BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE

BENCH AT CHENNAI

ORIGINAL APPLICATION NO. 156 OF 2021

Mr. B. Pasumpon Anand

...Applicant

Vs.

State of Tamil Nadu and 8 Others

…Respondents

INDEX TO ADDITIONAL TYPED SET OF PAPERS BY 9TH RESPONDENT

	and Anr. Civil Appeal No. 5909 of 2022 (Arising out of SLP(C) No. 22443 of 2019)-Para 25	
Prosecution cannot continue against a dead person		
7.	U. Subhadramma & Ors. Vs. State of Andhra Pradesh & Anr. (2016) 7 SCC 797- Para 9,12	75
8.	Rajiv Gandhi Etka Samiti Vs. Union of India 2000 (52) DRJ- Para 19	82

COUNSEL FOR RESPONDENT-9

(2024) 9 Supreme Court Cases 398

2J

(BEFORE B.V. NAGARATHNA AND UJJAL BHUYAN, JJ.)

VINAYAK PURSHOTTAM DUBE (DECEASED) THROUGH LEGAL REPRESENTATIVES .. Appellants;

Versus

JAYASHREE PADAMKAR BHAT AND OTHERS .. Respondents.

Civil Appeals Nos. 7768-69 of 2023†, decided on March 1, 2024

A. **Contract and Specific Relief — Contractual Obligations and Rights — Privity and Third Parties' Obligations and Rights — Personal rights and proprietary rights — Distinguished between — Contracts entered into with deceased promisor — Extent to which enforceable against the legal heirs/ estate of deceased — Law clarified**

— Held, personal rights (as opposed to a proprietary rights) are rights arising out of any contractual obligations or the rights that relate to status — Further, such personal rights are not transferable and also not inheritable — Correspondingly, S. 306 of the Succession Act, 1925 applies the maxim "*actio personalis moritur cum persona*" (a personal right of action dies with the person) which is limited to a certain class of cases and would apply when the right litigated is not heritable — Held, by the same logic, a decree-holder cannot enforce the same against the legal representatives of a deceased judgment-debtor unless the same survives as against his legal representatives

— Property Law — Generally — Proprietary rights/obligations — Distinguished from contractual/personal rights/obligations — Contract Act, 1872 — S. 37 — Specific Relief Act, 1963 — S. 14(b) — Doctrines and Maxims — Actio personalis moritur cum persona — Civil Suit — Abatement — Civil Procedure Code, 1908 — Ss. 2(11), 50 and Or. 22 — Succession Act, 1925, S. 306 (Para 28)

B. **Consumer Protection — Services — Housing and Real Estate — Contractual obligations of deceased developer/builder under a contract based on individual's skills, competency or other qualifications — Non-imposability of, on legal heirs of developer/promisor — Personal rights/obligations and proprietary rights — Distinguished between**

— Held, a contract can be performed vicariously by the legal representatives of the promisor depending upon the subject-matter of the contract and the nature of performance that was stipulated thereto — But a contract involving exercise of individual's skills or expertise of the promisor or which depends upon his/her personal qualification or competency, the promisor has to perform the contract by himself and not by his/her representatives — Further, a contract of service is also personal to the promisor — Correspondingly, duties or obligations which are personal in nature cannot be

† Arising from the impugned Final Judgment and Order in *Vinayak Purushottam Dube* v. *Jayashree Padmakar Bhat*, 2018 SCC OnLine NCDRC 798 (National Consumer Disputes Redressal Commission, Review Applications Nos. 26 & 27 of 2017 in RP No. 3283 of 2008, dt. 2-5-2018) **[Partly reversed]**

transmitted from a person who had to personally discharge those duties, on his demise, to his legal representatives — Held, where the decree or order is not against the estate of a deceased sole proprietor but based on the skills and expertise of the sole proprietor, the obligations which had to be performed by the sole proprietor would come to an end on his demise and the same cannot be imposed on his legal heirs or representatives

— Complainants, owners of property, had entered into a development agreement with the opposite party — State Commission inter alia directed the opposite party to obtain and hand over the completion certificate to the complainants; to execute the conveyance deed and to give electricity connections to the complainants for which they had already paid — During the pendency of revision petition before NCDRC, the original opposite party died and his legal representatives i.e. his wife and two sons were brought on record — In the present case, held, the legal representatives of the deceased opposite party-appellants were not liable to discharge the obligation which had to be discharged by the deceased opposite party in his personal capacity — Hence that portion of the impugned orders of NCDRC, State Commission and District Forum set aside

— Contract and Specific Relief — Contractual Obligations and Rights — Privity and Third Parties' Obligations and Rights — Contracts entered into with deceased promisor — Extent to which enforceable against the legal heirs/estate of deceased

— Housing and Real Estate — Allotment/Sale/Lease/Transfer of Flats/Houses by Builder/Developer — Obligations of Builder/Developer — Specific Relief Act, 1963 — S. 14(b) — Civil Procedure Code, 1908 — Ss. 2(11), 50 and Or. 22 — Contract Act, 1872, Ss. 37 and 40 (Paras 31 to 44)

The complainants, owners of property, had entered into a development agreement dated 30-7-1996 with the opposite party. According to the agreement, the complainants were entitled to receive eight residential flats and Rs 6,50,000 as consideration.

Seeking a resolution of the ongoing breaches under the Consumer Protection Act, the complainants pursued their legal recourse to address the deadlock by filing Complaint No. 184 of 2005 before the District Consumer Forum, Kolhapur. Their prayers for relief were several: they demanded payment of outstanding dues inclusive of interest; reimbursement of expenses incurred and compensation for the mental distress caused to them. Additionally, they sought structural rectification, emphasising on the removal of unauthorised constructions; rectification of construction defects; completion of pending work and the provision of essential amenities as initially agreed upon.

The District Consumer Forum at Kolhapur, vide order dated 16-10-2006, on perusal of various supporting documents, including the development agreement, building plans, notices, replies, certificates, estimates, receipts and affidavits partly allowed Consumer Complaint No. 184 of 2005 filed against the opposite party.

Both the parties challenged the order of the District Forum before the Consumer Disputes Redressal Commission, Maharashtra State, Mumbai ("the State Commission"). The State Commission, vide its common judgment dated 8-4-2008 in First Appeals Nos. 2570 of 2006 and 1115 of 2007, partly modified the order of the District Forum by setting aside the directions to pay Rs 1.85 lakhs and Rs 1.65 lakhs as the said claims were held to be time-barred but upheld the direction to pay Rs 1.5 lakhs. However, the State Commission placed reliance on some other clauses of the development agreement such as Clause 4(*k*), to hold that the building was incomplete and that the opposite party was liable to get the construction of the compound wall and give separate access in terms of Schedule II of the development agreement. The opposite party was further directed to obtain and hand over the completion certificate to the complainants; to execute the conveyance deed and to give electricity connections to the complainants for which they had already paid Rs 15,000 to the developer opposite party.

The complainants as well as the opposite party approached NCDRC by filing Revision Petitions Nos. 3283 and 2794 of 2008. During the pendency of the petition before NCDRC, the original opposite party Vinayak Purushottam Dube died and his legal representatives i.e. his wife and two sons were brought on record, appellants before the Supreme Court. NCDRC upheld the order of payment of 1.65 lakhs and 1.85 lakhs along with interest as directed by the District Forum, and also upheld the slew of directions issued by the State Commission to the developer-opposite party.

The issue involved in this appeal was whether the death of a developer has no effect upon the obligations of the developer under the development agreement and the same have to be executed by the legal heirs of the developer?

Allowing the appeals of the legal heirs of the original opposite party, the Supreme Court

Held :

During the pendency of the revision preferred by the original opposite party before NCDRC, the original opposite party died. His legal representatives i.e. his widow and two sons were brought on record. In fact, the complainants also had preferred their revision petition. NCDRC reasoned that the legal representatives of the opposite party were liable both with regard to the monetary payments that the original opposite party was directed to pay and also liable to comply with the other directions issued by the District Forum as modified by the State Commission and thereafter modified by NCDRC. (Para 16)

Personal rights (as opposed to a proprietary rights) are rights arising out of any contractual obligations or the rights that relate to status. Such personal rights are not transferable and also not inheritable. Correspondingly, Section 306 of the Succession Act, 1925 ("the 1925 Act") applies the maxim "*actio personalis moritur cum persona*" (a personal right of action dies with the person) which is limited to a certain class of cases and would apply when the right litigated is not heritable. By the same logic, a decree-holder cannot enforce the same against the legal representatives of a deceased judgment-debtor unless the same survives as against his legal representatives. (Para 27)

Report of the Insolvency Law Committee submitted in February 2020; P.J. Fitzgerald: *Salmond on Jurisprudence*, p. 221 (Universal Law Publishing Co. Pvt. Ltd., 12th Edn., 1966), *referred to*

Section 37 of the Contract Act states that a promise made by a promisor is binding on his representatives in case of his/her death, unless a contrary intention appears from the contract. Legal representatives are liable for the debts of their predecessor, but their liability is limited to the extent of the estate of the deceased inherited by them. Therefore, the representatives of a promisor are bound to perform the promisor's contract to the extent of the assets of the deceased falling in their hands. But they are not personally liable under the contracts of the deceased and are also not liable for personal contracts of the deceased. Therefore, when personal considerations are the basis of a contract they come to an end on the death of either party, unless there is a stipulation express or implied to the contrary. This is especially so when the contracts involve exercise of special skills such as expressed in Section 40 of the Contract Act, 1872. (Para 30)

Thus, a contract can be performed vicariously by the legal representatives of the promisor depending upon the subject-matter of the contract and the nature of performance that was stipulated thereto. But a contract involving exercise of individual's skills or expertise of the promisor or which depends upon his/her personal qualification or competency, the promisor has to perform the contract by himself and not by his/her representatives. A contract of service is also personal to the promisor. This is because when a person contracts with another to work or to perform service, it is on the basis of the individual's skills, competency or other qualifications of the promisor and in circumstances such as the death of the promisor he is discharged from the contract. (Para 31)

Correspondingly, duties or obligations which are personal in nature cannot be transmitted from a person who had to personally discharge those duties, on his demise, to his legal representatives. Just as a right is uninheritable and the right personal to him dies with the owner of the right, similarly, a duty cannot be transferred to the legal representatives of a deceased if the same is personal in nature. (Para 32)

A suit by or against a proprietary concern is by or against the proprietor of the business. In the event of the death of the proprietor of a proprietary concern, it is the legal representatives of the proprietor who alone can sue or be sued in respect of the dealings of the proprietary business which is by representing the estate of the deceased proprietor. The real party who is being sued is the proprietor of the said business. Therefore, if a proprietor had to carry on certain obligations personally under a contract, the same cannot be fastened on his legal representatives. (Para 33)

Raghu Lakshminarayanan v. *Fine Tubes*, (2007) 5 SCC 103 : (2007) 2 SCC (Cri) 455, *followed*

Further, Section 2(11) CPC defines a "legal representative" to mean a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. Thus, the legal representatives of a deceased are liable only to the extent of the estate which they inherit. (Para 34)

Where the decree or order is not against the estate of a deceased sole proprietor but based on the skills and expertise of the sole proprietor, in the latter case, the obligations which had to be performed by the sole proprietor would come

to an end on his demise and the same cannot be imposed on his legal heirs or representatives. (Para 36)

Custodian of Branches of Banco National Ultramarino v. *Nalini Bai Naique*, 1989 Supp (2) SCC 275, *clarified* and *distinguished*

Terms of the development agreement dated 30-7-1996 would clearly indicate that the obligations on the opposite party were to be carried out personally by him. (Para 37)

If the estate of the deceased becomes liable then the legal representatives who in law represent the estate of a deceased person or any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued is liable to the extent the estate has devolved. Hence, what is crucial is that the estate of a deceased person which becomes liable and the legal representatives must discharge their liability to a decree-holder or a person who has been granted an order to recover from the estate of the deceased which they would represent and not beyond it. (Para 39)

But in the case of a personal obligation imposed on a person under the contract and on the demise of such person, his estate does not become liable and therefore, the legal representatives who represent the estate of a deceased would obviously not be liable and cannot be directed to discharge the contractual obligations of the deceased. (Para 40)

Ajmera Housing Corpn. v. *Amrit M. Patel*, (1998) 6 SCC 500, *followed*

Vinayak Purushottam Dube v. *Jayashree Padmakar Bhat*, 2018 SCC OnLine NCDRC 798; *Vinayak Purushottam Dube* v. *Jayashree Padmakar Bhat*, 2016 SCC OnLine NCDRC 2734, *partly reversed*

Vinayak Purushottam Dube v. *Jayashree Padmakar Bhat*, 2017 SCC OnLine SC 2202, *referred to*

VN-D/71148/CV

Advocates who appeared in this case :
Aniruddha Deshmukh (Advocate-on-Record), Advocate, for the Appellants;
Braj Kishore Mishra (Advocate-on-Record), Abhishek Yadav, Ruchit Mohan, Priyadarshi Kumar and Ms Mini Kishore, Advocates, for the Respondents.

Chronological list of cases cited ***on page(s)***

1. 2018 SCC OnLine NCDRC 798, *Vinayak Purushottam Dube* v. *Jayashree Padmakar Bhat* **(partly reversed)** 403*a-b*, 403*b*, 405*d*, 405*e*, 405*f*
2. 2017 SCC OnLine SC 2202, *Vinayak Purushottam Dube* v. *Jayashree Padmakar Bhat* 403*b-c*, 405*c*
3. 2016 SCC OnLine NCDRC 2734, *Vinayak Purushottam Dube* v. *Jayashree Padmakar Bhat* **(partly reversed)** 403*b*, 404*g-h*, 405*c*
4. (2007) 5 SCC 103 : (2007) 2 SCC (Cri) 455, *Raghu Lakshminarayanan* v. *Fine Tubes* 407*f-g*, 410*f*
5. (1998) 6 SCC 500, *Ajmera Housing Corpn.* v. *Amrit M. Patel* 413*d-e*
6. 1989 Supp (2) SCC 275, *Custodian of Branches of Banco National Ultramarino* v. *Nalini Bai Naique* 411*c*

The Judgment of the Court was delivered by

B.V. NAGARATHNA, J.— These appeals have been filed by the legal representatives of the opposite party sole proprietor against the common final judgment and order dated 2-5-2018[1] passed by the National Consumer Disputes Redressal Commission (hereinafter referred to as "NCDRC") in Review Application No. 26 of 2017 in Review Petition No. 3283 of 2008 and Review Application No. 27 of 2017 in Review Petition No. 2794 of 2008.

2. NCDRC vide the impugned order[1] dismissed the review applications while affirming its earlier order dated 31-5-2016[2] passed in review petition with reference to the order dated 3-1-2017 passed by this Court in *Vinayak Purushottam Dube* v. *Jayashree Padmakar Bhat*[3] granting liberty to the appellants to resort to remedy of review before NCDRC.

3. The brief facts giving rise to the present appeal are as follows.

4. The appellants herein are the legal heirs of the original opposite party in the consumer complaint before the District Forum. All the respondents herein are the complainants. For the sake of convenience, the parties shall be referred to as complainants and opposite party.

5. The complainants, Jayashree Padmakar and others, owners of property CTS Nos. 1465/1 and 1465/2, 'C' Ward, Kolhapur, had entered into a development agreement dated 30-7-1996 with the opposite party. According to the agreement, the complainants were entitled to receive eight residential flats and Rs 6,50,000 as consideration. Allegedly, the opposite party failed to fulfil the payment obligations, resulting in payment of a balance amount and accruing interest at 18% p.a. with effect from 1-4-1997. The complainants alleged breaches of the agreement, including deviations from sanctioned plan, non-construction of a compound wall impacting parking and issues regarding access and unauthorised constructions beyond sanctioned plan, subsequently sold to third parties. They also noted defects in the building construction, such as cracks, in the building, terrace work being not completed and the absence of provision for electricity meters. Despite notices issued by the complainants, the opposite party denied the allegations asserting that the complainants owed them Rs 8,60,000 for construction and amenities.

6. Seeking a resolution of the ongoing breaches under the Consumer Protection Act, the complainants pursued their legal recourse to address the deadlock by filing Complaint No. 184 of 2005 before the District Consumer Forum, Kolhapur. Their prayers for relief were several: they demanded payment of outstanding dues inclusive of interest; reimbursement of expenses incurred and compensation for the mental distress caused to them. Additionally, they sought structural rectification, emphasising on the removal of unauthorised constructions; rectification of construction defects; completion of pending work and the provision of essential amenities as initially agreed upon.

1 *Vinayak Purushottam Dube* v. *Jayashree Padmakar Bhat*, 2018 SCC OnLine NCDRC 798
2 *Vinayak Purushottam Dube* v. *Jayashree Padmakar Bhat*, 2016 SCC OnLine NCDRC 2734
3 2017 SCC OnLine SC 2202

7. In his version, the original opposite party disputed the existence of any consumer relationship, denied breaches and argued for the resolution of contractual disputes through the civil court. The opposite party claimed that the complaint was time-barred and sought its dismissal with compensatory costs of Rs 10,000.

8. The District Consumer Forum at Kolhapur, vide order dated 16-10-2006, on perusal of various supporting documents, including the development agreement, building plans, notices, replies, certificates, estimates, receipts and affidavits partly allowed Consumer Complaint No. 184 of 2005 filed against the opposite party. The District Forum observed that as per the development agreement between the parties, the transaction between the parties was not one of sale and purchase of property but of development of property. Since the services regarding construction are covered by the Consumer Protection Act, the dispute was held to be a consumer dispute. Further, the District Forum refused to take into consideration the points raised by the complainants regarding defects in construction, amenities and facilities due to lack of evidence provided in that regard. However, the opposite party was found to be liable to pay to the complainants an amount of Rs 1,65,000 along with interest @ 18% p.a. with effect from 1-5-1997 till payment; an amount of Rs 1,85,000 along with interest @ 18% p.a. with effect from 31-8-1997 till payment; and an amount of Rs 1,50,000 at the time of conveyance.

9. Both the parties challenged the order of the District Forum before the Consumer Disputes Redressal Commission, Maharashtra State, Mumbai (for short "the State Commission"). The State Commission, vide its common judgment dated 8-4-2008 in First Appeals Nos. 2570 of 2006 and 1115 of 2007, partly modified the order of the District Forum by setting aside the directions to pay Rs 1.85 lakhs and Rs 1.65 lakhs as the said claims were held to be time-barred but upheld the direction to pay Rs 1.5 lakhs. However, the State Commission placed reliance on some other clauses of the development agreement such as Clause 4(*k*), to hold that the building was incomplete and that the opposite party was liable to get the construction of the compound wall and give separate access in terms of Schedule II of the development agreement. The opposite party was further directed to obtain and hand over the completion certificate to the complainants; to execute the conveyance deed and to give electricity connections to the complainants for which they had already paid Rs 15,000 to the developer opposite party.

10. The complainants as well as the opposite party approached NCDRC by filing Revision Petitions Nos. 3283 and 2794 of 2008. During the pendency of the petition before NCDRC, the original opposite party Vinayak Purushottam Dube died and his legal representatives i.e. his wife and two sons were brought on record, who are the appellants before this Court. NCDRC, vide order dated 31-5-2016[2], again partly modified the order of the State Commission. NCDRC disagreed with the finding and conclusion of the State Commission with respect to the time-barred transaction of Rs 1.85 lakhs and Rs 1.65 lakhs,

2 *Vinayak Purushottam Dube* v. *Jayashree Padmakar Bhat*, 2016 SCC OnLine NCDRC 2734

by observing that the limitation of the said claims had to be adjudged by looking at the transaction between the parties as a whole, which established a continuous cause of action in the matter. NCDRC upheld the directions given by the State Commission with respect to the completion certificate; conveyance deed; electricity connection, etc. since the developer did not challenge any part of those directions as the same were in accordance with the development agreement. In other words, NCDRC upheld the order of payment of 1.65 lakhs and 1.85 lakhs along with interest as directed by the District Forum, and also upheld the slew of directions issued by the State Commission to the developer-opposite party.

11. The appellant opposite party thereafter approached this Court by preferring Special Leave Petitions (Civil)... CC Nos. 24515-16 of 2016 to challenge the order of NCDRC dated 31-5-2016 in *Vinayak Purushottam Dube* v. *Jayashree Padmakar Bhat*[2]. This Court, vide order dated 3-1-2017[3], refused to interfere with the view taken by NCDRC and disposed of the same by granting liberty to the appellant opposite party herein to resort to the remedy of review before the National Commission.

12. Thereafter, the appellant opposite party filed Review Application No. 26 of 2017 and the complainants filed Review Application No. 27 of 2017, both before NCDRC and the order of review proceeding is assailed in the present case. NCDRC, vide order dated 2-5-2018[1], upheld its earlier findings on the question of limitation, status of complainants as consumers and the relief being in excess of the payment made by the complainants. Further, NCDRC refused to accept the contention of the appellant opposite party that after the death of the original owner, the legal representatives are not accountable for the liabilities under the agreement.

13. In SCC OnLine NCDRC para 12 of the order[1], NCDRC held that the death of a developer has no effect upon the obligations of the developer under the development agreement and the same have to be executed by the legal heirs of the developer. The relevant part of the said para 12 is extracted as under: (*Vinayak Purushottam Dube case*[1], SCC OnLine NCDRC)

> "*12*. Further, we have no reason to agree with the contention raised by the review applicant that after the death of the original owner, the legal representatives are not accountable for the liabilities under the agreement. In the eventuality of death of the developer, it cannot be stated that various clauses of the development agreement between the parties become redundant or the complainant is not entitled to seek execution of the provisions of the development agreement. Such execution has to be made by the legal heirs of the developer only."

2 2016 SCC OnLine NCDRC 2734
3 *Vinayak Purushottam Dube* v. *Jayashree Padmakar Bhat*, 2017 SCC OnLine SC 2202
1 *Vinayak Purushottam Dube* v. *Jayashree Padmakar Bhat*, 2018 SCC OnLine NCDRC 798

14. The legal representatives of the opposite party being aggrieved by the aforesaid reasoning of NCDRC have preferred these appeals.

15. We have heard learned counsel Shri Aniruddha Deshmukh for the appellants and learned counsel Shri Abhishek Yadav for the respondents and perused the material on record.

16. The controversy in these appeals is in a very narrow compass. No doubt, the complainants succeeded before the District Forum, the State Commission as well as NCDRC. During the pendency of the revision preferred by the original opposite party before NCDRC, the original opposite party died. His legal representatives i.e. his widow and two sons were brought on record. In fact, the complainants also had preferred their revision petition. NCDRC reasoned that the legal representatives of the opposite party were liable both with regard to the monetary payments that the original opposite party was directed to pay and also liable to comply with the other directions issued by the District Forum as modified by the State Commission and thereafter modified by NCDRC.

