbitration. In fact, on 14.09.2006, the Trust wrote to M/s. Today Homes and Infrastructure Pvt. Ltd. indicating that it was going to appoint an arbitrator within the next two days. However, before the expiry of the said period, on 15.09.2006, the Company filed an application before the Chief Justice of the Punjab and Haryana High Court under Section 11(6) of the Arbitration and Conciliation Act, 1996, hereinafter referred to as "the 1996 Act", being Arbitration Application No. 263 of 2006.

4. From the submissions made on behalf of the parties, it transpires that on 6.10.2006, a meeting was held between the Principal Secretary and officers of the Trust and the representatives of the Company, wherein it was agreed that

instead of the Company and the Trust sharing revenue from the project in the ratio of 70:30, the constructed area would be shared on the same basis. It was also agreed that the demarcation of the operations involved would be done jointly by the architects of the parties and all bookings prior to 15.10.2006, would be honoured and would go to the share of the Company. It was also decided that a Supplementary Agreement incorporating the said terms and conditions should also be executed. Instead of completing the said agreement, the Trust filed its response to the Arbitration Application No.263 of 2006, raising a plea, for the first time, that the agreement executed with the Company was void. Such plea was raised two years after the agreement was entered into and allowing a substantial portion of the construction of the City Centre, Ludhiana, to be completed, without any protest, after the Trust had received a sum of Rs.23 crores as its share of the sale/ lease proceeds from over 300 customers.

5. Faced with the above situation, the Company wrote a letter to the Trust on 08.06.2007, invoking the provisions of Article 17.1(a) and (b) of the Agreement dated 24.05.2005, for appointment of an arbitrator. It was also indicated in the letter that in the event no reply was received, the Company would nominate its arbitrator. Since no reply was received from the Trust, the Company wrote to the Trust on 30.06.2007, indicating that it had appointed its arbitrator. The Trust responded to the said letter by raising an objection that since the matter was sub judice before the Chief Justice of the High Court, no arbitrator could have been appointed by the Company.

6. On 22.08.2007, Arbitration Application No.263 of 2006, was taken up by the Chief Justice of the Punjab and Haryana High Court, but the same was dismissed as withdrawn with liberty to file a fresh petition. On the same day, a fresh petition was filed under Section 11(6) of the 1996 Act, being Arbitration Case No. 76 of 2007. On 04.04.2008, the Chief Justice of the aforesaid High Court appointed retired Chief Justice of India,

Shri R.C. Lahoti, as Arbitrator to adjudicate upon the disputes between the parties. Arbitration proceedings were, thereafter, held on 22.04.2008, when the Company filed its Statement of Claims. The next date for arguments, after completion of pleadings, was fixed on 02.06.2008.

7. In the meantime, however, SLP(C) No. 10550 of 2008, filed by the Trust challenging the appointment of the arbitrator, in Arbitration Case No.76 of 2007, came up for consideration before this Court by way of Civil Appeal No.6104 of 2008. Having regard to the decision of the 7-Judge Bench in *SBP & Co. Vs. Patel Engineering Ltd. and Another* [(2005) 8 SCC 618], this Court set aside the order of the Chief Justice and remitted the matter for a fresh decision in keeping with the decision of the 7-Judge Bench of this Court in the above case.

8. The challenge to the appointment of the arbitrator by the Chief Justice of the Punjab and Haryana High Court was that the agreement itself was void having been entered into in suspicious circumstances. It had been contended that since the main agreement, which contained the arbitration agreement, was itself void, the arbitration agreement could not survive independent of the main agreement. It was also contended that the said question was required to be left to the learned arbitrator in terms of Section 16 of the 1996 Act. Such a course of action, however, did not find favour with this Court, and as indicated hereinbefore, the matter was remanded to the Chief Justice of the Punjab and Haryana High Court for a fresh decision. The matter was, thereafter, taken up by the designate Judge who came to a finding that the agreement dated 24.05.2005 was not legal and valid and, therefore, the disputes between the parties arising out of the said agreement could not be referred to an arbitrator. The application under Section 11(6) of the 1996 Act was, therefore, dismissed.

9. It is the said decision of the designate Judge, which is the subject matter of challenge in these appeals.

10. On behalf of M/s. Today Homes and Infrastructure Pvt. Ltd., it was urged that while considering the matter on remand, the designate Judge treated the matter as if he was deciding a suit, but without adducing evidence. Mr. Uday U. Lalit, learned Senior Advocate submitted that in the parameters for consideration of an application under Section 11(6) of the 1996 Act set out by this Court in the decision rendered by the 7-Judge Bench in *SBP & Co.* (supra), this Court had intended a preliminary enquiry on the existence of an arbitration agreement and a dispute, which was required to be considered by an arbitrator to be appointed.

11. Mr. Lalit urged that Section 11(6) of the above Act nowhere contemplates an application filed thereunder to be gone into in intricate detail by framing issues and deciding the same without taking any evidence. Mr. Lalit submitted that the essence of the issue before the Arbitrator, was lost sight of by the designated Judge.