17. The learned counsel for the appellants submitted that the appellants as the legal representatives of the deceased opposite party are willing to make the payment as directed. But as far as the other set of the directions are concerned, it is not permissible for them to comply with them inasmuch as the said directions were issued by the District Forum as well as the State Commission personally against the opposite party who is since deceased. Those directions are with regard to construction of compound wall so as to give separate access in terms of Schedule II of the development agreement; to obtain and hand over completion certificate to the respondent complainants; to execute the conveyance deed and to give electricity connection and such other directions.

18. The learned counsel for the petitioner contended that the aforesaid directions cannot now be complied with by the legal representatives of the deceased original opposite party inasmuch as those were personal directions as issued against the original opposite party. He contended that the original opposite party was having the proprietorship concern and therefore, the estate of the deceased proprietor would be liable insofar as the satisfaction of the compensatory payments only, but not for complying with the other directions issued which cannot now fall on his legal representatives to comply. It was contended that the original opposite party had skills and expertise to comply with the said directions as a developer but on his demise, his legal representatives, namely, his widow and two sons, cannot be compelled to carry out those directions as they neither possess the necessary skills nor expertise and further, they are not continuing the proprietorship concern of the original opposite party which has now been wound up on the demise of the sole proprietor. Therefore, learned counsel for the appellant opposite party contended that the various clauses of the development agreement which had placed duties and obligations on the original opposite party, who is since deceased, cannot now be enforced against and performed by his legal representatives or heirs.

19. Per contra, the learned counsel for the respondent complainants submitted that no doubt the legal representatives of the original opposite party would comply with the directions for payments from out of the estate of the deceased opposite party but the complainants would be left high and dry insofar as the other obligations which had to be discharged by the opposite party and therefore, NCDRC was justified in directing the legal representatives of the deceased opposite party to take steps for also complying with those directions.

20. Having heard the learned counsel for the respective parties, we note that admittedly the original opposite party was in the business of real estate and as a developer, had entered into the development agreement dated 30-7-1996 with the complainants. According to the respondent complainants herein, they were entitled to eight residential flats and there were various other terms and conditions of the said development agreement which imposed an obligation on the original opposite party.

21. The question is: what would happen to the obligations imposed personally on the original opposite party on his demise? No doubt, the estate of the original opposite party would be liable for any monetary decree or directions for payment issued in the present case. However, what about the obligations which had to be performed under the development agreement such as certain construction to be made and certain approvals, etc. to be obtained by him on completion of the construction. Can the legal representatives be liable to comply with those obligations under the development agreement on the demise of the original opposite party?

22. In this regard, it is necessary to discuss the jurisprudential status of a proprietary concern. In a report of the Insolvency Law Committee submitted in February 2020, the definition of "proprietorship firms" reads as under:

> "**2. DEFINITION OF "PROPRIETORSHIP FIRMS"**
>
> * * *
>
> **2.2.** Proprietorship firms are businesses that are owned, managed and controlled by one person. They are the most common form of businesses in India and are based in unlimited liability of the owner. Legally, a proprietorship is not a separate legal entity and is merely the name under which a proprietor carries on business. [*Raghu Lakshminarayanan* v. *Fine Tubes*[4].] Due to this, proprietorships are usually not defined in statutes. Though some statutes define proprietorships, such definition is limited to the context of the statute. For example, Section 2(*haa*) of the Chartered Accountants Act, 1949 defined a "sole proprietorship" as "*an individual who engages himself in practice of accountancy or engages in services*…". Notably, "proprietorship firms" have also not been statutorily defined in many other jurisdictions." (emphasis in original)
>
> [*Source*: Report of the Insolvency Law Committee, pp. 117-118, Government of India (Ministry of Corporate Affairs, February, 2020).]

4 (2007) 5 SCC 103 : (2007) 2 SCC (Cri) 455

23. According to Salmond, there are five important characteristics of a legal right:

1. It is vested in a person who may be distinguished as the owner of the right, the subject of it, the person entitled, or the person of inherence.

2. It avails against a person, upon whom lies the correlative duty. He may be distinguished as the person bound, or as the subject of duty, or as the person of incidence.

3. It obliges the person bound to an act or omission in favour of the person entitled. This may be termed the content of the right.

4. The act or omission relates to something (in the widest sense of that word), which may be termed the object or subject-matter of the right.

5. Every legal right has a title, that is to say, certain facts or events by reason of which the right has become vested in its owner.

[*Source*: P.J. Fitzgerald, *Salmond on Jurisprudence*, p. 221 (Universal Law Publishing Co. Pvt. Ltd., 12th Edn., 1966)]

24. Salmond also believed that no right can exist without a corresponding duty. Every right or duty involves a bond of legal obligation by which two or more persons are bound together. Thus, there can be no duty unless there is someone to whom it is due; there can be no right unless there is someone from whom it is claimed; and there can be no wrong unless there is someone who is wronged, that is to say, someone whose right has been violated. This is also called as *vinculum juris* which means "a bond of the law". It is a tie that legally binds one person to another. [*Source*: P.J. Fitzgerald, *Salmond on Jurisprudence,* p. 220 (Universal Law Publishing Co. Pvt. Ltd., 12th Edn., 1966)].

25. Salmond's classification of proprietary and personal rights are encapsulated as under:

	Proprietary Rights	*Personal Rights*
1.	Proprietary rights means a person's right in relation to his own property. Proprietary rights have some economic or monetary value.	Personal rights are rights arising out of any contractual obligation or rights that relate to status.
2.	Proprietary rights are valuable.	Personal rights are not valuable in monetary terms.
3.	Proprietary rights are not residual in character.	Personal rights are the residuary rights which remain after proprietary rights have been subtracted.
4.	Proprietary rights are transferable.	Personal rights are not transferable.
5.	Proprietary rights are the elements of wealth for man.	Personal rights are merely elements of his well-being.
6.	Proprietary rights possess not merely judicial but also economic importance.	Personal rights possess merely judicial importance.

[Source: P.J. Fitzgerald, *Salmond on Jurisprudence,* p. 238 (Universal Law Publishing Co. Pvt. Ltd., 12th Edn., 1966)].

26. Salmond's classification of inheritable and uninheritable rights is stated as under:

Inheritable Rights	*Uninheritable Rights*
A right is inheritable if it survives the owner.	A right is uninheritable if it dies with the owner.

[Source: P.J. Fitzgerald, *Salmond on Jurisprudence,* pp. 415 & 442 (Universal Law Publishing Co. Pvt. Ltd., 12th Edn., 1966)].

27. On a reading of the above, it is clear, when it comes to personal rights (as opposed to a proprietary rights) are rights arising out of any contractual obligations or the rights that relate to status. Such personal rights are not transferable and also not inheritable. Correspondingly, Section 306 of the Succession Act, 1925 (for short "the 1925 Act") applies the maxim "*actio personalis moritur cum persona*" (a personal right of action dies with the person) which is limited to a certain class of cases and would apply when the right litigated is not heritable. By the same logic, a decree-holder cannot enforce the same against the legal representatives of a deceased judgment-debtor unless the same survives as against his legal representatives.

28. Section 306 of the 1925 Act reads as under:

> "**306.** ***Demands and rights of action of, or against deceased survive to and against executor or administrator.***—All demands whatsoever and all rights to prosecute or defend any action or special proceeding existing in *favour of or against* a person at the time of his decease, survive *to and against* his executors or administrators; except causes of action for defamation, assault, as defined in the Penal Code, 1860 (45 of 1860), or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory." (emphasis supplied)

29. We may also advert to Sections 37 and 40 of the Contract Act, 1872, which read as under:

> "**37.** ***Obligation of parties to contracts.***—The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.
>
> Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract.
>
> * * *
>
> **40.** ***Person by whom promise is to be performed.***—If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it."

30. Section 37 of the aforesaid Act states that a promise made by a promisor is binding on his representatives in case of his/her death, unless a contrary intention appears from the contract. Legal representatives are liable for the debts of their predecessor, but their liability is limited to the extent of the estate of the deceased inherited by them. Therefore, the representatives of a promisor are bound to perform the promisor's contract to the extent of the assets of the deceased falling in their hands. But they are not personally liable under the contracts of the deceased and are also not liable for personal contracts of the deceased. Therefore, when personal considerations are the basis of a contract they come to an end on the death of either party, unless there is a stipulation express or implied to the contrary. This is especially so when the contracts involve exercise of special skills such as expressed in Section 40 of the Contract Act, 1872.

31. Thus, a contract can be performed vicariously by the legal representatives of the promisor depending upon the subject-matter of the contract and the nature of performance that was stipulated thereto. But a contract involving exercise of individual's skills or expertise of the promisor or which depends upon his/her personal qualification or competency, the promisor has to perform the contract by himself and not by his/her representatives. A contract of service is also personal to the promisor. This is because when a person contracts with another to work or to perform service, it is on the basis of the individual's skills, competency or other qualifications of the promisor and in circumstances such as the death of the promisor he is discharged from the contract.

32. Correspondingly, duties or obligations which are personal in nature cannot be transmitted from a person who had to personally discharge those duties, on his demise, to his legal representatives. Just as a right is uninheritable and the right personal to him dies with the owner of the right, similarly, a duty cannot be transferred to the legal representatives of a deceased if the same is personal in nature.

33. In *Raghu Lakshminarayanan* v. *Fine Tubes*[4], while distinguishing a juristic person such as a company, a partnership or an association of persons from a proprietary concern, it was observed that a person who carries on business in the name of a business concern, but he being a proprietor thereof, would be solely responsible for conduct of its affairs. A proprietary concern is not a company. Further, a proprietary concern is only the business name in which the proprietor of the business carries on the business. A suit by or against a proprietary concern is by or against the proprietor of the business. In the event of the death of the proprietor of a proprietary concern, it is the legal representatives of the proprietor who alone can sue or be sued in respect of the dealings of the proprietary business which is by representing the estate of the deceased proprietor. The real party who is being sued is the

4 (2007) 5 SCC 103 : (2007) 2 SCC (Cri) 455

proprietor of the said business. Therefore, if a proprietor had to carry on certain obligations personally under a contract, the same cannot be fastened on his legal representatives.

34. Further, Section 2(11) of the Code of Civil Procedure, 1908 (for short "CPC") defines a "legal representative" to mean a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. Thus, the legal representatives of a deceased are liable only to the extent of the estate which they inherit.

35. In *Custodian of Branches of Banco National Ultramarino* v. *Nalini Bai Naique*[5], it was observed that the expression "legal representative" as defined in CPC is applicable to proceedings in a suit. It means a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. The definition is inclusive in character and its scope is wide as it is not confined to legal heirs only, instead, it stipulates a person who may or may not be an heir, competent to inherit the property of the deceased or he should represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title, either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression "legal representative". If there are many heirs, those in possession bona fide, without there being any fraud or collusion, are also entitled to represent the estate of the deceased.

36. The aforesaid judgment refers to representation of an estate of a deceased person which would devolve on his legal representatives and where the decree has to be executed vis-à-vis such an estate. In such a case, the heirs of the deceased judgment-debtor would be under a legal obligation to discharge their duties to satisfy the decree or an order from the estate of a deceased. But in the case of sole proprietorship, which is a common form of business in India, when a legal obligation arises under a contract which has to be discharged personally by the sole proprietor, who is since deceased, had entered into the agreement, such as, in the case of a development agreement in the instant case, can such obligations be imposed on his legal representatives or heirs who are not parties to the development agreement and where the obligations under such an agreement per se cannot be fulfilled inasmuch as they neither have the skills nor the expertise to do so and those obligations depend purely on the skills and expertise of the deceased sole proprietor? In other words, where the decree or order is not against the estate of a deceased sole proprietor but based on the skills and expertise of the sole proprietor, we are of the view that in the latter

5 1989 Supp (2) SCC 275

case, the obligations which had to be performed by the sole proprietor would come to an end on his demise and the same cannot be imposed on his legal heirs or representatives. We reiterate that such a position is distinguished from a position where the estate of the deceased sole proprietor would become liable to satisfy the decree in monetary terms. This is because a proprietorship firm is not a separate legal entity as compared to the proprietor and his estate would become liable only to satisfy a decree or an order in monetary terms on his demise.

37. In this context, the following terms of the development agreement dated 30-7-1996 would clearly indicate that the obligations on the opposite party were to be carried out personally by him:

> "NOW THIS AGREEMENT WITNESSETH AND IS AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:
>
> 1.1. The owners hereby grant to the developer sole and exclusive development rights in respect of the property bearing CS No. C. 1465 situated in 'C' Ward, Laxmipuri Kolhapur 416 002 in the form of licence to enter upon the said property in the capacity of the licensee of the owners for the sole purpose of developing the said property and selling the offices/premises/shops to the extent and in the manner stipulated hereafter and upon the terms and conditions agreed by the between the parties hereto and set out here below in this agreement. Subject to Clause 2 the licence hereby granted is irrevocable till the entire property is developed and all the premises constructed thereon are sold out. It is however, hereby expressly understood that the right of entry granted under this clause is for the sole purpose of developing the said property selling all premises (except those to be allotted to owners) including the shop/s basement/offices therein and common restricted areas or facilities as the case may be and such entry shall not be construed to mean that the owners have placed the developer in legal or physical possession of the said property.
>
> * * *
>
> 16. The developer undertakes to comply with and carry out all the legal and contractual obligations that may be entered into for the construction of the buildings and for the sale of the various premises in the said buildings. The developer further undertakes to indemnify and keep indemnified the owners from and against any action either civil or criminal suit proceedings, damages, penalties or any other similar actions which may be initiated, made or ledged by any person or persons by reason of the failure of the developer to comply with, carry out or perform any such legal and contractual obligations."

38. In this regard, it would be useful to illustrate that in a general sense, an injunction is a judicial mandate operating in personam by which upon certain established principles of equity, a party is required to do or refrain from doing a particular thing. On the other hand, a direction to pay money

either by way of final or interim order is not considered to be an injunction. An order of injunction is normally issued against a named person and is addressed to the defendant personally and on his demise the cause of action would come to an end insofar as such a person who is since deceased even if it relates to a proprietary right unless his legal representatives are also causing a threat in which case the cause of action would continue vis-à-vis the legal representatives also.

39. Therefore, if the estate of the deceased becomes liable then the legal representatives who in law represent the estate of a deceased person or any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued is liable to the extent the estate has devolved. Hence, what is crucial is that the estate of a deceased person which becomes liable and the legal representatives must discharge their liability to a decree-holder or a person who has been granted an order to recover from the estate of the deceased which they would represent and not beyond it.

40. But in the case of a personal obligation imposed on a person under the contract and on the demise of such person, his estate does not become liable and therefore, the legal representatives who represent the estate of a deceased would obviously not be liable and cannot be directed to discharge the contractual obligations of the deceased.

41. In *Ajmera Housing Corpn.* v. *Amrit M. Patel*[6], this Court observed that the defendants in the said case had no privity of contract with the plaintiff therein and the contract had been entered into on the basis of the skills and capacity of the party to perform under the contract and the rights and duties were also personal to the party who had to discharge the obligations under the contract. In the circumstances, it was observed that the legal representatives of the builder under the contract had neither the capacity nor the special skills to discharge the obligations of the deceased.

42. This position is also clear on a reading of Section 50 CPC which states as under:

> "**50.** ***Legal representative***.—(1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.
>
> (2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit."

6 (1998) 6 SCC 500

43. Thus, any decree which is relatable to the extent of the property of the deceased which has come to the hands of the legal representatives and has not been duly disposed of, the same would be liable for execution by a decree-holder so as to compel the legal representatives to satisfy the decree. In this context, even a decree for preventive injunction can also be executed against the legal representatives of the deceased judgment-debtor if such a decree is in relation to the property or runs with the property if there is a threat from such legal representatives.

44. In view of the aforesaid discussion, we hold that the legal representatives of the deceased opposite party-appellants herein are not liable to discharge the obligation which had to be discharged by the deceased opposite party in his personal capacity and hence that portion of the impugned orders of NCDRC, State Commission and District Forum are set aside. Needless to observe that the direction for payments shall be made by the legal representatives from the estate of the deceased opposite party if not already satisfied.

45. The appeals are allowed in the aforesaid terms. The parties to bear their respective costs.

W.P. No. 26493(W) of 2017

S.A. Enterprise v. General Manager

2017 SCC OnLine Cal 16988

In the High Court of Calcutta
(BEFORE DEBANGSU BASAK, J.)

M/s. S.A. Enterprise.

v.

The General Manager, Eastern Railway & Ors.

W.P. No. 26493(W) of 2017
Decided on November 7, 2017

Mr. Kumar Jyoti Tewari,
Mr. G. C. Baidya ... For the petitioner.
Mrs. Aparna Banerjee ... For the Railways.

The Judgment of the Court was delivered by

DEBANGSU BASAK, J.:— Two letters dated October 11, 2017 and October 13, 2017 are under challenge in the present writ petition.

2. Learned Advocate appearing for the petitioner submits that, the deceased mother of the writ petitioner had participated in a tender process floated by the railway authorities as a sole proprietor of M/s. S.A. Enterprise. The mother of the petitioner died on September 3, 2017. The petitioner had obtained a trade licence in the name of M/s. S.A. Enterprise on October 9, 2017. The petitioner is willing to proceed with the contract as entered into by the deceased mother as the sole proprietor of M/s. S.A. Enterprise and with that the railway authorities on May 29, 2017. He refers to a writing dated October 13, 2017 and submits that, the reasons for cancellation of the tender is frivolous. The railway authorities are represented.

3. It appears that the M/s. S.A. Enterprise was a sole proprietorship firm of the deceased mother of the petitioner. The mother had died on September 3, 2017. With her death therefore, the sole proprietorship business of such person came to an end. Such person had participated in the tender process of the railways on the basis of the General Conditions of contract of 2014 particularly paragraph 9 of Annexure "P-1" thereof which provides, inter alia, that if a tenderer expires after submission of the tender or after acceptances thereof, the railway shall deem such tender as "cancelled". Such clause has been invoked for the purpose of considering tender obtained by M/s. S.A. Enterprise as "cancelled".

4. A sole proprietorship does not have perpetual succession. The petitioner cannot claim to be the sole proprietorship firm upon the death of the mother.

5. Since the mother had participated in the tender process on the explicit condition as contained in the General Conditions of contract, I find no infirmity in the two impugned letters.

6. WP No. 26493(W) of 2017 is dismissed.

7. No order as to costs.

8. Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.

the time requisite for obtaining the copy, does not exceed 60 days, the High Court had power to condone the delay in filing the revision petitions. No fault can be found with the discretionary jurisdiction so exercised by the High Court.

13. The appeals are held devoid of any merit and are dismissed. Costs easy.

(2003) 9 Supreme Court Cases 401

(BEFORE SHIVARAJ V. PATIL AND ARIJIT PASAYAT, JJ.)

VIJAY SYAL AND ANOTHER .. Appellants;

Versus

STATE OF PUNJAB AND OTHERS .. Respondents.

Civil Appeals No. 812 of 2002† with Nos. 937, 5985 and 5986 of 2002, decided on May 22, 2003

A. **Service Law — Recruitment process — Selection — Interview — Arbitrariness — No abnormal variance in marks secured by candidates in interview found — Marks secured in interview and in written test also not grossly disproportionate — 10.4% marks allocated for interview — On facts held, arbitrariness not made out — Normally, court would not interfere with the assessment made by Interview Committee in absence of any mala fides or extraneous considerations — Moreover, when candidates knowing well the criteria fixed for selection and allocation of marks appeared in interview, on being unsuccessful cannot be allowed to challenge the same criteria — Constitution of India, Art. 136 — Interference in service matters — Recruitment process — Arbitrariness alleged**

B. **Service Law — Recruitment process — Interview — Marks given by Interview Committee — Held, are not subject to judicial review unless mala fides or extraneous considerations alleged**

Held :

The difference of marks secured by the candidates in the interview, in the instant case does not appear abnormal or per se does not smell of any foul play or does not appear patently arbitrary. The lowest of the marks given in the interview were 11.5 and the highest were 22.87. Further, marks secured in the interview and the marks secured in the written test were also not grossly disproportionate. Among the candidates, marks secured in the written test were between 119 to 128 except in one case belonging to a Scheduled Caste were 114. This apart, out of total marks of 240, only 25 marks were earmarked for interview. That cannot be taken as excessive. It comes to 10.4% i.e. well within the ambit of direction given by the Supreme Court in *Ashok Kumar Yadav case*, (1985) 4 SCC 417. However, as observed in *Jasvinder Singh case*, (2003) 2 SCC 132 there cannot be any hard-and-fast rule of universal application for allocating the marks for viva voce vis-à-vis the marks for written examination. So 25 marks for interview out of 240 as against 200 for the written test and 15 marks for

† From the Judgment and Order dated 4-1-2001 of the Punjab and Haryana High Court in CWP No. 7349 of 1998

qualification and other activities do not admit an element of arbitrariness or give scope for use of discretion by members of the Interview Committee recklessly or designedly in giving more marks to show favour in the interview so as to give an advantage or march to an undeserving candidate over others who had shown extraordinary merit in the written test. The marks secured in the interview are based on the assessment of the Interview Committee. Normally, it is not for the court to sit in judgment over such assessment and particularly in the absence of any mala fides or extraneous considerations attributed and established. Further, the appellants, knowing the criteria fixed for selection and allocation of marks, did participate in the interview; when they are not successful, it is not open to them to turn around and attack the very criteria. (Paras 12, 17 and 19)

Ashok Kumar Yadav v. *State of Haryana*, (1985) 4 SCC 417 : 1986 SCC (L&S) 88, *explained*

All India State Bank Officers' Federation v. *Union of India*, (1997) 9 SCC 151 : 1997 SCC (L&S) 1004; *Jasvinder Singh* v. *State of J&K*, (2003) 2 SCC 132 : 2003 SCC (L&S) 147, *relied on*

Lila Dhar v. *State of Rajasthan*, (1981) 4 SCC 159 : 1981 SCC (L&S) 588; *Mehmood Alam Tariq* v. *State of Rajasthan*, (1988) 3 SCC 241 : 1988 SCC (L&S) 757 : (1988) 7 ATC 741; *Manjeet Singh* v. *ESI Corpn.*, (1990) 2 SCC 367 : 1990 SCC (L&S) 271 : (1990) 13 ATC 686; *Anzar Ahmad* v. *State of Bihar*, (1994) 1 SCC 150 : 1994 SCC (L&S) 278 : (1994) 26 ATC 504, *cited*

C. **Service Law — Recruitment process — Selection — Written test and interview — Post-declaration lowering of standard — Propriety — After declaration of first list of successful candidates in written examination, second list of successful candidates, including two respondents declared by lowering the standard so as to make them, along with the first list of candidates, eligible for interview — But marks by the two respondents were more than those secured by the appellants — Thus even if respondents were denied appointment on ground that they were called for interview in the second list, position of appellants would not improve — Without anything more, held, selection of the respondents would not get vitiated (Para 11)**

D. **Service Law — Recruitment process — Selection — Marks for additional educational qualification — For total 5 marks set apart out of which maximum marks available to the highest qualification of a candidate required to be given — Held, marks not required to be given to every additional educational qualification**

Total marks for selection were 240. Marks allocated for competitive test were 200, marks allocated for additional educational, sports and other qualifications were 15 and marks allocated for interview (viva voce) were 25. As per criteria/formula adopted for selection of candidates for the post of Naib Tahsildar by the Subordinate Services Selection Board, Punjab, marks allocated for educational qualifications were 5 and maximum marks were 5 for PhD, for postgraduation in first division 3 marks, for second and third divisions 2 marks, for LLB 2 marks and any other qualification 1 mark. The appellant, who had additional qualifications of MA and LLB contended that he ought to have been given additional marks for MA as well as LLB, but only 2 marks were given for both the qualifications together, which affected his chance of selection.

Held :

If the argument of the appellant is to be accepted, it may result in an anomalous situation. Suppose, a candidate, who possesses three additional

qualifications including PhD, in that event he would be entitled to 5 marks for PhD and additional marks for every additional educational qualification. Then the total marks to be assigned to a candidate for the educational qualifications shall be more than 5 marks. In the case of the appellant, although he had two additional educational qualifications, the maximum marks to which he was entitled for highest qualification were given. Hence he cannot make any grievance. (Para 21)

E. **Service Law — Recruitment process — Selection — Marks for additional educational qualification — Claim for, to be made and substantiated — In the application form no mention was made about additional postgraduation qualification acquired by the appellant and no record or certificate was placed before the authorities at appropriate time to show that the appellant had acquired additional qualifications — Held, contention that no marks were given to the appellant for additional educational qualifications has no merit (Para 22)**

F. **Constitution of India — Art. 136 — Abuse of process of court — SLP — False statements in — Serious view should be taken by court — Lenient and generous view unwarranted — Appellant should be ready to face the consequences — Misrepresentation of facts (stating that 100 out of total 250 marks were allocated for interview) and false allegations of mala fides and bias against Selection Board (stating that one of the selected candidates was related to Chairman of the Selection Board and two other selected candidates were related to a Minister and a sitting MLA respectively) — At the hearing appellant expressing regrets and submitting that the said statements had not been made with any mala fide intention — On facts, statements in the SLP were not bona fide but were made to get leave and/or interim orders on ground of excessive marks allocated in interview and mala fides — This conduct of appellants is condemnable and would disentitle them to any relief on this score — Court cannot permit abuses of the process of law or of law courts — However, no serious action taken by the Court and it decided to examine on merits the contentions urged by the parties at length in view of apology and regret expressed by appellants — But appellants directed to pay costs — Service Law — Recruitment process — Selection — Interview — Practice and Procedure — Costs — Imposed for making false statements in SLP to secure leave and/or interim orders — Costs imposed despite expression of regret**

Held :

In order to sustain and maintain the sanctity and solemnity of the proceedings in law courts it is necessary that parties should not make false or knowingly, inaccurate statements or misrepresentation and/or should not conceal material facts with a design to gain some advantage or benefit at the hands of the court, when a court is considered as a place where truth and justice are the solemn pursuits. If any party attempts to pollute such a place by adopting recourse to make misrepresentation and is concealing material facts it does so at its risk and cost. Such party must be ready to take the consequences that follow on account of its own making. At times lenient or liberal or generous treatment by courts in dealing with such matters is either mistaken or lightly taken instead of learning a proper lesson. Hence there is a compelling need to take a serious view in such matters to ensure expected purity and grace in the administration of justice. (Para 24)

The misrepresentation made by the appellants in the SLPs supported by an affidavit requires serious action but no further action need be taken in this case in view of the apology and regret expressed by the appellants during the hearing. But a warning need be administered to them to be careful in future and not to make any misrepresentation or false statement before any court and impose cost also. (Paras 25, 5 and 9)

Hari Narain v. *Badri Das*, AIR 1963 SC 1558 : (1964) 2 SCR 203; *Rajabhai Abdul Rehman Munshi* v. *Vasudev Dhanjibhai Mody*, AIR 1964 SC 345 : (1964) 3 SCR 480; *Udai Chand* v. *Shankar Lal*, (1978) 2 SCC 209 : (1978) 2 SCR 809, *relied on*

Accordingly, these appeals are dismissed but with cost of Rs 10,000 (Rs 5000 to be paid by each of the appellants) in Civil Appeal No. 812 of 2002 and Rs 5000 in each one of the remaining appeals to be paid by the appellants which amount shall be deposited with the Legal Aid Committee of the Supreme Court. (Para 26)

R-M/ANWZF/28207/SL

Advocates who appeared in this case :

Mukul Rohatgi, Additional Solicitor-General, K.K. Venugopal, R.F. Nariman, H.N. Salve and Dr Rajeev Dhavan, Senior Advocates, Appellant-in-person (H.K. Puri, J.K. Das, S.A. Sattar, Bir Singh, Ms Anu Mohla, Ms Sangita Dhanda, Aditya Choudhary, Bharat Singh, Sanjay Singh, U.S. Prasad, Vipin Gogia, Ms Jaspreet Gogia, R.S. Suri, Jagjit Singh Chhabra, Krishnan Venugopal, Uday N. Tiwary, Abhijit Sengupta, V.N. Raghupathy, Brij Kishor Shah, Rajiv K. Garg, R.K. Joshi, A.D.N. Rao, Atul Sharma and K.K. Gupta, Advocates, with them) for the appearing parties.

Chronological list of cases cited ***on page(s)***

1. (2003) 2 SCC 132 : 2003 SCC (L&S) 147, *Jasvinder Singh* v. *State of J&K* 416*b-c*
2. (1997) 9 SCC 151 : 1997 SCC (L&S) 1004, *All India State Bank Officers' Federation* v. *Union of India* 415*g-h*
3. (1994) 1 SCC 150 : 1994 SCC (L&S) 278 : (1994) 26 ATC 504, *Anzar Ahmad* v. *State of Bihar* 416*e*
4. (1990) 2 SCC 367 : 1990 SCC (L&S) 271 : (1990) 13 ATC 686, *Manjeet Singh* v. *ESI Corpn.* 416*d-e*
5. (1988) 3 SCC 241 : 1988 SCC (L&S) 757 : (1988) 7 ATC 741, *Mehmood Alam Tariq* v. *State of Rajasthan* 416*d*
6. (1985) 4 SCC 417 : 1986 SCC (L&S) 88, *Ashok Kumar Yadav* v. *State of Haryana* 405*h*, 411*e-f*, 411*f-g*, 415*f*, 416*b-c*, 416*e*, 416*e-f*, 417*a*, 420*a-b*
7. (1981) 4 SCC 159 : 1981 SCC (L&S) 588, *Lila Dhar* v. *State of Rajasthan* 414*b-c*
8. (1978) 2 SCC 209 : (1978) 2 SCR 809, *Udai Chand* v. *Shankar Lal* 410*c*
9. AIR 1964 SC 345 : (1964) 3 SCR 480, *Rajabhai Abdul Rehman Munshi* v. *Vasudev Dhanjibhai Mody* 409*e-f*, 410*c*
10. AIR 1963 SC 1558 : (1964) 2 SCR 203, *Hari Narain* v. *Badri Das* 409*c*, 410*c*

The Judgment of the Court was delivered by

SHIVARAJ V. PATIL, J.— These appeals are directed against the common judgment and order dated 4-1-2001 passed by the Division Bench of the High Court. The controversy relates to selection/non-selection of candidates to the post of Assistant District Transport Officer (for short "ADTO"). The Punjab Subordinate Selection Board advertised twelve posts of ADTOs on 15-5-1995. Out of them, seven posts were for the general category, four for SC/ST and one was reserved for ex-servicemen. A written test was conducted

on 24-3-1996, the result of which was declared on 1-4-1998, declaring seventy-eight persons successful. Out of these seventy-eight persons, sixty-one belonged to the general category, fifteen belonged to the SC/ST category and two belonged to the category of ex-servicemen. Later, on 22-4-1998, forty more candidates were declared successful by lowering the standard. Out of these forty candidates, twenty-one belonged to the general category, thirteen to the SC/ST category and six to the ex-servicemen category. Criteria for selection were framed on 22-4-1998; final result was declared on 15-5-1998 and the appointments were made on 18-5-1998. Out of the candidates selected and appointed, six were from the general category, three were from SC/ST and one from the ex-servicemen category. Out of the seventy-eight candidates whose result was declared on 1-4-1998, four candidates belonging to the general category were selected. However, out of the forty candidates whose result was declared later, two candidates belonging to the general category were selected. The appellants in these appeals approached the High Court by filing writ petitions for quashing the select list of the candidates published by the authorities in *The Tribune* dated 23-5-1998, for issuing writ of mandamus directing the respondents to consider their claim on the basis of their merit from amongst the candidates originally invited for interview and to issue a writ in the nature of prohibition restraining the respondents from giving effect to the selection made. It may be mentioned here itself that the selected candidates were appointed on 18-5-1998 and having joined the services, they are continuing in service. The High Court considering the rival contentions on their relative merits and after perusing the records did not find any merit in the writ petitions. Consequently, they were dismissed by the impugned common order. Hence, these appeals.

2. Appellant 1 in Civil Appeal No. 812 of 2002 argued his case as party-in-person and submissions were made by the learned counsel on behalf of the other appellants. We may make it clear at the outset that none of the appellants belonged to the category of either SC/ST or ex-servicemen and their claim is also not against these categories. Hence, we consider it unnecessary to consider the validity of selection of the candidates made in these two categories. In other words, we confine our consideration to the validity of selection of the candidates made in the general category. Mainly, the submissions made on behalf of the appellants were that after declaration of the result of the written examination on 1-4-1998, standard could not have been lowered for making other forty candidates eligible for the purpose of interview; criteria could not have been framed after declaration of result of the written examination; a maximum of twenty-one candidates could have been called for interview in the ratio of 1:3 in the general category on the basis of the merit of the written examination whereas out of seventy-eight candidates whose result was declared on 1-4-1998, more than sixty candidates were from the general category. In this regard, reliance was placed on *Ashok Kumar Yadav* v. *State of Haryana*[1].

1 (1985) 4 SCC 417 : 1986 SCC (L&S) 88

3. Learned Additional Solicitor-General and learned Senior Counsel for the respondents at the outset submitted that they have preliminary objection to the very entertaining of these appeals and considering the contentions advanced on behalf of the appellants on merits having regard to their conduct. According to them, the appellants made deliberate misrepresentation with regard to the allocation of marks stating that 150 marks were for the written test and 100 marks for the interview. Further, mala fides were attributed to the authorities on the basis of the relation and political influence, which they gave up before the High Court but again reiterated in the SLPs. According to the learned counsel, these two grounds are good enough to dismiss the appeals by revoking leave granted without examining them on merits. Although we find justification in these submissions but having heard the parties at length, we consider these appeals on the merits of the contentions as well. On behalf of the respondents, further submissions were made explaining the criteria fixed, in what circumstances, more number of candidates were called for interview and how the selection made was fair and proper. According to them, mere calling more number of candidates for interview did not vitiate the selection made having regard to the facts and circumstances of the case; at any rate, the appellants being lower in merit, even otherwise, could not get any benefit. According to the learned counsel for the respondents, the impugned judgment of the High Court is perfectly valid and justified. They also submitted that pursuant to the selection made, the selected non-official respondents have been continuing in service since May 1998 i.e. they are continuing in service for about 5 years by now and as such these are not fit cases for exercise of jurisdiction under Article 136 of the Constitution of India to interfere with the impugned judgment and order.

4. It is useful to reproduce the chart furnished at the time of hearing indicating names of candidates, their categories, qualification, marks obtained in the written test as well as interview and the total marks:

CA No.	*Sr. No.*	*Name*	*List**	*Category*	*Qualification marks*	*Written test*	*Interview test*	*Total*
812 of 2002	*1.*	Umesh Kumar, appellant	I	G	2(MA 2)	124	12.5	138.5
	2.	Vijay Kumar, appellant	I	G	3(MA 2)	126	11.5	140.5
	3.	Karanbir Singh, Respondent 4	I	G	1(Sports)	127	20.5	148.5
	4.	Gurinderjit Singh, Respondent 5	I	G	—	127	19	146
	5.	Tarlochan Singh, Respondent 6	I	G	—	124	21.75	145.75
	6.	Manjit Singh, Respondent 7	I	G	2(MA 2)	123	20.25	145.25

	7.	Gurcharan Singh, Respondent 8	II	G	1(NSS)	120	22.5	143.5
	8.	Angrej Singh, Respondent 9	II	G	—	120	22.87	142.87
	9.	Sukhwinder Kumar, Respondent 10	I	SC	1(NSS/ NCC)	121	19.37	141.37
	10.	Dhian Singh, Respondent 11	II	SC	2(MA)	119	19.5	140.5
	11.	Karam Singh, Respondent 12	I	SC	2(MA/ LLB)	124	15.75	141.75
	12.	Jaswant Singh, Respondent 13	II	SC	5(MA=2, NCC 3)	114	21.5	140.5
5986 of 2002		Zulfikar Ali, Appellant	I	G	2(LLB)	122	12.25	136.25
5985 of 2002		Gurdeep Singh, Appellant	I	G	—	122	14.25	136.25
937 of 2002		Sarpinderjit Singh, Appellant	I	G	2(MA)	128	11.5	141.50
Not selected but better than all the appellants								
		Ram Nath	I	G		121	21.75	142.75
		Paramjit Singh	I	G		123	19	142

**Note*.—The names of the candidates from among seventy-eight candidates called for interview for the first time are shown as in List I and names of the candidates from among forty candidates called for interview are shown as in List II.

5. In para 8 of Writ Petition No. 7349 of 1998 filed by Appellant 1 in Civil Appeal No. 812 of 2002, it is averred that he came to know on inquiry that the entire selection had been made in a totally arbitrary and biased manner to help certain selected candidates; Respondent 8 is the nephew of Shri Jasdev Singh Sandhu, Chairman of the respondent Board; the sister's husband of Harmail Singh, Minister for Public Works in the present

Government is one of the selected candidates; Shri Angrej Singh, Respondent 9 is politically very well connected and is a close friend of a sitting MLA. In order to help these persons who did not come within the first list, the second list was issued. In para 10 of the writ petition, it is asserted that 100 marks were kept for interview as against the total marks of 250 (150 marks for written test + 100 marks for interview) which is totally arbitrary. Thus, 40% marks have been allocated for interview as against 12.2%, which are permissible in law. In the replication to the written statement filed, in para 8, it is stated that so far as the relationship of Respondent 8 with Shri Jasdev Singh Sandhu, the Chairman, is concerned, it is fairly conceded that this has been mentioned wrongly but not with mala fide intention. In the impugned judgment, the question of mala fides is not dealt with, obviously, in view of the replication filed by the appellants to the written statement before the High Court as noticed above. In the impugned judgment, the question of allocation of 100 marks for interview were excess, is also not dealt with as it does not appear to have been urged on behalf of the appellants. Criteria for selection were framed on 22-4-1998. The criteria for selection which were produced as Annexure R-1 in the writ petition before the High Court clearly indicated total marks for selection as 240, out of them 200 marks were allocated for competitive test, 15 marks for additional educational, sports and other qualifications and 25 marks were allocated for interview. The appellants were very much aware of Annexure R-1. The impugned order shows that the grievance of the appellants was in regard to the publication of the criteria, subsequent to declaration of the result of the written examination; not that 100 marks allocated for interview were excessive. With all this, it is painful to note that the appellants in Civil Appeal No. 812 of 2002 on p. K of the list of dates stated that 100 marks were kept for interview as against the total marks of 250 (150 marks for written test + 100 marks for interview). It is further stated that the selection has been made in a totally biased manner as the nephew of the Chairman of the respondent Board, the sister's husband of the Minister for Public Works and a friend of known political families in Punjab, have been appointed. It may be stated here itself that those persons were neither made parties nor were any particulars given touching mala fides. At p. 34 of SLP in paras K and L, same things are repeated as to the allotment of 100 marks for interview and also mala fides attributed to certain persons to accommodate the private respondents. It is further stated that arbitrarily 100 marks were set apart for interview out of 250 marks in order to help them only and that the entire selection was arbitrary. This is also the state of affairs even with regard to the other appellants in other appeals. At the hearing when pointed out, the appellants regretted the wrong statements and misrepresentation made but added that they were not with any mala fide intention. Looking to the background, specific statements made in the replication filed by the appellant before the High Court, being aware of the criteria that the marks for interview were only 25, having given up mala fides and having not urged the same before the High Court and taking note that the

appellants have sworn affidavits in support of the SLPs that they understood the accompanying synopsis, list of dates and paragraphs contained in special leave petitions and that they were fully conversant with the facts of the case and that the contents of the affidavit were true to their knowledge and nothing material has been concealed therefrom and no part of it is false, we find it difficult to accept that the statements were made in the SLPs bona fidely. It appears to us that these statements were made in SLPs to get leave and/or interim orders on the ground of excessive marks allocated for interview and mala fides. In our view, this conduct of the appellants is condemnable and we may straight away say without any hesitation that they have disentitled themselves to any relief on this score.

6. A Bench of three learned Judges of this Court in *Hari Narain* v. *Badri Das*[2] revoked the special leave granted to the appellant and dismissed the appeal for making inaccurate, untrue and misleading statement in SLP observing that: (AIR p. 1560, para 9)

> "It is of utmost importance that in making material statements and setting forth grounds in applications for special leave, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. That is why we have come to the conclusion that in the present case, special leave granted to the appellant ought to be revoked. Accordingly, special leave is revoked and the appeal is dismissed. The appellant will pay the costs of the respondent."

7. Again in *Rajabhai Abdul Rehman Munshi* v. *Vasudev Dhanjibhai Mody*[3] this Court observed that: (AIR p. 347, para 9)

> "Exercise of the jurisdiction of the Court under Article 136 of the Constitution is discretionary; it is exercised sparingly and in exceptional cases, when a substantial question of law falls to be determined or where it appears to the Court that interference by this Court is necessary to remedy serious injustice. A party who approaches this Court invoking the exercise of this overriding discretion of the Court must come with clean hands. If there appears on his part any attempt to overreach or mislead the Court by false or untrue statements or by withholding true information which would have a bearing on the question of exercise of the discretion, the Court would be justified in refusing to exercise the discretion or if the discretion has been exercised in revoking the leave to appeal granted even at the time of hearing of the appeal."

2 AIR 1963 SC 1558 : (1964) 2 SCR 203
3 AIR 1964 SC 345 : (1964) 3 SCR 480

8. In the same judgment, Hidayatullah, J. concurring with the judgment of Shah, J. delivered on behalf of himself and Sarkar, J., added that: (AIR p. 349, para 19)

> "*19.* I have considered the matter carefully. This is not a case of a mere error in the narration of facts or of a bona fide error of judgment which in certain circumstances may be considered to be venial faults. This is a case of being disingenuous with the Court by making out a point of law on a suppositious state of facts, which facts, if told candidly, leave no room for the discussion of the law. The appellant has by dissembling in this Court induced it to grant special leave in a case which did not merit it. I agree, therefore, that this leave should be recalled and the appellant made to pay the costs of this appeal."

9. Yet again, a Bench of three learned Judges of this Court in *Udai Chand* v. *Shankar Lal*[4] revoked the special leave and dismissed it after referring to the decisions in *Hari Narain*[2] and *Rajabhai Abdul Rehman Munshi*[3]. It was further observed that this Court cannot permit abuses of the process of law and of law courts.

10. However, even otherwise we proceed to examine on the merits of the contentions urged on either side at length and with all seriousness.

11. From the chart extracted above in regard to the marks secured by the appellants and the respondents, it is evident that Respondents 4-7 (in general category) were in the first list i.e. they were from out of the seventy-eight candidates. The appellants cannot make grievance as far as these candidates are concerned in the sense that they were in the first list and not in the second list so as to give them advantage. No doubt, Respondents 8 and 9 (in general category) were called for interview in the second list out of forty candidates. Admittedly, the marks secured by these respondents are more than any of the appellants in the general category. It is pointed out that the two candidates, namely, Ram Nath and Paramjit Singh in the general category called in the first list of the interview have secured more marks than all the appellants. Even if Respondents 8 and 9 were to be denied appointment on the ground that they were called for the interview in the second list, the position of the appellants could not improve. One more fact to be kept in mind is that two candidates belonging to a the Scheduled Caste category having secured higher marks than the appellants could be selected in the general category. Thus, even otherwise, the appellants would not succeed in getting selected for appointments. Merely because forty more candidates were called for interview without anything more, selection of the candidates does not get vitiated particularly so when mala fides were given up and 100 marks were not allocated for interview as wrongly stated by the appellants.

12. As can be seen from the difference of marks secured by the candidates in the interview, it does not appear abnormal or per se does not smell of any foul play or does not appear patently arbitrary. The lowest of the marks given in the interview are 11.5 and the highest are 22.87. Further,

4 (1978) 2 SCC 209 : (1978) 2 SCR 809

marks secured in the interview and the marks secured in the written test are also not grossly disproportionate. This apart, out of total marks of 240, only 25 marks were earmarked for interview. So 25 marks for interview out of 240 as against 200 for the written test and 15 marks for qualification and other activities do not admit an element of arbitrariness or give scope for use of discretion by members of the Interview Committee recklessly or designedly in giving more marks to show favour in the interview so as to give an advantage or march to an undeserving candidate over others who had shown extraordinary merit in the written test. From the chart, we find among the candidates, marks secured in the written test were between 119 to 128 except in one case belonging to a Scheduled Caste were 114. This apart, the marks secured in the interview are based on the assessment of the Interview Committee. Normally, it is not for the court to sit in judgment over such assessment and particularly in the absence of any mala fides or extraneous considerations attributed and established. The interview marks of 25 as against total marks of 240, cannot be taken as excessive. It comes to 10.4%. Possibly the selection would have been vitiated, if the marks for interview were 100 as against 150 marks for written test as sought to be made out. Unfortunately, for the appellants, their misrepresentation in this regard, is unfolded very clearly as already stated above. Further, the appellants, knowing the criteria fixed for selection and allocation of marks, did participate in the interview; when they are not successful, it is not open to them to turn around and attack the very criteria. The High Court in the impugned order has found that the criteria contained in Annexure R-1 filed in the writ petition was published and that such criteria was adopted earlier also in respect of other selections.