12. An attempt was made by Mr. Salil Sagar, learned Senior Advocate, appearing for the Trust, to counter the submissions made by Mr. Lalit and Mr. H. Devarajan, learned Advocate, appearing for the appellants in the appeals arising out of SLP (C) Nos. 11778 of 2010 and 10795 of 2010. The learned counsel supported the decision of the learned designate Judge to distinguish the decision rendered by this Court in *SBP & Co.* (supra) and the facts of the present case. Mr. Sagar insisted that once the main agreement had been found to be void, the contents thereof, including any arbitration agreement, was also rendered void. The learned counsel submitted that the arbitration clause contained in the arbitration agreement dated 24.05.2005, stood automatically dissolved upon the agreement itself being held to be void. Mr. Sagar, therefore, urged that the appointment of an arbitrator by the designated Judge in Arbitration Case No.76 of 2007 was void and was liable to be set aside.

13. We have carefully considered the submissions made on behalf of the respective parties and we are of the view that the learned designated Judge exceeded the bounds of his jurisdiction, as envisaged in *SBP & Co.* (supra). In our view, the learned designated Judge was not required to undertake a detailed scrutiny of the merits and de-merits of the case, almost as if he was deciding a suit. The learned Judge was only required to decide such preliminary issues such as jurisdiction to entertain the application, the existence of a valid arbitration agreement, whether a live claim existed or not, for the purpose of appointment of an arbitrator. By the impugned order, much more than what is contemplated under Section 11(6) of the 1996 Act was sought to be decided, without any evidence being adduced by the parties. The issue regarding the continued existence of the arbitration agreement, notwithstanding the main agreement itself being declared void, was considered by the 7-Judge Bench in SBP & Co. (supra) and it was held that an arbitration agreement could stand independent of the main agreement and did not necessarily become otiose, even if the main agreement, of which it is a part, is declared void.

14. The same reasoning was adopted by a member of this Bench (S.S. Nijjar, J.), while deciding the case of *Reva Electric Car Company Private Limited Vs. Green Mobil* [(2012) 2 SCC 93], wherein the provisions of Section 16(1) in the backdrop of the doctrine of kompetenz kompetenz were considered and it was inter alia held that under Section 16(1), the legislature makes it clear that while considering any objection with regard to the existence or validity of the arbitration agreement, the arbitration clause, which formed part of the contract, had to be treated as an agreement independent of the other terms of the contract. Reference was made in the said judgment to the provisions of Section 16(1)(b) of the 1996 Act, which provides that even if the arbitral tribunal concludes that the contract is null and void, it should not result, as a matter of law, in an automatic invalidation of the arbitration clause. It was also held

that Section 16(1)(a) of the 1996 Act presumes the existence of a valid arbitration clause and mandates the same to be treated as an agreement independent of the other terms of the contract. By virtue of Section 16(1)(b) of the 1996 Act, the arbitration clause continues to be enforceable, notwithstanding a declaration that the contract was null and void.

15. In our view, the learned designated Judge misunderstood the scope of the order dated 14.10.2008, passed in the earlier proceedings and the provisions of Section 16 of the 1996 Act in going into a detailed examination regarding the merits of the case and the existence of an arbitration agreement and in holding that once the main agreement between the parties was declared void, the entire contents thereof, including any arbitration clause that may have been incorporated in the main agreement, were rendered invalid.

16. It may be profitable to remind ourselves of the observations made by the 7-Judge Bench in *SBP & Co.* (supra), regarding what the Chief Justice is really required to decide on an application being made to him under Section 11(6) of the 1996 Act. In paragraph 39 of the judgment, it has been stated that obviously the Chief Justice has to first decide his own jurisdiction and whether the party concerned has approached the right High Court. He also has to decide whether there is an arbitration agreement and as to whether the person who has made the request before him, is a party to such agreement. Their Lordships further indicated that it was necessary to mention that the learned arbitrator could also decide the question as to whether the claim was a dead one or a long-barred claim, that was sought to be resurrected. Summing up its views, in paragraph 47 of the judgment, the 7-Judge Bench, while holding that the power exercised by the Chief Justice of the High Court or the Chief Justice of India under Section 11(6) of the 1996 Act is not an administrative power but a judicial one, also held that the Chief Justice or the

designated Judge would have the right to decide the preliminary aspects, as indicated hereinbefore.

17. The above views expressed by the 7-Judge Bench and by the learned Single Judge are sufficient to dispose of these appeals. In the light of what has been indicated hereinbefore, we have no hesitation in setting aside the impugned judgment and the order of the designated Judge once again and directing that the matter be again considered de novo in the light of the observations made hereinabove and the various decisions cited at the Bar.

18. The appeals are, accordingly, disposed of along with the interlocutory applications. Having regard to the peculiar facts of this case, the parties will bear their own costs.

R.P. Appeals disposed of.