13. The appellants heavily relied on a decision of this Court by four learned Judges in *Ashok Kumar Yadav case*[1] in support of their contentions that where there is a composite test consisting of written examination followed by viva voce test, the number of candidates to be called for interview on the basis of marks obtained in the written examination should not exceed twice or at the highest thrice the number of vacancies to be filled; further, marks allocated to the viva voce test should not be more than 12.2%. The learned counsel for the respondents from the very judgment pointed out that it does not advance the case of the appellants having regard to the facts and circumstances of the cases at hand. In the aforementioned case of *Yadav*[1], the facts were that in October 1980, the Haryana Public Service Commission (HPSC) invited applications for recruitment to sixty-one posts in Haryana Civil Service (Executive) and Allied Services. The recruitment was governed by the Punjab Civil Service (Executive Branch) Rules, 1930 as applicable in the State of Haryana. In response to that advertisement issued by HPSC, about 6000 candidates applied for recruitment and appeared at the written examination. Out of them, over 1300 obtained more than 45% marks and were called for interview. HPSC invited all the 1300 and odd candidates for interview and the interviews lasted for almost half a year. Though originally, applications were invited for recruitment to sixty-one posts, the number of

vacancies during the time taken in the written examination and viva voce test rose to 119. It seems there were some candidates who had obtained very high marks at the written examination but owing to securing poor marks in the viva voce test, they could not come within the first 119 candidates and consequently they were not selected. Aggrieved by the non-selection, they filed writ petitions in the High Court challenging the validity of the selection. It was contended that the marks given in the viva voce test should be ignored and selection should be made only on the basis of the marks obtained by the candidates at the written examination. The writ petitions were allowed by the Division Bench of the High Court. Hence, the appeals were filed before this Court aggrieved by the judgment of the High Court. The High Court took the view that there was reasonable likelihood of bias vitiating the selection process based on the fact that though only sixty-one vacant posts were advertised over 1300 candidates representing more than twenty times the number of available vacancies were called for viva voce test. The Division Bench pointed out that in order to have proper balance between the objective assessment of a written examination and the subjective assessment of personality by a viva voce test, the candidates to be called for interview at viva voce test should not exceed twice or at the highest, thrice the number of available vacancies. Since the candidates were called twenty times the number of available vacancies, the High Court held that the selection process was vitiated. This Court disagreed with this conclusion reached by the Division Bench of the High Court. While doing so, this Court observed that HPSC was not right in calling for interview all the 1300 and odd candidates; it was difficult to see how a viva voce test for properly and satisfactorily measuring the personality of a candidate can be carried, if over 1300 candidates were to be interviewed for recruitment to a service; if the viva voce test was to be carried out in a thorough and scientific manner, to arrive at a fair and satisfactory evaluation of the personality of a candidate, the interview must take anything between 10 to 30 minutes. This Court, while considering the question whether selection made by HPSC after calling 1300 candidates for interview was vitiated on that account, in para 21, held thus: (SCC pp. 447-49)

> "*21.* We do not think that the selections made by the Haryana Public Service Commission could be said to be vitiated merely on the ground that as many as 1300 and more candidates representing more than 20 times the number of available vacancies were called for interview, though on the view taken by us that was not the right course to follow and not more than twice or at the highest thrice, the number of candidates should have been called for interview. Something more than merely calling an unduly large number of candidates for interview must be shown in order to invalidate the selections made. That is why the Division Bench relied on the comparative figures of marks obtained in the written examination and at the viva voce test by the petitioners, the first 16 candidates who topped the list in the written examination and the first 16 candidates who topped the list on the basis of the combined marks obtained in the written

examination and the viva voce test, and observed that these figures showed that there was reasonable likelihood of arbitrariness and bias having operated in the marking at the viva voce test. Now it is true that some of the petitioners did quite well in the written examination but fared badly in the viva voce test and in fact their performance at the viva voce test appeared to have deteriorated in comparison to their performance in the year 1977-78. Equally it is true that out of the first 16 candidates who topped the list in the written examination, 10 secured poor rating in the viva voce test and were knocked out of the reckoning while 2 also got low marks in the viva voce test but just managed to scrape through to come within the range of selection. It is also true that out of the first 16 candidates who topped the list on the basis of the combined marks obtained in the written examination and the viva voce test, 12 could come in the list only on account of high marks obtained by them at the viva voce test, though the marks obtained by them in the written examination were not of sufficiently high order. These figures relied upon by the Division Bench may create a suspicion in one's mind that some element of arbitrariness might have entered the assessment in the viva voce examination. But suspicion cannot take the place of proof and we cannot strike down the selections made on the ground that the evaluation of the merits of the candidates in the viva voce examination might be arbitrary. It is necessary to point out that the Court cannot sit in judgment over the marks awarded by interviewing bodies unless it is proved or obvious that the marking is plainly and indubitably arbitrary or affected by oblique motives. It is only if the assessment is patently arbitrary or the risk of arbitrariness is so high that a reasonable person would regard arbitrariness as inevitable, that the assessment of marks at the viva voce test may be regarded as suffering from the vice of arbitrariness. Moreover, apart from only three candidates, namely, Trilok Nath Sharma, Shakuntala Rani and Balbir Singh one of whom belonged to the general category and was related to Shri Raghubar Dayal Gaur and the other two were candidates for the seats reserved for Scheduled Castes and were related to Shri R.C. Marya, there was no other candidate in whom the Chairman or any members of the Haryana Public Service Commission was interested, so that there could be any motive for manipulation of the marks at the viva voce examination. There were of course general allegations of casteism made against the Chairman and the members of the Haryana Public Service Commission, but these allegations were not substantiated by producing any reliable material before the Court. The Chairman and members of the Haryana Public Service Commission in fact belonged to different castes and it was not as if any particular caste was predominant amongst the Chairman and members of the Haryana Public Service Commission so as even to remotely justify an inference that the marks might have been manipulated to favour the candidates of that caste. We do not think that the Division Bench was right in striking down the selections made by the Haryana Public Service Commission on

the ground that they were vitiated by arbitrariness or by reasonable likelihood of bias."

14. In that case the marks allocated for the viva voce test came to 22.2% of the total number of marks kept for the competitive examination. This percentage of 33.3% was in the case of ex-service officers and 22.2% was in the case of other candidates.

15. As regards the allocation of marks for interview, in paras 23 and 24 of the same judgment it is stated thus: (SCC pp. 450-51)

"*23*. This Court speaking through Chinnappa Reddy, J. pointed out in *Lila Dhar* v. *State of Rajasthan*[5] that the object of any process of selection for entry into public service is to secure the best and the most suitable person for the job, avoiding patronage and favouritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service. So open competitive examination has come to be accepted almost universally as the gateway to public services. But the question is how should the competitive examination be devised? The competitive examination may be based exclusively on written examination or it may be based exclusively on oral interview or it may be a mixture of both. It is entirely for the Government to decide what kind of competitive examination would be appropriate in a given case. To quote the words of Chinnappa Reddy, J. 'in the very nature of things it would not be within the province or even the competence of the court and the court would not venture into such exclusive thickets to discover ways out, when the matters are more appropriately left' to the wisdom of the experts. It is not for the court to lay down whether interview test should be held at all or how many marks should be allowed for the interview test. Of course the marks must be minimal so as to avoid charges of arbitrariness, but not necessarily always. There may be posts and appointments where the only proper method of selection may be by a viva voce test. Even in the case of admission to higher degree courses, it may sometimes be necessary to allow a fairly high percentage of marks for the viva voce test. That is why rigid rules cannot be laid down in these matters by courts. The expert bodies are generally the best judges. The Government aided by experts in the field may appropriately decide to have a written examination followed by a viva voce test.

24. It is now admitted on all hands that while a written examination assesses the candidate's knowledge and intellectual ability, a viva voce test seeks to assess a candidate's overall intellectual and personal qualities. While a written examination has certain distinct advantages over the viva voce test, there are yet no written tests which can evaluate a candidate's initiative, alertness, resourcefulness, dependableness, cooperativeness, capacity for clear and logical presentation, effectiveness in discussion, effectiveness in meeting and dealing with others,

5 (1981) 4 SCC 159 : 1981 SCC (L&S) 588

adaptability, judgment, ability to make decision, ability to lead, intellectual and moral integrity. Some of these qualities can be evaluated, perhaps with some degree of error, by viva voce test, much depending on the constitution of the interview board."

16. Even after having found that allocation of 22.2% marks for viva voce test were unreasonable and excessive, selection was not upset as stated hereunder: (SCC pp. 454-55, para 28)

"*28.* But the question which then arises for consideration is as to what is the effect of allocation of such a high percentage of marks for the viva voce test, both in case of ex service officers and in case of other candidates, on the selections made by the Haryana Public Service Commission. Though we have taken the view that the percentage of marks allocated for the viva voce test in both these cases is excessive, we do not think we would be justified in the exercise of our discretion in setting aside the selections made by the Haryana Public Service Commission after the lapse of almost two years. The candidates selected by the Haryana Public Service Commission have already been appointed to various posts and have been working on these posts since the last about two years. Moreover the Punjab Civil Service (Executive Branch) Rules, 1930 under which 33.3% marks in case of ex-service officers and 22.2% marks in case of other candidates, have been allocated for the viva voce test have been in force for almost 50 years and everyone has acted on the basis of these rules. If selections made in accordance with the prescription contained in these rules are now to be set aside, it will upset a large number of appointments already made on the basis of such selections and the integrity and efficiency of the entire administrative machinery would be seriously jeopardized. We do not therefore propose to set aside the selections made by the Haryana Public Service Commission though they have been made on the basis of an unduly high percentage of marks allocated for the viva voce test."

17. This Court in *Ashok Kumar Yadav case*[1] aforementioned, found that allocation of 12.2% marks for viva voce test was fair and just and in that view directed that marks allocated for the viva voce test shall not exceed 12.2% of the total marks taken into account for the purpose of selection. Even judged by this standard in the present appeals, the marks allocated for the viva voce test being 25 as against total marks of 240 are less than 12.2% i.e. well within the ambit of direction given. In that case, this Court declined to exercise discretion to set aside the selection made by HPSC after the lapse of 2 years taking note that the selected candidates had already been appointed to various posts.

18. In *All India State Bank Officers' Federation* v. *Union of India*[6] this Court observed: (SCC p. 169, para 30)

"There can be no rigid or hard-and-fast rule that the interview marks can only be 15 per cent and no more. The percentage of marks for viva

6 (1997) 9 SCC 151 : 1997 SCC (L&S) 1004

voce or interview which can be regarded as unreasonable will depend on the facts of each case. Decisions of this Court show that no rigid rule, relating to percentage of marks for interview of general universal application can or has been laid down. What the interview or viva voce marks should be may vary from service to service and the office or position or the purpose for which the interview is to be held. But the interview marks should not be so high as to give an authority unchecked scope to manipulate or act in an arbitrary manner while making selection."

19. This Court in a recent decision in *Jasvinder Singh* v. *State of J&K*[7] after referring to earlier decisions, pointed out that the very observations made in *Ashok Kumar Yadav case*[1] show that there cannot be any hard-and-fast rule of universal application for allocating the marks for viva voce vis-à-vis the marks for written examination and consequently the percentage indicated therein alone cannot be the touchstone in all cases; what ultimately is required to be ensured is as to whether the allocation as such is with an oblique intention and whether it is so arbitrary as capable of being abused and misused in its exercise. Para 7 of the said judgment reads: (SCC pp. 136-37)

"7. In *Mehmood Alam Tariq* v. *State of Rajasthan*[8] prescription of 33% as minimum qualifying marks of 60 out of total 180 marks set apart for viva voce examination does not by itself incur any constitutional infirmity. In *Manjeet Singh* v. *ESI Corpn.*[9] this Court held that in the absence of any prescription of qualifying marks for the interview test the same 40% as applicable for written examination was reasonable. In *Anzar Ahmad* v. *State of Bihar*[10] this Court exhaustively reviewed the entire case-law on the subject including the one in *Ashok Kumar Yadav case*[1] and upheld a selection method which involved allocation of 50% marks for academic performance and 50 marks for the interview. The very observations in *Ashok Kumar Yadav case*[1] would go to show that there cannot be any hard-and-fast rule of universal application for allocating the marks for viva voce vis-à-vis the marks for written examination and consequently the percentage indicated therein alone cannot be the touchstone in all cases. What ultimately required to be ensured is as to whether the allocation, as such is with an oblique intention and whether it is so arbitrary as capable of being abused and misused in its exercise. Judged from the above the Division Bench could not be held to have committed any error in sustaining the allocation of 25 marks (20%) for viva voce as against 100 marks for written examination for selection of candidates in the present case. The learned Single Judge, in our view, has adopted a superficial exercise and proceeded on a

7 (2003) 2 SCC 132 : 2003 SCC (L&S) 147
8 (1988) 3 SCC 241 : 1988 SCC (L&S) 757 : (1988) 7 ATC 741
9 (1990) 2 SCC 367 : 1990 SCC (L&S) 271 : (1990) 13 ATC 686
10 (1994) 1 SCC 150 : 1994 SCC (L&S) 278 : (1994) 26 ATC 504

misunderstanding of the real ratio of the decision in *Ashok Kumar Yadav case*[1]. Further, the learned Single Judge appears to have applied the ultimate decision in the said case, to the case on hand drawing certain inferences on mere assumptions and surmises or some remote possibilities, without any proper or actual foundation or basis, therefor."

20. The observations made in para 8 of the same judgment in somewhat similar circumstances which have negative impact on the contentions urged on behalf of the appellants are: (SCC pp. 137-38)

"*8*. The learned Single Judge also seems to have been very much carried away by few instances noticed by him as to the award of higher percentage of marks in viva voce to those who got lower marks in the written test as compared to some who scored higher marks in the written examination but could not get as much higher marks in viva voce. Picking up a negligible few instances cannot provide the basis for either striking down the method of selection or the selections ultimately made. There is no guarantee that a person who fared well in the written test will or should be presumed to have fared well in the viva voce test also and the expert opinion about as well as experience in viva voce does not lend credence to any such general assumptions, in all circumstances and for all eventualities. That apart, the variation of written test marks of those who were found to have been awarded higher marks in viva voce vis-à-vis those who secured higher marks in the written test but not so in the viva voce cannot be said to be so much (varying from five marks and at any rate below even 10) as to warrant any proof of inherent vice in the very system of selection or the actual selection in the case. There was no specific allegation of any mala fides or bias against the Board constituted for selection or anyone in the Board nor any such plea could be said to have been substantiated in this case. The observation by the learned Single Judge that there was a conscious effort made for bringing some candidates within the selection zone cannot be said to be justified from the mere fact of certain instances noticed by him on any general principle or even on the merits of those factual instances alone. Further, the course adopted by the learned Single Judge in directing selection from general candidates of all those who have obtained 56 marks in the written examination cannot be justified at all and it is not given to the Court to alter the very method of selection and totally dispense with viva voce in respect of a section alone of the candidates, for purposes of selection. On a careful and overall consideration of the judgments of the learned Single Judge and that of the Division Bench, we are of the view that the decision of the learned Single Judge cannot be sustained for the reasons assigned by him and the decision of the Division Bench cannot be considered to suffer any such serious infirmity in law to call for our interference."

21. In Civil Appeal No. 937 of 2002 the learned counsel for the appellant urged an additional ground that 5 marks fixed for higher educational qualifications were not given to the appellant. According to him the appellant

had additional qualifications of MA and LLB; he ought to have been given additional marks for MA as well as LLB, but only 2 marks were given for both the qualifications together, which affected his chance of selection. It appears that this point was not urged before the High Court and no opportunity was available to the respondents to meet this point. However, during the course of hearing, based on the criteria fixed for selection, it was explained to us by the learned counsel for the respondents that for additional educational qualifications 5 marks were set apart. Out of them maximum marks available to the highest educational qualification of a candidate were to be given and not that marks were to be given to every additional educational qualification. It is better to look at the criteria, which was filed as Annexure R-1 in the writ petition, which is reproduced hereunder:

"ANNEXURE R-1

Criteria/formula adopted for selection of candidates for the post of Naib Tahsildar by the Subordinate Services Selection Board, Punjab

Total marks for selection				240
(*i*)	Marks allotted for competitive test			200
(*ii*)	Marks allotted for additional educational, sports and other qualifications			15
(*iii*)	Marks allotted for interview/(viva voce)			25
(*I*)	(*A*)	*Marks allotted for educational qualification (for additional qualification)*		5
		(*i*)	PhD	5
		(*ii*)	MA/MSc/MTech and other *post-graduate degrees*	
			1st division	3
			2nd division and	
			3rd division	2
		(*iii*)	LLB	2
		(*iv*)	Any other qualification	1

Note.—The candidate will be given the marks on the basis of his/her highest qualification and not on the basis of his/her each qualification lower than this.

(*II*)	(*B*)	*Sports/extracurricular activities*		*5*
	(*i*)	*Sports*		
		International winner		5
		National winner		3
		State winner		2
	(*ii*)	*NCC*		*3*
		C Certificate	3	
		B Certificate	2	
		A Certificate	1	
	(*iii*)	*NSS*		*2*
		One camp	1	
		Two or more camps	2	

(III) Interview

Interview marks of the Board will be 25 and the system for awarding the marks would be same as approved separately for all categories.

sd/-
(Jasdev Singh Sandhu)
Chairman

19-1-1999

sd/-
(Kulbir Singh Randhawa)
Member

sd/-
(Ashok Loomba)
Member

sd/-
(Parkash Singh Gardhiwal)
Member

sd/-
(Virsa Singh Valtoha)
Member

sd/-
(Jarnail Singh Wahid)
Member"

From Annexure R-1 it is clear that total marks for selection were 240. Marks allocated for competitive test were 200, marks allocated for additional educational, sports and other qualifications were 15 and marks allocated for interview (viva voce) are 25. Marks allocated for educational qualifications are 5 and maximum marks are 5 for PhD, for postgraduation in first division 3 marks, for second and third divisions 2 marks, for LLB 2 marks and any other qualification 1 mark. If the argument of the learned counsel for the appellant is to be accepted, it may result in an anomalous situation. Suppose, a candidate, who possesses three additional qualifications including PhD, in that event he would be entitled to 5 marks for PhD and additional marks for every additional educational qualification. Then the total marks to be assigned to a candidate for the educational qualifications shall be more than 5 marks. In the case of the appellant, although he had two additional educational qualifications, the maximum marks to which he was entitled for highest qualification were given. Hence he cannot make any grievance. This being the position, we do not find any merit in the contention. Hence it is rejected.

22. In Civil Appeal No. 5985 of 2002 it was urged that no marks were given to the appellant for additional educational qualifications. It appears that this point also was not raised before the High Court and similarly no opportunity was available to the respondents to meet the point. The learned counsel for the appellant contended that the appellant had additional postgraduation qualification and no marks were given to him. It was brought to our notice by showing the original record that in the application form no mention was made about additional postgraduation qualification acquired by the appellant and no record or certificate was placed before the authorities at appropriate time to show that the appellant had acquired additional qualifications. Hence the contention has no merit and consequently it is rejected.

23. In these appeals, the non-official respondents having been appointed in May 1998, are continuing in service almost for a period of five years. On

this ground as well as looking to the conduct of the appellants in making misrepresentation to this Court and finding no merit in these appeals, we should decline to interfere with the impugned judgment and order. It may be noted that even in *Ashok Kumar Yadav case*[1] this Court set aside the judgment of the Division Bench of the High Court by rejecting the challenge to the validity of the selection made by HPSC.

24. In order to sustain and maintain the sanctity and solemnity of the proceedings in law courts it is necessary that parties should not make false or knowingly, inaccurate statements or misrepresentation and/or should not conceal material facts with a design to gain some advantage or benefit at the hands of the court, when a court is considered as a place where truth and justice are the solemn pursuits. If any party attempts to pollute such a place by adopting recourse to make misrepresentation and is concealing material facts it does so at its risk and cost. Such party must be ready to take the consequences that follow on account of its own making. At times lenient or liberal or generous treatment by courts in dealing with such matters is either mistaken or lightly taken instead of learning a proper lesson. Hence there is a compelling need to take a serious view in such matters to ensure expected purity and grace in the administration of justice.

25. Before we part with these cases, we must observe that the misrepresentation made by the appellants in the SLPs supported by an affidavit require serious action but we refrain from taking any further action in view of the apology and regret expressed by the appellants during the hearing. But, we administer a warning to them to be careful in future and not to make any misrepresentation or false statement before any court and impose cost also.

26. For the reasons stated and discussion made above, these appeals are dismissed but with cost of Rs 10,000 (Rs 5000 to be paid by each of the appellants) in Civil Appeal No. 812 of 2002 and Rs 5000 in each one of the remaining appeals to be paid by the appellants which amount shall be deposited with the Legal Aid Committee of the Supreme Court.

(2003) 9 Supreme Court Cases 420

(BEFORE N. SANTOSH HEGDE AND B.P. SINGH, JJ.)

KHIMA VIKAMSHI AND OTHERS . . Appellants;

Versus

STATE OF GUJARAT . . Respondent.

Criminal Appeals Nos. 1301-02 of 1998†, decided on March 27, 2003

A. **Penal Code, 1860 — Ss. 302/149, 147 and 148 — Omissions and discrepancies — Reversal of acquittal by High Court — Propriety of — Appellants attacking deceased *S* on a road while he was going along with**

† From the Judgment and Order dated 17-11-1998 of the Gujarat High Court in Crl. A. No. 119 of 1985 with Crl. R. Appln. No. 15 of 1985

(2013) 12 Supreme Court Cases 326

(BEFORE T.S. THAKUR AND S.J. MUKHOPADHAYA, JJ.)

MADHYA PRADESH STATE MINING CORPORATION LIMITED . . Appellant;

Versus

SANJEEV BHASKAR AND OTHERS . . Respondents.

Civil Appeals No. 4950 of 2013† with No. 4951 of 2013‡, decided on July 2, 2013

A. **Mineral Concession Rules, 1960 — R. 27 — Mining lease — Death of original lessee during subsistence/continuation of lease — Legal heirs neither entitled to continue the lease nor for renewal of lease — Death of original lessee during pendency of appeal against cancellation of lease and before expiry of period of lease — Application by legal heirs for continuation of lease filed after 14 yrs of death of original lessee — High Court held them entitled to continue lease for remaining period — Unsustainability — Held, LRs of original lessee, if they wanted to continue the business or mining activity of deceased and if they had the requisite qualifications, could at best file an application for grant of fresh mining lease — After death of the lessee legal heirs never applied for fresh grant of lease — In view thereof, after death of the original lessee all rights came to an end and the LR(s) were neither entitled to continue with the lease nor entitled for renewal of lease — Further, respondent LRs had not explained delay of more than 14 yrs to move any court of law, and High Court ought to have dismissed the case on grounds of delay and laches — Transfer of Property Act, 1882 — S. 6(d) — Non-heritable property right — Instance of (Paras 15 to 17, 21 and 22)**

B. **Mineral Concession Rules, 1960 — R. 25-A (as *ins.* on 20-2-1991) — Applicability — Where original lessee died during subsistence/continuation of lease period and it was not a case of death of an applicant during the pendency of grant or renewal of mining lease and further R. 25-A having been inserted nine years after death of the lessee (in 1982), held, R. 25-A is not applicable in present case and LRs deceased lessee cannot derive advantage of the substituted provision (Paras 19 and 20)**

C. **Constitution of India — Art. 226 — Territorial jurisdiction of High Court — Jurisdiction of Delhi High Court to entertain appeal against State Government's order granting lease in favour of appellant, passed pursuant to interim mandamus of M.P. High Court — Held, it was not desirable for Delhi High Court to entertain writ petition and ought to have asked first respondent to move M.P. High Court for appropriate relief — Mineral Concession Rules, 1960, R. 27 (Para 23)**

G. Buchivenkata Rao v. *Union of India*, (1972) 1 SCC 734, *relied on*

Dhani Devi v. *Sant Bihari Sharma*, AIR 1970 SC 759, *cited*

† Arising out of SLP (C) No. 13053 of 2011. From the Judgment and Order dated 20-4-2011 of the High Court of Delhi at New Delhi in LPA No. 742 of 2010

‡ Arising out of SLP (C) No. 29421 of 2011

M.P. State Mining Corpn. Ltd. v. *Sanjeev Bhaskar*, (2011) 123 DRJ 455; *Sanjeev Bhaskar* v. *Govt. of India*, WP (C) No. 8033 of 2002, decided on 21-9-2010 (Del), *reversed*

Appeals allowed B-D/51993/S

Advocates who appeared in this case :
Dushyant A. Dave and Rakesh Dwivedi, Senior Advocates (Viplav Sharma, Nilanjana Banerjee, Santosh Kr. Tripathi, B.S. Banthia, Ms Kirti Renu Mishra, Ms Apurva Upmanyu, Ms Sansriti Pathak, Vishnu Sharma, Arjun Garg and Mishra Saurabh, Advocates) for the appearing parties.

Chronological list of cases cited ***on page(s)***

1. (2011) 123 DRJ 455, *M.P. State Mining Corpn. Ltd.* v. *Sanjeev Bhaskar* **(reversed)** 327*d*, 330*a-b*, 330*b*, 333*c*
2. WP (C) No. 8033 of 2002, decided on 21-9-2010 (Del), *Sanjeev Bhaskar* v. *Govt. of India* **(reversed)** 327*d-e*, 329*g-h*, 333*c*
3. (1972) 1 SCC 734, *G. Buchivenkata Rao* v. *Union of India* 331*c*
4. AIR 1970 SC 759, *Dhani Devi* v. *Sant Bihari Sharma* 331*g*

The Judgment of the Court was delivered by

S.J. MUKHOPADHAYA, J.— Leave granted. These two appeals are preferred by the appellants M.P. State Mining Corporation Ltd. (hereinafter referred to as "the Mining Corporation") and the State of Madhya Pradesh (hereinafter referred to as "the State") against the common judgment dated 20-4-2011 passed by the Division Bench of the Delhi High Court in *M.P. State Mining Corpn. Ltd.* v. *Sanjeev Bhaskar*[1]. By its impugned judgment[1], the Division Bench dismissed the appeals preferred by the Mining Corporation and the State with costs quantified at Rs 25,000 for each appeal and affirmed the judgment dated 21-9-2010[2] passed by the learned Single Judge of the Delhi High Court.

2. The factual matrix of the case is as follows: the Government of Madhya Pradesh on 3-11-1966 granted a mining lease over an area of 28 acres in Village Kari, District Tikamgarh (M.P.) to one Rajendra Nath Bhaskar for extraction of pyrophyllite and diaspore minerals under the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as "the 1957 Act") read with the Mineral Concession Rules, 1960 (hereinafter referred to as the "1960 Rules") for a period of twenty years commencing from 3-11-1966 to 2-11-1986. After about 13 years, a notice dated 18-9-1979 was issued to the said Rajendra Nath Bhaskar by the Collector, Tikamgarh to show cause as to why his mining lease should not be revoked on the ground of certain breaches committed by him which were discovered during the inspection made by the Mining Inspector on 28-5-1979.

3. Rajendra Nath Bhaskar submitted his reply on 3-10-1979 and denied the alleged breaches. Thereafter, by an order dated 5-4-1980, determination of the lease was done by the State Government in accordance with the then Rule 27(5) of the 1960 Rules, on the ground of contravention of clauses (*f*) and (*g*) of sub-rule (1) of Rule 27 of the 1960 Rules. A revision application

1 (2011) 123 DRJ 455

2 *Sanjeev Bhaskar* v. *Govt. of India*, WP (C) No. 8033 of 2002, decided on 21-9-2010 (Del)

was preferred by Rajendra Nath Bhaskar to the Central Government under Rule 54, read with Section 30 of the 1957 Act which was ultimately dismissed by an order dated 6-4-1981.

4. Being dissatisfied, Rajendra Nath Bhaskar challenged the order of determination and the order passed in revision application by filing Miscellaneous Petition No. 805 of 1981 before the Madhya Pradesh High Court. The Division Bench of Madhya Pradesh High Court by its judgment dated 16-7-1986† held that the impugned orders did not disclose the aspects which were taken into account and accordingly set aside the orders with direction to the State Government to decide afresh the question of determination of lease in accordance with law.

5. In the meantime and before the decision of the Madhya Pradesh High Court, the original lessee, Rajendra Nath Bhaskar died on 7-9-1982, but no application for substitution was filed. The period of lease also expired on 2-11-1986. Subsequently, the legal heirs, Sanjeev Bhaskar and others, the respondents herein, filed an application on 2-9-1986 before the State Government praying therein for bringing them on record as the legal heirs and to permit them to carry out the mining operation for the remaining period, which came to 6 years 6 months and 29 days as the lease could not be operated for the aforesaid remaining period because of illegal determination of lease, which had been quashed vide order dated 16-7-1986 passed by the Madhya Pradesh High Court. No action was taken thereon for about four years. The Collector, Tikamgarh issued a demand notice on 8-6-1990 determining the dead rent for the period before expiry of the lease deed in view of audit inspection note. Subsequently, two other demand notices were issued on 14-8-1990 and 8-12-1993 which according to the State, were inadvertently sent. The stand of the State Government was that as per the term of the lease, the period of twenty years expired on 2-11-1986 due to efflux of time. Subsequently, legal heirs of the original lessee made no application in the prescribed form and in the manner for grant of mining lease either by way of a fresh grant or by way of renewal. As the lessee was not a holder of the lease the dead rent for the subsequent period could not have been demanded and therefore, notices dated 14-8-1990 and 8-12-1993 were inadvertently sent.

6. The first respondent, one of the legal heirs, made representations, inter alia, on 28-8-1996, 14-4-1997 and 23-9-1997 to allow him to do mining for rest of the period of 6 years 6 months and 29 days but it has not been made clear as to why no representation was made by legal heirs for more than 10 years after the order of the Madhya Pradesh High Court was passed on 16-7-1986.

7. Receiving no reply, the first respondent filed Contempt Petition No. 186 of 1998 before the Madhya Pradesh High Court which was dismissed on the ground of being time-barred. However, an observation was

† **Ed.**: The complete order may be referred to in para 5 of the decision in *Sanjeev Bhaskar* v. *Govt. of India*, WP (C) No. 8033 of 2002, decided on 21-9-2010 (Del)

made by the Madhya Pradesh High Court that it could hope and trust that the Government would implement the order passed in the year 1986, if they had not implemented the same so far.

8. For the first time, the State Government responded on 21-4-1999 declining to extend the mining lease. It was communicated that in view of the order passed by the High Court on 16-7-1986, the mining lease was automatically restored for the remaining period up to 2-11-1986. In the absence of any direction given by the High Court for renewal of lease and the only direction being given for the State Government to decide afresh the question of determination of lease of original lessee, no renewal could be made.

9. The first respondent on 7-7-1999, filed a revision application before the Central Government under Section 30 of the 1957 Act read with Rule 55 of the 1960 Rules. During the pendency of the said revision application, the State Government granted a lease for 5 ha out of the mining area in question to the M.P. State Mining Corporation. The Central Government vide order dated 12-8-1999, granted an interim stay directed the State Government not to grant the mining lease to the third party. The Mining Corporation filed Writ Petition No. 3914 of 1999 before the Madhya Pradesh High Court on 24-8-1999 seeking a writ of mandamus directing the respondents to execute a lease deed for a period of 20 years commencing from the date of execution in terms of the grant made on 30-7-1999. But the first respondent was not made a party therein.

10. In the said case on 15-9-1999, interim mandamus was issued on the State to execute the mining lease in favour of the Mining Corporation which was executed on 25-9-1999. According to the appellants, the writ petition filed by the Mining Corporation became infructuous.

11. The first respondent filed another revision application on 15-12-1999, inter alia, praying for quashing of the grant made on 30-7-1999 in favour of the Mining Corporation. The first revision application was dismissed on 7-11-2001 by the Mines Tribunal, which was challenged by the first respondent in Writ Petition (Civil) No. 8033 of 2002 but this time before the High Court of Delhi. The second revision application was dismissed on 31-12-2002, inter alia, on the ground that the lease was executed in favour of the Mining Corporation by the State Government in compliance with the order dated 15-9-1999 of interim mandamus by the Madhya Pradesh High Court. The said order was assailed by the first respondent by filing Writ Petition (Civil) No. 5809 of 2004 before the High Court of Delhi. Both the aforesaid writ petitions were heard by the learned Single Judge of High Court of Delhi who by common impugned judgment dated 21-9-2010[2] allowed both the writ petitions filed by the first respondent holding that the grant could not have been made in favour of the Mining Corporation and that the first respondent was entitled to the benefit of the remaining expired period of the original lease to begin from the date the decision was taken by the State

2 *Sanjeev Bhaskar* v. *Govt. of India*, WP (C) No. 8033 of 2002, decided on 21-9-2010 (Del)

Government, but subject to the first respondent complying with all the requirements of the Act and Rules and any other applicable law and paying the dead rent and other charges as required by law. The common order passed in those two writ petitions was upheld by the Division Bench of Delhi High Court by its common judgment dated 20-4-2011[1].

12. The learned counsel for the State and the Mining Corporation assailed the impugned judgment[1] on the following grounds:

12.1. Original lessee Rajendra Nath Bhaskar having died on 7-9-1982, the lease comes to an end. As per the 1960 Rules as was prevailing in June 1982, if the lessee dies during the continuation of the lease, a fresh application has to be presented by his heirs or legal representatives if they are continuing the business of the deceased and have the required qualification to obtain a grant on account of special reason for grant. In the absence of any such application filed by legal heirs for grant of lease in their favour, they are not entitled for renewal of lease or to continue for the remaining period.

12.2. The High Court of Delhi had no jurisdiction to interfere with the impugned order of grant passed in favour of the Mining Corporation, being granted by the State Government pursuant to the direction of the Madhya Pradesh High Court dated 15-9-1999.

13. Per contra, according to the first respondent pursuant to the original order passed by the Madhya Pradesh High Court dated 16-7-1986 it was the duty on the part of the State Government to re-examine and decide the matter afresh regarding the question of determination of the lease. Admittedly, the State Government did not proceed to decide the matter afresh. Therefore, the first respondent was entitled for mining for the remaining period of 6 years 6 months and 29 days. The learned counsel for the respondents contended that the first respondent Sanjeev Bhaskar, son of Rajendra Nath Bhaskar, original lessee moved an application on 2-9-1986 for mutating his name saying that in view of the family settlement his name be mutated. He also requested for grant of benefit for the period during which mining was unlawfully interrupted. In this background, the High Court rightly interfered with the order as well as the order issuing grant in favour of the Mining Corporation which was passed during the pendency of the revision application.

14. Further, according to the learned counsel for the first respondent, part of the cause of action having taken place at Delhi, the orders in the revision applications had been passed by the Central Government, the writ petitions were maintainable before the Delhi High Court.

15. It is not disputed that much before the decision of the Madhya Pradesh High Court, the original lessee, Rajendra Nath Bhaskar died on 7-9-1982. Miscellaneous Petition No. 805 of 1981 pending before the Madhya Pradesh High Court abated in absence of any petition for substitution filed by the legal heirs.

1 *M.P. State Mining Corpn. Ltd.* v. *Sanjeev Bhaskar*, (2011) 123 DRJ 455

16. Further, in the year 1982 when the original lessee died, there was no provision for orders to continue the application for a mining lease. Legal heirs/representatives of the original lessee, if they wanted to continue the business or mining activity of the deceased and also if they had required qualification, could at best file an application for grant of fresh mining lease. Admittedly, after the death of the lessee (7-9-1982), legal heirs including the first respondent never applied for fresh grant of lease. It has also not been made clear that whether any one of them have required qualification for grant of mining lease.

17. In view of the aforesaid fact, we hold that after the death of the original lessee, Rajendra Nath Bhaskar, all rights come to an end and the first respondent or any other legal heir(s) were neither entitled to continue with the lease nor entitled for renewal of lease.

18. Similar issue fell for consideration before this Court in *G. Buchivenkata Rao* v. *Union of India*[3]. In the said case, this Court held as follows: (SCC p. 739, paras 14-15)

> "*14.* It has to be remembered that, in order to enable a legal representative to continue a legal proceeding, the right to sue or to pursue a remedy must survive the death of his predecessor. In the instant case, we have set out provision showing that the rights which an applicant may have had for the grant of a mining lease, on the strength of an alleged superior claim, cannot be separated from his personal qualifications. No provision has been pointed out to us in the Rules for impleading an heir who could continue the application for a mining lease. The scheme under the Rules seems to be that, if an applicant dies, a fresh application has to be presented by his heirs or legal representatives if they themselves desire to apply for the grant of a lease. It may be that the heirs and legal representatives, if they are continuing the business or industry of the deceased and have the required qualifications, obtain priority over an earlier applicant on account of special reasons for this preference. But, in each case, they have to apply afresh and set out their own qualifications. It has not been shown to us that any legal representatives have applied afresh. The legal representatives only claim to be entitled to succeed the deceased Buchivenkata Rao under a will. The assumption underlying the application is that whatever right the deceased may have had to obtain a lease survived and vested in the heirs after his death, we are unable to accept the correctness of this assumption.
>
> *15.* In support of the contention on behalf of the heirs of Buchivenkata Rao, our attention was drawn to *Dhani Devi* v. *Sant Bihari Sharma*[4] which related to a right to obtain transfer of a permit for a Motor Vehicle under Section 61, sub-section (2) of the Motor Vehicles Act. It was held there that, in the case of the death of an applicant for the grant of a permit in respect of his motor vehicle, the Regional Transport

3 (1972) 1 SCC 734
4 AIR 1970 SC 759

Authority had the power to substitute the person succeeding to the possession of the vehicle in place of the deceased applicant. It was routed out there that the right to the permit was related to the possession of the vehicle. Moreover, there was a rule enabling the Transport Authorities to substitute the heir or legal representatives of the deceased. No such rule applicable to the case of the heirs of the deceased Buchivenkata Rao has been pointed out to us. Therefore, we are unable to hold that the heirs, who have been heard, had any right to continue the appeal before us. This feature of the case is decisive not only on the right to be heard on the fresh ground but also on the right to advance any argument in support of the appeal of the deceased."

19. After a period of more than 9 years from the death of original lessee, Rule 25-A was inserted in the 1960 Rules by GSR No. 129(E) dated 20-2-1991, which reads as follows:

"**25-A.** ***Status of the grant on the death of applicant for mining lease***.—(1) Where an applicant for grant or renewal of mining lease dies before the order granting him a mining lease or its renewal is passed the application for the grant or renewal of a mining lease shall be deemed to have been made by his legal representative.

(2) In the case of an applicant in respect of whom an order granting or renewing a mining lease is passed, but who dies before the deed referred to in sub-rule (1) of Rule 31 is executed, the order shall be deemed to have been passed in the name of the legal representative of the deceased."

20. The aforesaid substituted provision of Section 25-A is not applicable in the present case as it was not a case of death of the applicant during the pendency of grant or renewal of mining lease. Further Section 25-A having been inserted nine years after the death of the assessee, the first respondent and the other legal heirs cannot derive advantage of the same.

21. The original lessee died on 7-9-1982 during the pendency of Miscellaneous Petition No. 805 of 1981 and much before the final order dated 16-7-1986 was passed in the said case by the Madhya Pradesh High Court. In the absence of petition for substitution of legal heirs, the said case got abated. The legal heirs including the first respondent cannot derive the advantage of the order dated 16-7-1986, which was inadvertently passed by the Madhya Pradesh High Court in the absence of knowledge of death of the original petitioner/lessee.

22*. From the impugned judgment, it is clear that after 1986, the first respondent made representations on 28-8-1996, 14-4-1997 and 23-11-1997. In 1998, Contempt Application No. 186 of 1998 was filed by the first respondent which was dismissed for being barred by time. The first respondent had not explained the delay of more than 14 years after the death of the original lessee and delay of 10 years after the order dated 16-7-1986 passed by the Madhya Pradesh High Court as to why they did not choose to move before any court of law. In absence of any such valid explanation, we are of the view that the High Court ought to have dismissed the case on the ground of delay and laches.

* **Ed.**: Para 22 corrected vide Official Corrigendum No. F.3/Ed.B.J./16/2014 dated 14-3-2014.

23*. Admittedly, the third-party rights were created in the meantime in favour of the Mining Corporation pursuant to the order of Madhya Pradesh High Court dated 15-9-1999. The order passed by the Madhya Pradesh High Court was not challenged in any appeal. The Delhi High Court also failed to notice the aforesaid fact and failed to decide the jurisdiction of the High Court to entertain the appeal against the order passed in favour of the Mining Corporation which was passed pursuant to the direction of the Madhya Pradesh High Court. In this background, it was not desirable for the Delhi High Court to entertain the writ petition. Even though the revisional order was passed by the Central Government, the Delhi High Court ought to have asked the first respondent to move before the Madhya Pradesh High Court for appropriate relief.

24. In view of our findings given in the preceding paragraph, the order dated 21-9-2010[2] passed by the Single Judge of the High Court of Delhi and the impugned order dated 20-4-2011[1] passed by the Division Bench of the Delhi High Court cannot be upheld. They are accordingly set aside. Both the appeals are allowed but there shall be no order as to costs.

(2013) 12 Supreme Court Cases 333

(BEFORE A.K. PATNAIK AND S.J. MUKHOPADHAYA, JJ.)

RANJIT SINGH . . Appellant;

Versus

STATE OF PUNJAB . . Respondent.

Criminal Appeal No. 510 of 2007†, decided on July 3, 2013

A. **Penal Code, 1860 — Ss. 304-B and 498-A — Dowry death — Death within four months of marriage of bride by throttling/strangulation — Deceased was subjected to cruelty soon before her death for demand of dowry — Presumption under S. 113-B, rightly invoked — Same not rebutted — Conviction of appellant husband confirmed — Prosecution case mainly rests on evidence of PWs 4 and 5, parents of deceased — They made statements that even at the time of marriage they spent Rs 1,50,000 — Even after 7-8 days of marriage appellant-accused husband demanded dowry as amount of "shagun" for which Rs 8000 was given — Upon subsequent visit of their daughter to her parental home after about 20 days, a sum of Rs 1500 was spent by PW 4 for purchase of certain articles, which his daughter took to her matrimonial home in a tractor — Just a day before her death, she informed her mother (PW 5) that accused were torturing her and demanding Maruti car — She further informed her mother that she apprehended that she might be killed by her in-laws and requested her**

* **Ed.**: Para 23 corrected vide Official Corrigendum No. F.3/Ed.B.J./16/2014 dated 14-3-2014.

2 *Sanjeev Bhaskar* v. *Govt. of India*, WP (C) No. 8033 of 2002, decided on 21-9-2010 (Del)

1 *M.P. State Mining Corpn. Ltd.* v. *Sanjeev Bhaskar*, (2011) 123 DRJ 455

† From the Judgment and Order dated 17-1-2007 of the High Court of Punjab and Haryana at Chandigarh in Crl. A. No. 303-DB of 2006

2024 INSC 926

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 1711-1712 OF 2021

GRASIM INDUSTRIES LIMITED ...APPELLANT(S)

VERSUS

THE STATE OF MADHYA PRADESH AND ANOTHER ...RESPONDENT(S)

WITH

CIVIL APPEAL NO. 5158 OF 2021

J U D G M E N T

B.R. GAVAI, J.

CIVIL APPEAL NO(S). 1711-1712/2021

1. These appeals challenge the order dated 07.04.2021 passed by the National Green Tribunal (NGT), vide which the NGT has held that the appellant had committed a violation of the provisions of Environment Protection Act. The Court found that the appellant had failed to install the online flow meter in CS2 stacks to quantify the CS2 emissions. It also found that the acid produced which is a by-product of the process employed by the appellant was hazardous to the

environment. The NGT, therefore, on different counts imposed penalty of Rs.75,00,000/- each.

2. We have heard Shri Neeraj Kishan Kaul, learned senior counsel for the appellant and Shri Raghav Sharma, learned counsel appearing for Respondent No.1/State of Madhya Pradesh through Madhya Pradesh Pollution Control Board and Shri Rahul Pratap, learned counsel appearing for Respondent No.2.

3. Though, Shri Neeraj Kishan Kaul, learned Senior Counsel, submits that there is no violation as found by the learned NGT, we find that the present appeals deserve to be allowed on the following short ground.

4. After the NGT entertained the O.A. on the basis of the letter addressed by Respondent No.1, it initially directed the plant of the appellant to be examined by the State Pollution Control Board. After the receipt of the report of the State Pollution Control Board, the Court appointed a Joint Committee to give its report. The said Joint Committee made certain recommendations and the NGT passed the impugned order on the basis of the said recommendations.

5. The material placed on record would also reveal that the

appellant herein was not made a party to the proceedings before the learned NGT or before the Joint Committee. Though an application for impleadment was filed by the appellant, the same was rejected by the learned NGT.

6. It further appears that even the Joint Committee appointed by the NGT neither gave any notice to the appellant nor an opportunity was given of being heard. Though, this objection was specifically taken by the appellant, the NGT observed "We asked the learned Counsel whether the stand of the unit is that the violations found never existed or whether they existed but have been remedied. His answer is later. It is patent that there were violations".

7. It is thus clear that the procedure followed by the learned NGT was totally unknown to the settled principles of natural justice.

8. Neither was any notice given by the Joint Committee before giving an adverse report against the appellant nor the NGT permitted impleadment of the appellant as a party respondent. As a matter of fact, the NGT could not have proceeded further with the matter even at the initial stage

without impleading the appellant herein as a party respondent. The approach adopted by the NGT clearly smacks of condemning a person unheard. A reliance in this respect should be placed on the judgment of this Court in the case of ***Municipal Corporation of Greater Mumbai v. Ankita Sinha and Others***[1].

9. Another glaring error that has been committed by the NGT is that it has based its decision only on the basis of the report of the Joint Committee. The NGT is a tribunal constituted under the National Green Tribunal Act of 2010. A tribunal is required to arrive at its decision by fully considering the facts and circumstances of the case before it. It cannot outsource an opinion and base its decision on such an opinion. A reliance in this respect should be placed on the judgment of this Court in ***Kantha Vibhag Yuva Koli Samaj Parivartan Trust and Others v. State of Gujarat and Others***[2].

10. In that view of the matter, the impugned orders are not sustainable, the same are quashed and set aside and the matters are remitted back to the learned NGT for considering

[1] **(2022) 13 SCC 401 : 2021 INSC 624**
[2] **2022 SCC OnLine SC 120 : 2022 INSC 79**

the matters afresh.

11. Needless to state that if the NGT decides to proceed further on the basis of the complaint of Respondent No.1, it shall not do so unless the appellant herein is impleaded as a party respondent.

12. With these observations and directions, the appeals are allowed.

13. Pending application(s), if any, shall stand disposed of.

CIVIL APPEAL NO. 5158 OF 2021

1. The facts in the present case are almost similar or rather more glaring than the facts in Civil Appeal Nos. 1711-1712 of 2021. In the present appeals the complainant (Respondent No.2 herein) had not even mentioned the name of the present appellant. However, the learned National Green Tribunal (NGT) on the basis of the Report of the Joint Committee imposed penalty of Rs.82.2 Lacs and Rs.75.6 Lacs for violation of environment laws on two counts.

2. In the appeal arising out of the same common order we have found that the approach of the NGT in deciding the matter without impleading an affected party and passing its

decision on an outsourced opinion of the experts is not permissible on the ground of violation of principle of natural justice.

3. In that view of the matter, we are inclined to allow this appeal.

4. The impugned order is quashed and set aside and the matter is remitted back to the learned NGT for considering the matter afresh.

5. The appeal is accordingly allowed.

6. Pending application(s), if any, shall stand disposed of.

.....J.
(B.R. GAVAI)

.....J.
(K.V. VISWANATHAN)

NEW DELHI;
NOVEMBER 27, 2024.

2022 LiveLaw (SC) 729

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
ANIRUDDHA BOSE; J., J.B. PARDIWALA; J.
September 1, 2022
CIVIL APPEAL NO. 5909 OF 2022 (Arising out of SLP(C) No. 22443 of 2019)
LIFE INSURANCE CORPORATION OF INDIA *versus* **SANJEEV BUILDERS PRIVATE LIMITED & ANR.**

Code of Civil Procedure, 1908; Order II Rule 2 - Order II Rule 2 of the CPC cannot apply to an amendment which is sought on an existing suit - It applies only for a subsequent suit. *(Para 49-50, 70)*

Code of Civil Procedure, 1908; Order VI Rule 17 - Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision. *(Para 70)*

Code of Civil Procedure, 1908; Order VI Rule 17 - All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side - The prayer for amendment is to be allowed (i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and (ii) to avoid multiplicity of proceedings, provided (a) the amendment does not result in injustice to the other side, (b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and (c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations) - A prayer for amendment is generally required to be allowed unless (i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration, (ii) the amendment changes the nature of the suit, (iii) the prayer for amendment is malafide, or (iv) by the amendment, the other side loses a valid defence - In dealing with a prayer for amendment of pleadings, the court should avoid a hyper technical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs. *(Para 70)*

Code of Civil Procedure, 1908; Order VI Rule 17 - Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed. - Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation - Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint - Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed - Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the

opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. *(Para 70)*

Code of Civil Procedure, 1908; Section 11 - The principle of constructive res judicata has no application when there was no formal adjudication between the parties after full hearing. *(Para 52)*

Specific Relief Act, 1963; Section 21, 22 - Code of Civil Procedure, 1908; Order VI Rule 17 - The provisions contained in Order VI Rule 17 of the CPC would apply to a specific performance suit and a plaintiff who has earlier failed to incorporate the reliefs for compensation or who has incorporated the reliefs for compensation but seeks amendment in the same, could seek the permission of the court to introduce these reliefs by way of amendment. *(Para 66)*

Specific Relief Act, 1963; Section 21 - Specific Relief (Amendment) Act, 2018 - After 2018 amendment, damages are now available only in addition to specific performance and not in lieu thereof. *(Para 59)*

Specific Relief Act, 1963; Section 21 (5) - Sub-section (5) stipulates that compensation cannot be awarded under the section unless the Plaintiff has claimed such compensation in the plaint. This provision is mandatory. *(Para 55)*

(Arising out of impugned final judgment and order dated 13-12-2018 in AL No. 499/2018 passed by the High Court of Judicature at Bombay)

For Petitioner(s) Mr. Aakarsh Kamra, AOR

For Respondent(s) Mr. Sanjiv Sen, Sr.Adv. Mr. Mahesh Agarwal, Adv. Mr. Ankur Saigal, Adv. Mr. N. Janardhanan, Adv. Ms. Kajal Dalal, Adv. Mr. E.C. Agrawala, AOR

J U D G M E N T

J.B. PARDIWALA, J.

1. Leave granted.

2. This appeal is at the instance of a defendant in a suit filed by the respondents herein (original plaintiffs) for the specific performance of contract based on an agreement dated 08.06.1979 and is directed against the judgment and order passed by the High Court of Judicature at Bombay dated 13.12.2018 in the Appeal [L] No. 499 of 2018, arising from the order passed by a learned Single Judge on its ordinary original civil jurisdiction side in the Chamber Summons No. 854 of 2017 in the Suit No. 894 of 1986 dated 11.09.2018. The Chamber Summons was allowed by the High Court at the instance of the plaintiffs, permitting the plaintiffs to amend the plaint. The order passed by the High Court in the Chamber Summons came to be affirmed by a Division Bench in the Appeal [L] No. 499 of 2018. The High Court permitted the plaintiffs to amend the plaint, seeking to enhance the amount towards the alternative claim for damages.

FACTUAL MATRIX

3. It appears from the materials on record that the respondents herein are the original plaintiffs and the appellant herein is the original defendant in the Suit No. 894 of 1986, pending as on date in the High Court of Judicature at Bombay on its original side. The said suit has been instituted seeking specific performance of the agreement dated 08.06.1979. In the alternative, the plaintiffs have also prayed for damages. The plaintiffs moved the Chamber Summons No. 854 of 2017, *inter alia*, seeking enhancement of the amount towards damages on the grounds, more particularly, set out in the affidavit filed in support of the said chamber summons.

4. The learned Single Judge of the High Court allowed the chamber summons referred to above, *vide* the order dated 11.09.2018, keeping the issue of limitation open and also permitting the defendant, appellant herein, to file additional written statement.

5. The appellant herein preferred an appeal against the said order which came to be dismissed *vide* the impugned order dated 13.12.2018.

6. Being aggrieved and dissatisfied with the impugned order passed by the High Court referred to above, the appellant (original defendant) is here before this Court with the present appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT

7. The learned senior counsel appearing for the appellant, vehemently, submitted that the High Court committed a serious error in passing the impugned order. He would submit that the High Court overlooked the order passed by this Court in the ***Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd. & Ors.***, (2018) 11 SCC 722 between the same parties, arising from the same suit proceedings.

8. The learned counsel would submit that the High Court should not have permitted the plaintiffs to amend the plaint after a period of thirty-one years, more particularly, when the earlier amendment seeking to implead the assignee as the plaintiff No. 3 in the suit was declined by this Court *vide* the judgment and order dated 24.10.2017 passed in the ***Life Insurance Corporation of India*** (supra).

9. The learned counsel would submit that the High Court failed to consider that the amendment was hit by the provisions of Order II Rule 2 of the Civil Procedure Code, 1908 (for short, the 'CPC'). He would submit that the amendment could be said to be even hit by the principle of constructive *res judicata*.

10. The learned counsel pointed out that at the time when the suit came to be instituted, the damages to the tune of Rs. 1,01,00,000/- [Rs. One Crore & One Lakh only] in the alternative was prayed for.

By way of amendment the damages now prayed for is to the tune of Rs. 4,00,01,00,000/- [Rs. Four Hundred Crore & One Lakh only].

11. In such circumstances referred to above, the learned counsel appearing for the appellant (original defendant) prayed that there being merit in his appeal, the same may be allowed and the impugned order passed by the High Court may be set aside and the original amendment application filed by the plaintiffs be rejected.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

12. The learned senior counsel appearing for the respondents herein (original plaintiffs) on the other hand, submitted that no error, not to speak of any error of law, could be said to have been committed by the High Court in passing the impugned order. It is submitted that the question of limitation has been kept open by the High Court that may be agitated by the defendant in the trial and the defendant has also been permitted to file its additional written statement.

13. The learned counsel would submit that the suit is yet to be adjudicated; and in such circumstances, the delay in amending the plaint for the purpose of enhancing the amount towards damages would not cause any serious prejudice to the defendant.

14. The learned counsel further submitted that the provisions of Order II Rule 2 of the CPC cannot be made applicable to an application seeking amendment of plaint.

15. The learned counsel in the last submitted that the decision of this Court rendered in the case of ***Life Insurance Corporation of India*** (supra) between the same parties was altogether in a different context. In the said appeal before this Court, the issue was whether the assignee could have been impleaded as one of the plaintiffs in the suit after a period of twenty-seven years from the date of institution of the suit?

16. In such circumstances referred to above, the learned counsel appearing for the plaintiffs prays that there being no merit in this appeal, the same may be dismissed with costs.

ANALYSIS

17. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following questions of law fall for the consideration of this Court:

1. Whether the High Court committed any material

irregularity or jurisdictional error going to the root of the matter in passing the impugned order?

2. Whether the provisions of Order II Rule 2 CPC can be made applicable to an amendment application?

3. Whether the amendment of plaint for the purpose of enhancing the amount towards damages could be said to be hit by the doctrine of constructive *res judicata*?

4. Whether the judgment and order passed by a coordinate Bench of this Court in the case of ***Life Insurance Corporation of India*** (supra) between the same parties has any bearing on the present appeal?

5. Whether the present appeal is covered by the proviso to Section 21(5) and Section 22(2) resply of the Specific Relief Act, 1963 (47 of 1963) (for short, 'the Act 1963')?

18. Before adverting to the rival contentions canvassed on either side and before we deal with the orders passed by the High Court permitting the plaintiffs to amend the plaint with respect to the prayer clause, let us consider, the laws on the question of allowing or rejecting a prayer for amendment of the pleadings, more particularly, when the plea of limitation was taken by one of the parties.

19. It is well settled that the court must be extremely liberal in granting the prayer for amendment, if the court is of the view that if such amendment is not allowed, a party, who has prayed for such an amendment, shall suffer irreparable loss and injury. It is also equally well settled that there is no absolute rule that in every case where a relief is barred because of limitation, amendment should not be allowed. It is always open to the court to allow an amendment if it is of the view that allowing of an amendment shall really sub-serve the ultimate cause of justice and avoid further litigation. In ***L.J. Leach & Co. Ltd. & Anr. v. Jardine Skinner & Co.***, AIR 1957 SC 357, this Court at paragraph 16 of the said decision observed as follows:

*"**16.** It is no doubt true that courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interest of justice….."*

20. Again in ***T.N. Alloy Foundry Co. Ltd. v. T.N. Electricity Board & Ors.***, (2004) 3 SCC 392, this Court observed as follows:

*"**2.** …..The law as regards permitting amendment to the plaint, is well settled. In L.J. Leach and Co. Ltd. v. Jardine Skinner and Co. [AIR 1957 SC 357 : 1957 SCR 438] it was held that the Court would as a rule decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it.*

***3.** It is not disputed that the appellate court has a coextensive power of the trial court. We find that the discretion exercised by the High Court in rejecting the plaint was in conformity with law."*

21. So far as the answer to the specific plea that the claim of damages is barred by limitation and cannot be permitted at this stage is concerned, it becomes necessary to examine the various judicial pronouncements of this Court. The principles governing an amendment which may be permitted even after the expiry of the statutory period of limitation were laid down by the Privy Council in its judgment in ***Charan Das & Ors. v. Amir Khan & Ors***., AIR 1921 PC 50. In this case, the Privy Council laid down the principles thus:

"…..That there was full power to make the amendment cannot be disputed, and though such a power should not as a rule be exercised where its effect is to take away from a defendant a legal right which has accrued to him by lapse of time, yet there are cases: see for example Mohummud Zahoor Ali v. Rutta Koer, where such considerations are outweighed by the special circumstances of the case, and their Lordships are not prepared to differ from the Judicial Commissioner in thinking that the present case is one."

22. It would be useful to also notice the observations of this Court in, ***Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil & 2 Ors.***, 1957 SCR 595 : AIR 1957 SC 363, wherein this Court considered an objection to the amendment on the ground that the same amounted to a new case and a new cause of action. In this case, this Court laid down the principles which would govern the exercise of discretion as to whether the court ought to permit an amendment of the pleadings or not. This Court approved the observations of Batchelor, J., in the case of ***Kisandas Rupchand & Anr. v. Rachappa Vithoba Shilwant and Ors.*** reported in ILR (1909) 33 Bom 644, when he laid down the principles thus:

*"**10.** …..“All amendments ought to be allowed which satisfy the two conditions (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real*

questions in controversy between the parties … but I refrain from citing further authorities, as, in my opinion, they all lay down precisely the same doctrine. That doctrine, as I understand it, is that amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. It is merely a particular case of this general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation, the amendment must be refused; to allow it would be to cause the defendant an injury which could not be compensated in costs by depriving him of a good defence to the claim. The ultimate test therefore still remains the same : can the amendment be allowed without injustice to the other side, or can it not?"….."

23. This Court has repeatedly held that the power to allow an amendment is undoubtedly wide and may be appropriately exercised at any stage in the interests of justice, notwithstanding the law of limitation. In this behalf, in ***Ganga Bai v. Vijay Kumar & Ors.***, (1974) 2 SCC 393, this Court held thus:

*"**22.** …..The power to allow an amendment is undoubtedly wide and may at any stage be appropriately exercised in the interest of justice, the law of limitation notwithstanding. But the exercise of such far-reaching discretionary powers is governed by judicial considerations and wider the discretion, greater ought to be the care and circumspection on the part of the Court….."*

24. Again in ***M/s Ganesh Trading Co. v. Moji Ram***, (1978) 2 SCC 91, this Court laid down the principles thus:

***"4.** It is clear from the foregoing summary of the main rules of pleadings that provisions for the amendment of pleadings, subject to such terms as to costs and giving of all parties concerned necessary opportunities to meet exact situations resulting from amendments, are intended for promoting the ends of justice and not for defeating them. Even if a party or its Counsel is inefficient in setting out its case initially the shortcoming can certainly be removed generally by appropriate steps taken by a party which must no doubt pay costs for the inconvenience or expense caused to the other side from its omissions. The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued."*

25. The principles applicable to the amendments of the plaint are equally applicable to the amendments of the written statements. The courts are more generous in allowing the amendment of the written statement as question of prejudice is less likely to operate in that event. The defendant has a right to take alternative plea in defense which, however, is subject to an exception that by the proposed amendment other side should not be subjected to injustice and that any admission made in favor of the plaintiff is not withdrawn. All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defense taken. Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings. The proposed amendment should not cause such prejudice to the other side which cannot be compensated by costs. No amendment should be allowed which amounts to or relates in defeating a legal right accruing to the opposite party on account of lapse of time. The delay in filing the application for amendment of the pleadings should be properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement. (See ***South Konkan Distilleries & Anr. v. Prabhakar Gajanan Naik & Ors.***, (2008) 14 SCC 632)

26. But undoubtedly, every case and every application for amendment has to be tested in the applicable facts and circumstances of the case. As the proposed amendment of the pleadings amounts to only a different or an additional approach to the same facts, this Court has repeatedly laid down the principle that such an amendment would be allowed even after the expiry of statutory period of limitation.

27. In this behalf, in ***A.K. Gupta & Sons Ltd. v. Damodar Valley Corporation***, AIR 1967 SC 96 : (1966) 1 SCR 796, this Court held thus:

*"**7.** …..a new case or a new cause of action particularly when a suit on the new case or cause of action is barred: Weldon v. Neale [19 QBD 394]. But it is also well recognised that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation:….."*

28. In entitled, ***G. Nagamma & Anr. v. Siromanamma & Anr.,*** (1996) 2 SCC 25, this Court considered the proposed amendment of the plaint and noticing that neither the cause of action would change nor the relief would be materially affected, allowed the same. This Court in this case noticed that in the plaintiff's suit for specific performance, the plaintiff was entitled to plead even inconsistent pleas and that in the present case, the plaintiffs were seeking only the alternative reliefs. It appears that the plaintiffs had filed a suit for specific performance of an agreement of re-conveyance. By the application under Order VI Rule 17 of the CPC for amendment of the plaint, the appellants were pleading that the transactions of execution of the sale deed and obtaining a document for reconveyance were single transactions viz. mortgage by conditional sale. They also wanted to incorporate an alternative relief to redeem the mortgage. At the end of the prayer, the plaintiff sought alternatively to grant of a decree for redemption of the mortgage. This amendment was permitted by this Court.

29. In ***Pankaja & Anr. v. Yellappa (dead) by lrs. & Ors.***, (2004) 6 SCC 415, this Court held that it was in the discretion of the court to allow an application under Order VI Rule 17 of the CPC seeking amendment of the plaint even where the relief sought to be added by amendment was allegedly barred by limitation. The Court noticed that there was no absolute rule that the amendment in such a case should not be allowed. It was pointed out that the court's discretion in this regard depends on the facts and circumstances of the case and has to be exercised on a judicial evaluation thereof. It would be apposite to notice the observations of this Court in this pronouncement in extenso. The principles were laid down by this Court thus:

*"**12.** So far as the court's jurisdiction to allow an amendment of pleadings is concerned, there can be no two opinions that the same is wide enough to permit amendments even in cases where there has been substantial delay in filing such amendment applications. This Court in numerous cases has held that the dominant purpose of allowing the amendment is to minimise the litigation, therefore, if the facts of the case so permit, it is always open to the court to allow applications in spite of the delay and laches in moving such amendment application.*

***13.** But the question for our consideration is whether in cases where the delay has extinguished the right of the party by virtue of expiry of the period of limitation prescribed in law, can the court in the exercise of its discretion take away the right accrued to another party by allowing such belated amendments.*

***14.** The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to*

allow or not allow an amendment being discretionary, the same will have to be exercised on a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straitjacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case.

xxx xxx xxx

***16.** This view of this Court has, since, been followed by a three-Judge Bench of this Court in the case of T.N. Alloy Foundry Co. Ltd. v. T.N. Electricity Board [(2004) 3 SCC 392]. Therefore, an application for amendment of the pleading should not be disallowed merely because it is opposed on the ground that the same is barred by limitation, on the contrary, application will have to be considered bearing in mind the discretion that is vested with the court in allowing or disallowing such amendment in the interest of justice.*

xxx xxx xxx

***18.** We think that the course adopted by this Court in Ragu Thilak D. John case [(2001) 2 SCC 472] applies appropriately to the facts of this case. The courts below have proceeded on an assumption that the amendment sought for by the appellants is ipso facto barred by the law of limitation and amounts to introduction of different relief than what the plaintiff had asked for in the original plaint. We do not agree with the courts below that the amendment sought for by the plaintiff introduces a different relief so as to bar the grant of prayer for amendment, necessary factual basis has already been laid down in the plaint in regard to the title which, of course, was denied by the respondent in his written statement which will be an issue to be decided in a trial. Therefore, in the facts of this case, it will be incorrect to come to the conclusion that by the amendment the plaintiff will be introducing a different relief."*

30. From the above, therefore, one of the cardinal principles of law in allowing or rejecting an application for amendment of the pleading is that the courts generally, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of filing of the application. But that would be a factor to be taken into account in the exercise of the discretion as to whether the amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interest of justice.

31. In ***Ragu Thilak D. John v. S. Rayappan & Ors.,*** (2001) 2 SCC 472, this Court also observed that where the amendment was barred by time or not, was a disputed question of fact and, therefore, that prayer for amendment could not be rejected and in that circumstances the issue of limitation can be made an issue in the suit itself like the one made by the High Court in the case on hand.

32. In a decision in ***Vishwambhar & Ors. v. Laxminarayan (Dead) through Lrs. & Anr.,*** (2001) 6 SCC 163, this Court held that the amendment though properly made cannot relate back to the date of filing of the suit, but to the date of filing of the application.

33. Again, in ***Vineet Kumar v. Mangal Sain Wadhera***, (1984) 3 SCC 352 : AIR 1985 SC 817, this Court held that if a prayer for amendment merely adds to the facts already on record, the amendment would be allowed even after the statutory period of limitation.

IMPUGNED ORDERS

34. We now proceed to look into the two orders passed by the High Court i.e. one by the learned Single Judge and the other in the appeal by the Division Bench.

35. The learned Single Judge in ***Sanjeev Builders Pvt. Ltd. & Ors. v. Life Insurance Corporation of India***, 2018 SCC OnLine Bom 15283, while allowing the Chamber Summons and permitting the plaintiffs to amend the plaint, observed thus:

*"**5.** It is the case of the applicant as submitted by Ms. Panda that while filing the suit, plaintiffs quantified the estimated damages likely to be caused to them by reason of non performance at Rs. 1,01,00,000/- The value of the suit property increased during the pendency of the suit. According to plaintiffs' estimate, the value of the property today can be estimated to be Rs. 400,01,00,000/- and if the court is not inclined to grant specific performance, then the damages which plaintiffs would suffer on account of non performance by the defendants under the agreement should be Rs. 400,01,00,000/-. Therefore, there is already claim for damages but what plaintiffs are seeking today is only enhancing the claim, of course subject to provisions of Section 73 of the Contract Act.*

6. *Ms. Paranjape submitted that after 30 years, this application is filed for enhancement and therefore, exfacie the increased amount is barred by limitation. Ms. Paranjape submitted that though the settled position in law is that courts are generally liberal with pre-trial amendment, when ex-facie claim appears to be barred by limitation, the court should not permit the amendment.*

7. *What one should keep in mind is this figure of Rs. 400,01,00,000/- can tomorrow go up or go down. Plaintiffs are only estimating it to be the amount which according to plaintiffs, is the loss which they would suffer. Whether that is the right estimate can be decided only at the time of trial. Even in para 12 of the plaint plaintiff has stated "…….**suffered** loss and damages which they estimate **at**……." In prayer clause-(b)(v) plaintiff pray "…….. or such other sum as this Honourable Court may deem just and **proper**……" Further, if this figure of Rs. 1,01,00,000/- is not amended as prayed in this Notice of Motion, defendant will object the attempt of plaintiff to claim more as damages saying plaintiff cannot go beyond what is averred in the plaint. Due to situation beyond the control of plaintiff, this suit has remained pending for almost 32 years. Chances of suffering greater prejudice is more if the amendment is not allowed. It is clarified that plaintiff will still have to prove every penny it is claiming as damages.*

xxx xxx xxx

10. *Admittedly, the trial is yet to begun though issues have been framed long ago.*

11. *In the circumstances, keeping open rights and contentions of defendants to raise the issue of limitation which the court will decide at the time of trial, Chamber summons allowed in terms of prayer clause-(a) and accordingly disposed.*"

36. While affirming the aforesaid order, the High Court in Appeal (L) No. 499 of 2018 held as under:

*"**4.** Undisputedly, trial is yet to commence. The amendment has been allowed by the learned Single Judge by giving cogent and sound reasons. Merely because the Plaintiffs are permitted to amend the plaint does not mean that the claim which has been made by the Plaintiffs by way of amendment would be granted by the Court. Defendants can always file an additional Written Statement to contest the claim of the Plaintiffs. In such additional Written statement, Appellants can also raise a ground with regard to limitation which will have to be gone into by the learned Single Judge. In any case, in the present case, Appellants have also filed additional Written Statement so as to meet the grounds brought on record by way of amendment.*

5. *In that view of the matter, we do not find that this is a fit case to interfere with the discretion exercised by the learned Single Judge. Appeal is therefore **rejected**."*

LIFE INSURANCE CORPORATION OF INDIA (SUPRA)

37. We now proceed to give a fair idea, as regards the judgment rendered by a coordinate Bench of this Court in the case of ***Life Insurance Corporation of India*** (supra) dated 24.10.2017.

38. The said appeal before this Court arose out of the judgment of the High Court of Bombay dated 22.08.2014 in and by which the Division Bench dismissed the appeal filed by the appellant herein Life Insurance Corporation of India (for short, 'LIC') thereby affirming the order of the Single Judge in the Chamber Summons No. 187 of 2014 by which the respondent No. 3 therein was impleaded as the plaintiff No. 3 in the Suit No. 894 of 1986.

39. It appears from the pleadings, more particularly, the facts recorded in the judgment rendered by the coordinate Bench that in the year 2014, the respondent No. 3 therein, namely, the Kedia Construction Company Ltd. filed the Chamber Summons No. 187 of 2014 stating that subsequent to the filing of the suit for the specific performance of contract, with the consent of the respondent No. 2, plaintiff No. 1/respondent No. 1 had assigned its interest to the respondent No. 3 for a consideration of Rs. 23,31,000/- by an agreement for sale dated 24.08.1987. The chamber summons was filed to implead the respondent No. 3 therein as the plaintiff No. 3 with a prayer to amend the plaint pursuant to the agreement of sale in its favour. The appellant herein (LIC) had opposed the chamber summons on the ground that the respondent No. 3 therein was not a *bona fide* assignee or a necessary party and that the issues in the suit were framed on 31.01.2014 and there had been an inordinate delay on 27 years in filing the application which had not been properly explained.

40. In the aforesaid set of facts, this Court while allowing the appeal filed by the appellant herein (LIC) held as under:

*"**11.** The stand of Respondent 3 is that it claims as an assignee of the rights of Respondents 1 and 2 and that it has the right to continue the suit under Order 22 Rule 10 CPC and the provisions of limitation, do not apply to such an application. To appreciate merits of this contention, we may usefully refer to Order 22 Rule 10 CPC, which reads as under:*

Order 22 — Death, Marriage and Insolvency of Parties

*"**10. Procedure in case of assignment before final order in suit**.—(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the court, be continued by or against the person to or upon whom such interest has come or devolved.*

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1)."

Under Order 22 Rule 10 CPC, when there has been an assignment or devolution of interest during the pendency of a suit, the suit may, by leave of the court, be continued by or against person to or upon whom such interest has been assigned or devolved and this entitles the person who has acquired an interest in the subject-matter of the litigation by an assignment or creation or devolution of interest pendente lite or suitor or any other person interested, to apply to the court for leave to continue the suit. When the plaintiff assigns/transfers the suit during the pendency of the suit, the assignee is entitled to be brought on record and continue the suit. Order 22 Rule 10 CPC enables only continuance of the suit by the leave of the court. It is the duty of the court to decide whether leave was to be granted or not to the person or to the assignee to continue the suit. The discretion to implead or not to implead parties who apply to continue the suit must be exercised judiciously and not arbitrarily.

***12.** The High Court was not right in holding that mere alleged transfer/assignment of the agreement would be sufficient to grant leave to Respondent 3 to continue the suit. From the filing of the suit in 1986, over the years, valuable right of defence accrued to the appellant; such valuable right of defence cannot be defeated by granting leave to the third respondent to continue the suit in*

the application filed under Order 22 Rule 10 CPC after 27 years of filing of the suit. The learned Single Judge was not right in saying that impleading Respondent 3 as Plaintiff 3 would cause no prejudice to the appellant and that the issues can be raised at the time of trial.

13. *In a suit for specific performance, application for impleadment must be filed within a reasonable time. Considering the question of impleadment of party in a suit for specific performance after referring to various judgments, in Vidur Impex and Traders (P) Ltd. v. Tosh Apartments (P) Ltd. [Vidur Impex and Traders (P) Ltd. v. Tosh Apartments (P) Ltd., (2012) 8 SCC 384 : (2012) 4 SCC (Civ) 1] the Court summarised the principles as under : (SCC p. 413, para 41)*

"41. Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:

41.1. The court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the court is necessary for effective and complete adjudication of the issues involved in the suit.

41.2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the court.

41.3. A proper party is a person whose presence would enable the court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

41.4. If a person is not found to be a proper or necessary party, the court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.

41.5. In a suit for specific performance, the court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

41.6. However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the court or the application is unduly delayed then the court will be fully justified in declining the prayer for impleadment."

In light of the above principles, considering the case in hand, in our view, the application filed for impleading Respondent 3 as Plaintiff 3 was not filed within reasonable time. No explanation is offered for such an inordinate delay of 27 years, which was not kept in view by the High Court.

14. *Be it noted that an application under Order 22 Rule 10 CPC seeking leave of the court to continue the suit by the assignee/third respondent was not actually filed. Chamber Summons No. 187 of 2014 was straightaway filed praying to amend the suit which would have been the consequential amendment, had the leave to continue the suit been granted by the court.*

15. *As pointed out earlier, the application was filed after 27 years of filing of the suit. Of course, the power to allow the amendment of suit is wide and the court should not adopt hypertechnical approach. In considering amendment applications, court should adopt liberal approach and amendments are to be allowed to avoid multiplicity of litigations. We are conscious that mere delay is not a ground for rejecting the amendment. But in the case in hand, the parties are not rustic litigants; all the respondents are companies and the dispute between the parties is a commercial litigation. In such facts and circumstances, the amendment prayed in the chamber summons filed under Order 22 Rule 10 CPC ought not to have been allowed, as the same would cause serious prejudice to the appellant. In our view, the impugned order, allowing Chamber Summons No. 187 of 2014 filed after 27 years of the suit would take away the substantial rights of defence accrued to the appellant and the same cannot be sustained.*

16. *In the result, the impugned judgment [LIC v. Sanjeev Builders (P) Ltd., 2014 SCC OnLine Bom 4811] is set aside and the appeal is allowed. Chamber Summons No. 187 of 2014 in Suit No. 894 of 1986 stands dismissed. No order as to costs."*

41. Thus, from the aforesaid, it is evident that a coordinate Bench of this Court took the view that impleading the respondent No. 3 therein as the plaintiff No. 3 would cause a serious prejudice to the appellant. This Court took the view that no explanation was offered for an inordinate delay of twenty-seven years, which was overlooked by the High Court. Even while allowing the appeal filed by the appellant herein, the coordinate Bench of this Court observed that mere delay would not be a ground for rejecting the amendment. However, in the facts of the case, since the parties not being rustic litigants and all the respondents therein being companies and the dispute being a commercial litigation, the amendment could not have been permitted after twenty-seven years of the suit, as it would take away the substantial rights of defence accrued in favour of the appellant (LIC).

42. We are of the view that the judgment and order passed by the coordinate Bench of this Court in the ***Life Insurance Corporation of India*** (supra) has no application so far as the present appeal is concerned. The appellant herein cannot succeed in the present appeal merely on the strength of the judgment and order passed by this Court in the ***Life Insurance Corporation of India*** (supra).

ORDER II RULE 2 OF THE CPC

43. In the present appeal, the principal argument of the learned counsel appearing for the appellant is that the amendment application should have been rejected by the courts below applying the principle of Order II Rule 2 of the CPC.

44. The said provision is set out below:

*"**Order II Rule 2 of the Code of Civil Procedure**:*

2. Suit to include the whole claim.*-(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.*

(2) ***Relinquishment of part of claim.****-Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.*

(3) ***Omission to sue for one of several reliefs.****-A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.*

Explanation.-For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

Illustration

A lets a house to B at a yearly rent of Rs. 1200. The rent for the whole of the years 1905, 1906 and 1907 is due and unpaid. A sues B in 1908 only for the rent due for 1906. A shall not afterwards sue B for the rent due for 1905 or 1907."

45. The expressions "omits to sue" and "intentionally relinquish any portion of his claim" give an indication as to the intention of the legislature in framing the said rule. The term 'sue' can mean both the filing of the suit and prosecuting the suit to its culmination,

depending on the context of the provision. In the present case, the legislature thought it fit to debar a plaintiff from suing afterwards for any relief which he/she has omitted without the leave of the court or from suing in respect of any portion of his claim which he intentionally relinquishes. Order II Rule 2(1) provides that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action.

46. The provision of Order II Rule 2 of the CPC has been well discussed by the Privy Council in the case of ***Mohd. Khalil Khan & Ors. v. Mahbub Ali Mian & Ors.***, AIR 1949 PC 78, held as under:

"The principles laid down in the cases thus far discussed may be thus summarized :

(1.) the correct test in cases falling under Or. 2, r. 2, is "whether the claim in the new suit is, in fact, founded on a cause of action distinct from that which was the foundation for the former suit." (Moonshee Buzloor Ruheem v. Shumsoonnissa Begum.) (2.) The cause of action means every fact which will be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment. (Read v. Brown.) (3.) If the evidence to support the two claims is different, then the causes of action are also different. (Brunsden v. Humphrey.) (4.) The causes of action in the two suits may be considered to be the same if in substance they are identical. (Brunsden v. Humphrey.) (5.) The cause of action has no relation whatever to the defence that may be set up by the defendant, nor does it depend on the character of the relief prayed for by the plaintiff. It refers "to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour." (Muss. Chand Kour v. Partab Singh.) This observation was made by Lord Watson in a case under s. 43 of the Act of 1882 (corresponding to Or. 2, r. 2), where plaintiff made various claims in the same suit."

47. In ***Upendra Narain Roy v. Rai Janoki Nath Roy***, AIR 1919 Cal 904, a Division Bench of the Calcutta High Court had an occasion to consider this question. Woodroffe, J. has observed:

".....As regards the other point it has more ingenuity than substance. It proceeds on the erroneous assumption that the amendment was prohibited by Or. II, r. 2. This Rule does not touch the matter before us. It refers to a case where there has been a suit in which there has been an omission, to sue in respect of portion of a claim, and a decree has been made in that suit. In that case a second suit in respect of the portion so omitted is barred. That is not the case here. In the present case the suit has not been heard but a claim has been omitted by, it is said, inadvertence. To hold that in such case an amendment should not be allowed would be to hold something which the Rule does not say and which would be absurd. The Rule says "he shall not afterwards sue," that is, it assumes that there has been a suit carried to a decision, and a sub-sequent suit. It does not apply to amendment where there has been only one suit. As the Plaintiff had in law a right to apply for an amendment before the conclusion of his suit, it cannot be said that any rights of the Respondent in the Pabna suit are affected. Such a contention is based on the erroneous assumption that nothing could be done by way of amendment of the Calcutta suit to remove the objection that the claims on the previous mortgage or charge were not sustainable. A case would fall within Or. II, r. 2, only if a Plaintiff fails to apply for amendment before decree, and then brings another suit. The Plaintiffs are not doing that but asking for amendment in the one and only suit they have brought. This is, therefore, not a case in which the amendment either affects rights to the other party, or otherwise prejudices him."

(emphasis supplied)

48. A Constitution Bench of this Court, considering the scope and applicability of Order II Rule 2 of the CPC, in the case of ***Gurbux Singh v. Bhooralal***, AIR 1964 SC 1810, held as under:

*"**6.** In order that a plea of a Bar under Order 2 Rule 2(3) of the Civil Procedure Code should succeed the defendant who raises the plea must make out; (i) that the second suit was in respect of the same*

cause of action as that on which the previous suit was based; (2) that in respect of that cause of action the plaintiff was entitled to more than one relief; (3) that being thus entitled to more than one relief the plaintiff, without leave obtained from the Court omitted to sue for the relief for which the second suit had been filed. From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed, for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the latter suit is based there would be no scope for the application of the bar. No doubt, a relief which is sought in a plaint could ordinarily be traceable to a particular cause of action but this might, by no means, be the universal rule. As the plea is a technical bar it has to be established satisfactorily and cannot be presumed merely on basis of inferential reasoning. It is for this reason that we consider that a plea of a bar under Order 2 Rule 2 of the Civil Procedure Code can be established only if the defendant files in evidence the pleadings in the previous suit and thereby proves to the Court the identity of the cause of action in the two suits. It is common ground that the pleadings in CS 28 of 1950 were not filed by the appellant in the present suit as evidence in support of his plea under Order 2 Rule 2 of the Civil Procedure Code. The learned trial Judge, however, without these pleadings being on the record inferred what the cause of action should have been from the reference to the previous suit contained in the plaint as a matter of deduction. At the stage of the appeal the learned District Judge noticed this lacuna in the appellant's case and pointed out, in our opinion, rightly that without the plaint in the previous suit being on the record, a plea of a bar under Order 2 Rule 2 of the Civil Procedure Code was not maintainable."

49. So far as, ***Gurbux Singh*** (supra) is concerned, we may clarify that the entire consideration in the said case by this Court was to the fact that there was a relinquishment of a claim by the plaintiff therein, but the relevant point which was considered by this Court was that the relief had become time barred. The ratio of the said judgment is that the relief being barred by limitation, the Order II Rule 2 of the CPC only came in as an adjunct. However, ***Gurbux Singh*** (supra) makes it clear that the bar of Order II Rule 2 of the CPC applies only to the subsequent suits.

50. In the light of the principles discussed and the law laid down by the Constitution Bench as also the other decisions discussed above, we are of the view that if the two suits and the relief claimed therein are based on the same cause of action then the subsequent suit will become barred under Order II Rule 2 of the CPC. However, we do not find any merit in the contention raised on behalf of the appellant herein that the amendment application is liable to be rejected by applying the bar under Order II Rule 2 of the CPC. Order II Rule 2 of the CPC cannot apply to an amendment which is sought on an existing suit.

51. In the aforesaid context, we may refer to with approval a decision rendered by the High Court of Delhi in the case of ***Vaish Cooperative Adarsh Bank Ltd. v. Geetanjali Despande & Ors.***, (2003) 102 DLT 570. Paras 17 and 18 resply indicate that the bar under Order II Rule 2 of the CPC is only for a subsequent suit. These paras read as under:

"***17.*** *Reverting to the preliminary objections raised by the appellant against the maintainability of the application for amendment, one would come across with a peculiar plea of proposed amendment being barred under Order II Rule 2 CPC. General rule enacted under Order II Rule 2.(1) CPC is that every suit must include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action. Order II Rule 2.(2) precludes a subsequent suit on any part of claim, which had been omitted or intentionally relinquished by the plaintiff in an earlier suit based on the same cause of action. Similarly, where the plaintiff is entitled to more than one relief in respect of the same cause of action but omits, except with the leave of the court, to sue for all such reliefs, he is debarred in view of the Order II Rule 2(3) CPC from suing afterwards for any relief so omitted.*

__18.__ A plea of bar under Order II Rule 2 CPC is maintainable only if the defendant makes out (i) that the cause of action of the second suit is the same on which the previous suit was based, (ii) that in respect of that cause of action, the plaintiff was entitled to more than one relief and (iii) that the plaintiff without leave obtained from the Court omitted to sue earlier for the relief for which the second suit is filed.(see "Gurbux Singh v. Bhooralal", AIR 1964 SC 1810). Clearly, Order II Rule 2 CPC enacts a rule barring a second suit in the situation indicated above. Identity of cause of action in the former and subsequent suits is essential before the bar contemplated under Order II Rule 2 CPC is set to operate. Thus, where the claim or reliefs in the second suit are based on a distinct cause of action, Order II Rule 2 CPC would have no application. Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived. "

(emphasis supplied)

52. We are also not impressed by the contention raised on behalf of the appellant herein that the amendment application is hit by the principle of constructive *res judicata*. The principle of constructive *res judicata* has no application in the instant case, since there was no formal adjudication between the parties after full hearing. The litigation before this Court has come up at the stage when the courts below allowed the amendment of plaint for the purpose of enhancing the amount towards damages in the alternative to the main relief of specific performance of the contract.

SPECIFIC RELIEF ACT, 1963

53. The above takes us now to consider the proviso to Section 21(5) and Section 22(2) of the Act 1963.

54. The Act 1963 contemplates that in addition to or in substitution of a claim for performance, a plaintiff is entitled to claim compensation. Section 21 of the Act 1963 provides as follows:

"__21. Power to award compensation in certain cases. –__(1) In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach [in addition to] such performance.

(2) If, in any such suit, the court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.

(3) If, in any such suit, the court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

(4) In determining the amount of any compensation awarded under this section, the court shall be guided by the principles specified in section 73 of the Indian Contract Act, 1872 (9 of 1872).

(5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint:

Provided that where the plaintiff has not claimed any such compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation.

Explanation.-The circumstances that the contract has become incapable of specific performance does not preclude the court from exercising the jurisdiction conferred by this section."

55. Under sub-section (2) of Section 21, the court is empowered to award compensation for breach where it holds that there is a contract between the parties which

was broken by the defendant but in the event, it decides that specific performance ought not to be granted. Sub-section (3) of Section 21 empowers the court to grant compensation for breach in addition to a decree for specific performance where it is of the view that specific performance alone would not satisfy the justice of the case. Sub-section (5), however, stipulates that compensation cannot be awarded under the section unless the Plaintiff has claimed such compensation in the plaint. This provision is mandatory.

56. The proviso to sub-section (5) of Section 21 dilutes the rigours of the main provision by allowing the plaintiff who has not claimed such compensation in the plaint to amend the plaint at any stage of the proceedings and the court, it has been provided, shall at any stage of the proceedings allow an amendment for including a claim for such compensation on such terms as may be just. In ***Shamsu Suhara Beevi v. G. Alex & Anr.***, (2004) 8 SCC 569, for instance, this Court held that the High Court erred in granting compensation under Section 21, in addition to the relief of specific performance in the absence of a prayer made to that effect either in the plaint as originally filed or as amended at any stage of the proceedings

57. Section 22 of the Act 1963 contains the following provisions:

*"**22. Power to grant relief for possession, partition, refund of earnest money, etc.-**(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908, (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for-*

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or (made by) him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the Court unless it has been specifically claimed:

Provided that where the plaintiff has not claimed any such relief in the plaint, the Court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the Court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under section 21."

58. Section 22 has a non-obstante provision which overrides the CPC. A plaintiff who claims specific performance of a contract for the transfer of immovable property, may in an appropriate case ask for possession, partition and separate possession of the property, in addition to specific performance. The plaintiff may also claim any other relief including the refund of earnest money or deposit paid, in case the claim for specific performance is refused. Corresponding to the provisions of sub-section (5) of Section 21, sub-section (2) of Section 22 stipulates that such relief cannot be granted by the court unless it has been specifically claimed. However, the proviso requires that the court shall at any stage of the proceedings allow the plaintiff to amend the plaint to claim such relief where it has not been originally claimed on such terms which may appear just.

THE SPECIFIC RELIEF (AMENDMENT) ACT, 2018

59. The Act 1963 was amended in the year 2018 and in Section 21 of the Principal Act, in sub-section (1) the words “either in addition to, or in substitution of” were deleted

and the words "in addition to" were substituted in their place. As a result, damages are now available only in addition to specific performance and not in lieu thereof. This is a consequence of other amendments to the Act 1963 whereby the amending act has eliminated the discretion of courts by substituting Sections 10 and 20 resply of the Principal Act.

60. The aforesaid provisions of the Act 1963 were duly considered by the Bombay High Court in the case of ***Kahini Developers Pvt. Ltd. v. Mukesh Morarjipanchamatia & Ors.***, reported in (2013) 3 Mah LJ 440, Dr. Justice D.Y. Chandrachud, (as His Lordship then was), speaking for the Bench, very lucidly and in the most erudite manner explained as under:

*"**9.** The object of the legislature in introducing the proviso to sub-section (5) of section 21 and to sub-section (2) of section 22 was to obviate a multiplicity of the proceedings. In Babu Lal v. Hazari Lal, (1982) 1 SCC 525: AIR 1982 SC 818 the Supreme Court noted that the legislature "has given ample power to the Court to allow amendment of the plaint at any stage." (At para 20 page 825). This, the Supreme Court held, would include even the stage of execution. The Supreme Court also held that a mere contract for sale or for that matter, a decree for specific performance does not confer title on the buyer and that title would pass only upon execution of the decree. While discussing the issue of limitation, the Supreme Court held as follows:*

"If once we accept the legal position that neither a contract for sale nor a decree passed on that basis for specific performance of the contract gives any right or title to the decree-holder and the right and the title passes to him only on the execution of the deed of sale either by the judgment-debtor himself or by the Court itself in case he fails to execute the sale deed, it is idle to contend that a valuable right had accrued to the Petitioner merely because a decree has been passed for the specific performance of the contract. The limitation would start against the decree-holders only after they had obtained a sale in respect of the disputed property. It is, therefore, difficult to accept that a valuable right had accrued to the judgment-debtor by lapse of time. Section 22 has been enacted only for the purpose of avoiding multiplicity of proceedings which the law Courts always abhor." (At para 21 page 825)

***10.** The same view was taken by the Supreme Court in a later judgment in Jagdish Singh v. Natthu Singh, (1992) 1 SCC 647 : AIR 1992 SC 1604:*

"So far as the proviso to sub-section (5) is concerned, two positions must be kept clearly distinguished. If the amendment relates to the relief of compensation in lieu of or in addition to specific performance where the plaintiff has not abandoned his relief of specific performance the Court will allow the amendment at any stage of the proceeding. That is a claim for compensation falling under section 21 of the Specific Relief Act, 1963 and the amendment is one under the proviso to sub-section (5). But different and less liberal standards apply if what is sought by the amendment is the conversion of a suit for specific performance into one for damages for breach of contract in which case section 73 of the Contract Act is invoked. This amendment is under the discipline of R.17, 0.6, C.P.C. The fact that sub-section (4) in turn, invokes section 73 of the Contract Act for the principles of quantification and assessment of compensation does not obliterate this distinction." (At para 10 page 1608)

In the decision in Shamsu Suhara Beevi (supra), while holding that the High Court had erred in granting compensation under section 21, in addition to the relief of the specific performance in the absence of a prayer to that effect, the Supreme Court held that a prayer could have been made to that effect either in the plaint or by amending the plaint at any later stage of the proceeding to include the relief of compensation in addition to the relief of a specific performance. The plaint, however, in that case, was never amended and the order of the High Court was, therefore, held to be in error. These principles have also been noticed in a judgment of a learned Single Judge of this Court in Manohar Dhundiraj Joshi v. Jhunnulal Hariram Yadao, 1983 Mh.L.J. 369.

11. *Since the Court is informed that an appeal has been filed against the judgment of the learned Single Judge in Harinarayan G. Bajaj (supra), we are not expressing any opinion on the correctness of that decision. We are, however, of the view that since the legislature has contemplated that an amendment within the meaning of the provisos to section 21(5) and section 22(2) of the Specific Relief Act, 1963 can be made at any stage of the proceeding, such an amendment would not be barred by limitation. Even as a matter of first principle, an application for amendment must be distinguished from the cause of action which is sought to be set up by the amendment. As a matter of general principle, though an application for amendment is allowed, the question as to whether the cause of action is within limitation would have to be determined and adjudicated upon. While allowing an amendment, it is always open to a Civil Court to direct that the amendment shall not relate back to the institution of the proceeding. The Court would therefore have to determine at trial whether the cause of action is within limitation or is barred. Where the legislature has contemplated that the plaint can be amended at any stage of the proceeding as stipulated in the provisos to section 21(5) and section 21(2). Such an amendment of the nature contemplated by those provisions can indeed be brought about at any stage of the proceedings."*

(emphasis supplied)

61. In the case of ***B.K. Narayana Pillai v. Parameswaran Pillai & Anr.,*** (2000) 1 SCC 712 relying upon the cases of ***A.K. Gupta*** (supra) and ***Ganesh Trading Co.*** (supra), this Court held that the court should adopt a liberal approach in the matter of amendment and only when the other side had acquired any legal right due to lapse of time, the amendment should be declined. It has been held as follows:

"…..All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defence taken. Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings. Proposed amendment should not cause such prejudice to the other side which cannot be compensated by costs. No amendment should be allowed which amounts to or results in defeating a legal right accruing to the opposite party on account of lapse of time. The delay in filing the petition for amendment of the pleadings should be properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement."

62. In ***Jagdish Singh* v. *Natthu Singh***, reported in (1992) 1 SCC 647 : AIR 1992 SC 1604, this Court had the occasion to deal with the provisions of Section 21 of the Act 1963. While analysing the aforesaid provisions, this Court laid down that if the amendment relates to the relief of compensation in lieu of or in addition to specific performance where the plaintiff has not abandoned his relief of specific performance the court should allow the amendment at any stage of the proceedings since that is a claim for compensation falling under Section 21 of the Act 1963 and the amendment is one under the proviso to sub-section (5) of Section 21. This Court, however, issued a note of caution by laying down that different and less liberal standards would apply if what is sought by the amendment is conversion of a suit for specific performance into one for damages for breach of contract, in which case Section 73 of the Indian Contract Act, 1872 would get invoked, and then the said amendment would be under the discipline of Order VI Rule 17 of the CPC. This Court further held that when the plaintiff by his option had made specific performance impossible then Section 21 does not entitle him to seek damages. It is also held that in Indian Law when the contract, for no fault of the plaintiff, becomes impossible of performance Section 21 enables award of compensation in lieu and substitution of specific performance.

63. The legal position, therefore, in respect of scope and ambit of Section 21 of the Act 1963 is clear and made so more by the ratio of the aforesaid decision of this Court.

64. The plaintiffs in the original plaint claimed for compensation in addition to a decree for specific performance of the agreement to sell. Therefore, strictly speaking the provisions of Section 21 of the Act 1963 are not attracted to the facts of the present case. The intention of the plaintiffs in seeking for amendment of the plaint appears to be to get an enhanced amount of compensation than what was originally claimed in the original plaint which was restricted only to Rs. 1,01,00,000/-. The aforesaid intention becomes apparent when the averments made in the application praying for amendment are looked into inasmuch as, the plaintiffs have stated that in view of the fact that in last 30 years there had been a tremendous escalation of the value of the suit property which has an adverse effect on the quantum of damages, compensation, relief sought for the breach of contract by the appellant/defendant. According to the plaintiffs the raising of the amount of compensation to Rs. 400,01,00,000/- from Rs. 1,01,00,000/- as claimed in the original plaint has been necessitated in view of undue delay in the prosecution of the suit which was not earlier foreseen, which in turn has caused more damage to the plaintiffs through the years and therefore, they have sought to raise the amount of compensation to the present value as stated above from Rs. 1,01,00,000/-.

65. However, the argument of the learned counsel appearing for the appellant in regard to the two provisos referred to above, is quite curious. The argument is that the power of the court to permit the plaintiff to amend the plaint in a suit filed for the specific performance of contract flows from Sections 21 and 22 resply of the Act, 1963 & the proviso to the sub-section (5) of Section 21 of the Act 1963 may entitle the plaintiff to amend the plaint, provided the plaintiff has inadvertently or otherwise omitted to pray for compensation. The argument proceeds on the footing that in the present case, as the plaintiff specifically prayed for compensation in the plaint, later if he seeks to amend that part of the relief, the subsection (5) of Section 21 of the Act 1963 would be an embargo for the court to do so. We do not find any merit in this argument of the learned counsel appearing for the appellant.

66. The two provisos referred to above, deal with the question of permitting the plaintiff to amend his plaint. It is not, as if, in the absence of these two provisos, it is not permissible in law for the plaintiff to carry out an amendment in his pleading by introducing a relief for enhanced compensation. Rule 17 of Order VI of the CPC does confer power on a Court to allow a party to alter or amend his pleading in such manner and on such terms as may be just. This rule does not stop at that, but it further says that all such amendments should be made as may be necessary for the purpose of determining the real question in controversy between the parties. It is pertinent to note that this provision which empowers the court in its discretion to permit a party to amend his pleadings, was already on the statute book, when the Specific Relief Act, 1963 was enacted. It can, therefore, be presumed that when the latter legislation was on the anvil, the Parliament was aware of this power of the court to permit amendment of pleadings. Therefore, it cannot be successfully urged that a suit for specific performance falling under the provisions of the Act, 1963 would not be governed by the provisions of the CPC. It is, therefore, clear that to such a suit the provisions contained in Order VI Rule 17 of the CPC would apply and a plaintiff who has earlier failed to incorporate the reliefs for compensation or who has incorporated the reliefs for compensation but seeks

amendment in the same, could seek the permission of the court to introduce these reliefs by way of amendment.

67. It is important to note that sub-section (5) of Section 21 of the Act 1963 was originally introduced to resolve the confusion over whether the court had the power to grant compensation in a claim for specific performance in absence of any pleading to that effect under the provisions of the Act 1963. Prior to the enactment of the Act 1963 the Law Commission in its 9th Law Commission Report while referring to the diverse opinions expressed by the High Courts recommended that in no case should compensation be decreed unless it is claimed by a proper pleading.

68. In ***The Arya Pradeshak Pritinidhi Sabha, Sindh, Punjab & Bilochistan v. Lahori Mal & Ors.***, (1924) 6 Lah LJ 286 : AIR 1924 Lah 713, the Lahore High Court had held that the court has the power to award damages in substitution of or in addition to specific performance even though the plaintiff has not specifically claimed the same in its plaint and written submissions. As against, the Madras High Court in ***Somasundaram Chettiar v. Chidambaram Chettiar***, AIR 1951 Mad 282 held that the court could not award damages in absence of a specific claim for damages.

69. In ***Somasundaram Chettiar*** (supra), the Madras High Court held that the rationale for not allowing a claim for damages in a suit for specific performance without a specific pleading is based on the principle that the plaintiff must establish its claim for damages and the defendant must be put on notice and correspondingly have an opportunity to adduce evidence that the damages claimed are excessive or that the plaintiff has not suffered any damages.

70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is *malafide*, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See ***Vijay Gupta v. Gagninder Kr. Gandhi* & Ors.**, 2022 SCC OnLine Del 1897)

71. In the overall view of the matter, we are convinced that we should not disturb the impugned order passed by the Division Bench of the High Court, affirming the order passed by the learned Single Judge allowing the amendment application filed at the instance of the plaintiffs.

72. In the result, this appeal fails and is hereby dismissed with no order as to costs.

73. Pending application, if any, stands disposed of.

(2016) 7 Supreme Court Cases 797

(BEFORE S.A. BOBDE AND AMITAVA ROY, JJ.)

U. SUBHADRAMMA AND OTHERS .. Appellants;

Versus

STATE OF ANDHRA PRADESH REPRESENTED BY PUBLIC PROSECUTOR AND ANOTHER .. Respondents.

Criminal Appeal No. 1596 of 2011†, decided on July 4, 2016

A. **Criminal Procedure Code, 1973 — Ss. 190, 209, 226, 228 to 235, 240 to 244, 246 to 248, 251 to 255 and 394 — Criminal trial — Continuance of criminal proceedings against a dead person — Held, a criminal court cannot continue proceedings against a dead person and find him guilty**

— Thus, where accused *R* died during his trial, finding of trial court that *R* was alone responsible for offences in question, completely vitiated as null and void — Consequently, District Judge concerned committed a gross error of law in acting upon such a finding and treating *R* as guilty of said offences while passing orders as to attachment of properties against *R* under Criminal Law Amendment Ordinance, 1944 — Penal Code, 1860, Ss. 409, 468 r/w S. 471 — Criminal Law Amendment Ordinance, 1944, Cls. 3, 4 and 13 (Paras 9 to 11)

U. Subhadramma v. *State of A.P.*, Criminal Petition No. 5922 of 2002, decided on 28-6-2006 (AP), *reversed*

State of Punjab v. *Jagir Singh*, (1974) 3 SCC 277 : 1973 SCC (Cri) 886, *referred to*

B. **Criminal Law Amendment Ordinance, 1944 — Ss. 3, 4 and 13 — Attachment proceedings under the 1944 Ordinance against a dead person — Impermissibility**

— Held, 1944 Ordinance authorises State Government to make an application for attachment even though criminal proceedings against person concerned may not yet have resulted in a conviction, Cl. 3 of said Ordinance excludes possibility of attachment proceedings against a dead person — Thus, where attachment proceedings were initiated against *R* subsequent to occurrence of his death during his trial as to offences in question, held, District Judge concerned erred in proceeding with attachment proceedings against *R* in such a case (Paras 7, 12 and 13)

U. Subhadramma v. *State of A.P.*, Criminal Petition No. 5922 of 2002, decided on 28-6-2006 (AP), *reversed*

C. **Criminal Law Amendment Ordinance, 1944 — S. 13(2) — Attachment order under the 1944 Ordinance against an accused — Withdrawal of, in terms of S. 13(2) of the Ordinance — Prerequisites**

— Held, attachment order must be withdrawn where prosecution against the accused concerned abates or cannot result in a conviction due to death of that accused during trial (Para 8)

† From the Judgment and Order dated 28-6-2006 of the High Court of Judicature of Andhra Pradesh at Hyderabad in Criminal Petition No. 5922 of 2002

Willie (William) Slaney v. *State of M.P.*, (1955) 2 SCR 1140 : AIR 1956 SC 116 : 1956 Cri LJ 291; *Babu Singh* v. *State of Punjab*, (1963) 3 SCR 749 : (1964) 1 Cri LJ 566; *Ashish Batham* v. *State of M.P.*, (2002) 7 SCC 317 : 2002 SCC (Cri) 1718; *Ranjitsing Brahmajeetsing Sharma* v. *State of Maharashtra*, (2005) 5 SCC 294 : 2005 SCC (Cri) 1057; *Sher Singh* v. *State of Haryana*, (2015) 3 SCC 724 : (2015) 2 SCC (Cri) 422, *referred to*

Appeal allowed W-D/57162/CR

Advocates who appeared in this case :
J.M. Sharma, Senior Advocate (R.S. Krishnan, Ms Suruchi, Syed Ahmad Naqvi, Ms Sweta Jain and D. Mahesh Babu, Advocates) for the Appellants;
Guntur Prabhakar, Ms Prerna Singh and G.N. Reddy, Advocates, for the Respondents.

Chronological list of cases cited ***on page(s)***

1. (2015) 3 SCC 724 : (2015) 2 SCC (Cri) 422, *Sher Singh* v. *State of Haryana* 801*f-g*
2. Criminal Petition No. 5922 of 2002, decided on 28-6-2006 (AP), *U. Subhadramma* v. *State of A.P.* **(reversed)** 798*e*
3. (2005) 5 SCC 294 : 2005 SCC (Cri) 1057, *Ranjitsing Brahmajeetsing Sharma* v. *State of Maharashtra* 801*f-g*
4. (2002) 7 SCC 317 : 2002 SCC (Cri) 1718, *Ashish Batham* v. *State of M.P.* 801*f-g*
5. (1974) 3 SCC 277 : 1973 SCC (Cri) 886, *State of Punjab* v. *Jagir Singh* 802*d-e*
6. (1963) 3 SCR 749 : (1964) 1 Cri LJ 566, *Babu Singh* v. *State of Punjab* 801*f-g*
7. (1955) 2 SCR 1140 : AIR 1956 SC 116 : 1956 Cri LJ 291, *Willie (William) Slaney* v. *State of M.P.* 801*f-g*

The Judgment of the Court was delivered by

S.A. BOBDE, J.— The appellants being legal representatives of one Ramachandraiah who was accused of offences under Sections 409 and 468 read with Section 471 of the Penal Code, 1860 have filed this appeal against the judgment and order dated 28-6-2006[1] of the High Court of Andhra Pradesh at Hyderabad dismissing their petition under Section 482 of the Criminal Procedure Code. Ramachandraiah, since deceased, who was the husband of Appellant 1 and father of Appellants 2 and 3, was prosecuted under the aforesaid sections in respect of misappropriation of funds. He was charged with misappropriation of an amount of Rs 6,57,355.90 during the period 31-7-1987 to 29-6-1988, along with him one Subbarayudu was charged as Accused 2. In October 1991, U. Ramachandraiah expired during the trial.

2. The trial court acquitted Accused 2, Subbarayudu by the judgment dated 25-10-1993. However, the trial court observed on the basis of oral and documentary evidence that Ramachandraiah alone committed the offence as alleged by the prosecution. Further, that there was no oral or documentary evidence placed before the court to show that Subbarayudu, the surviving accused, assisted Ramachandraiah in committing the alleged offence. In effect, the trial court found Ramachandraiah responsible for the offences though he could not be adjudged guilty since he had expired.

1 *U. Subhadramma* v. *State of A.P.*, Criminal Petition No. 5922 of 2002, decided on 28-6-2006 (AP)

Proceedings under the Criminal Law Amendment Ordinance against the property of the deceased

3. In 1997, the State moved an application under the Criminal Law Amendment Ordinance, 1944 (Ordinance 38 of 1944) for attachment of property of the appellant under the criminal law. Thereon, the District Judge passed an order of interim attachment under Section 4 of the Ordinance on the basis that Ramachandraiah has committed the scheduled offences or that he has procured money or the property in question from the proceeds of such offence. The District Judge issued notice calling upon the appellants to show cause why the order of attachment should not be made absolute. In this order, the District Judge observed that according to the State as many as 30 items mentioned in the schedule were acquired by the said Ramachandraiah either in his own name or his wife's name or in the names of his sons due to illegal amounts drawn by him and a case was filed against Ramachandraiah as Accused 1 and Subbarayudu as Accused 2. The District Judge further observed that the trial court i.e. First Additional District Munsif, Cuddapah found Ramachandraiah had committed the offence as alleged by the prosecution and, therefore, the said Ramachandraiah committed the offence. It was observed by the learned District Judge that Ramachandraiah had been found to have prepared bills in the fictitious names of 21 lecturers during the relevant period and had drawn cash on the basis of the pay bills including the bogus bills since May 1991 and drawn about Rs 38,00,000 to Rs 40,00,000.

4. Thereafter on 1-10-2002, the learned District Judge heard both sides and made the order of interim conditional attachment absolute. He observed that the High Court has refused to interfere with the order of interim conditional attachment and though no counter-affidavit had been filed by the appellants, the learned District Judge observed that the appellants have failed to prove that the properties as mentioned in the schedule are the self-acquired properties of U. Ramachandraiah and, therefore, the order is being made absolute.

5. The appellants then challenged the order of the learned District Judge making an interim attachment absolute by way of a petition under Section 482 of the Criminal Procedure Code. The learned Single Judge held that the amount misappropriated is Rs 6,57,355.90; strangely, on the basis of the charge-sheet. The learned Single Judge also observed that Ramachandraiah who alone had committed the offence and not Subbarayudu, must be taken to have misappropriated the said amount since the trial court held the latter to be innocent. Against the aforesaid order, the appellants have preferred this appeal.

6. The learned Senior Counsel for the appellants submitted that the scheme of the Criminal Law Amendment Ordinance, 1944 does not permit the District Judge to confirm any attachment of the property though the criminal court has not validly convicted and found the accused or the person whose property is sought to be attached as guilty. The learned counsel submitted that in this case, it was not possible for the criminal court to have convicted or found Ramachandraiah guilty since he expired in 1991 during the trial. In fact, according to the appellants, no application for attachment could have been

made under these circumstances. The learned counsel for the respondents strongly opposed the prayer and submitted that the appellants may not be allowed to retain property obtained by ill-gotten means and it was legal for the learned District Judge to have passed the order of attachment in respect of such property which was admittedly the subject-matter of the charge-sheet. It has, therefore, become necessary for us to examine whether the property of a person which was merely a case of an offence of misappropriation but who died during the pendency of the criminal trial can be attached in the hands of his legal representatives under the provisions of the Criminal Law Amendment Ordinance, 1944.

7. As far as making the application for attachment is concerned, we find that the law authorises the State Government to make such an application even though proceedings against the person may not yet have resulted in a conviction. This is by virtue of Section 3[2] which empowers the Government to authorise making of such an application to the District Judge where it has reason to believe that any person has committed any scheduled offence. But, however, Section 3 requires the Government to make such an application to the District Judge within the local limits of whose jurisdiction the said person

---

2 "**3.** ***Application for attachment of property***.—(1) Where the State Government or as the case may be, the Central Government has reason to believe that any person has committed (whether after the commencement of this Ordinance or not) any scheduled offence, the State Government may, whether or not any court has taken cognizance of the offence, authorise the making of an application to the District Judge within the local limits of whose jurisdiction the said person ordinarily resides or carries on business, for attachment, under this Ordinance, of the money or other property which the State Government, or as the case may be, the Central Government believes the said person to have procured by means of the offence, or if such money or property cannot for any reason be attached, of other property of the said person of value as nearly as may be equivalent to that of the aforesaid money or other property.

[Amended by A.O. 1950 and again by the Prevention of Corruption Act, 1988]

(2) The provisions of Order 27 of the First Schedule to the Code of Civil Procedure, 1908, shall apply to proceedings for an order of attachment under this Ordinance as they apply to suits by the Government.

(3) An application under sub-section (1) shall be accompanied by one or more affidavits, stating the grounds on which the belief that the said person has committed any scheduled offence is founded, and the amount of money or value of other property believed to have been procured by means of the offence. The application shall also furnish—

[Added by the Prevention of Corruption Act, 1988]

(*a*) any information available as to the location for the time being of any such money or other property and shall, if necessary, give particulars, including the estimated value, of other property of the said person;

(*b*) the names and addresses of any other person believed to have or to be likely to claim, any interest or title in the property of the said person."

ordinarily resides or carries on business; thus clearly requiring the existence of such a person. It excludes the possibility of proceedings against a dead person. Section 4 of the Ordinance empowers the District Judge to pass an order of ad interim attachment on prima facie grounds for believing that the person in respect of whom the application is made has committed any scheduled offence or has procured any money or property thereby. Sub-section (2) requires the District Judge to issue a notice, presumably at the address where the person ordinarily resides or carries on business (vide Section 3) along with copies of the order and the application, etc. Section 5 provides for an investigation of objections to the attachment who have been served with notices under Section 4. Sub-section (3) empowers the District Judge to pass an order making the ad interim order of attachment absolute or varying it by releasing a portion of the property or withdrawing the order.

8. Section 13 requires the Government to inform the District Judge about the status of the criminal proceedings. It requires the Government to furnish the District Judge with a copy of the judgment or order of the trial court and with copies of the judgment or orders, if any, of the appellate or Revisional Court thereon. Sub-section (2) mandates that the District Judge shall forthwith withdraw any orders of attachment of property made in connection with the offence if (*a*) cognizance of alleged scheduled offence has not been taken, or (*b*) where the final judgment and orders of the criminal court is one of acquittal. While this section is clear that the orders of attachment must be withdrawn if cognizance of the offence has not been taken or there has been an acquittal; the section is silent as to the effect of abatement of prosecution. It is due to this silence that it is contended by the State Government in this case that the orders of attachment could not only have been continued but could also have been confirmed. It is not possible for us to accept the submission. If the law requires that the orders of attachment should be withdrawn upon acquittal it stands to reason that such orders must be withdrawn when the prosecution abates or cannot result in a conviction due to the death of the accused, whose property is attached. Concept of abatement of a trial could be subsumed in the section where the final judgment and order of the criminal court is one of acquittal. In this context, the presumption of innocence of an accused till he is convicted must be borne in mind and there is no reason to consider this presumption to have vaporised upon the death of an accused. It may be noted that this Court has time and again reiterated the presumption of innocence of an accused till he is convicted.[3]

---

3 *Willie (William) Slaney* v. *State of M.P.*, (1955) 2 SCR 1140 at p. 1195 : AIR 1956 SC 116 : 1956 Cri LJ 291; *Babu Singh* v. *State of Punjab*, (1963) 3 SCR 749 at p. 766 : (1964) 1 Cri LJ 566; *Ashish Batham* v. *State of M.P.*, (2002) 7 SCC 317, para 8 : 2002 SCC (Cri) 1718; *Ranjitsing Brahmajeetsing Sharma* v. *State of Maharashtra*, (2005) 5 SCC 294, para 35 : 2005 SCC (Cri) 1057 and *Sher Singh* v. *State of Haryana*, (2015) 3 SCC 724, paras 12 & 17 : (2015) 2 SCC (Cri) 422

9. As far as the circumstances of this case are concerned, we find that there has been a gross miscarriage of justice at several steps. In the first place, the finding of the trial court that Ramachandraiah was alone responsible for the offences is completely vitiated as null and void since Ramachandraiah had admittedly died on the date this finding was rendered. It is too well settled that a prosecution cannot continue against a dead person. A fortiori a criminal court cannot continue proceedings against a dead person and find him guilty. Such proceedings and the findings are contrary to the very foundation of criminal jurisprudence. In such a case the accused does not exist and cannot be convicted. Consequently, the learned District Judge committed a gross error of law in acting upon such a finding and treating Ramachandraiah as guilty of such offences while making the order of attachment and while confirming the said order of attachment of properties.

10. In such circumstance, the courts below erred in recording the finding that Appellant 1 had committed the offence as alleged by the prosecution. Further, finding recorded by the learned Single Judge of the High Court that Appellant 1 alone had committed the offence and not Appellant 2, must be taken to have misappropriated the said amount is perverse:

> "A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged… In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witness[4]."

11. The facts involved herein did not warrant presumption of commission of offence by Appellant 1 and thus the findings recorded by the courts below are not tenable.

12. In fact, we find that the learned District Judge could not have proceeded with the attachment proceedings at all since the attachment proceedings were initiated by the State against Ramachandraiah under Section 3 of the Criminal Law Amendment Ordinance, 1944, who was actually dead. Section 3 contemplates that such an application must be made to the District Judge within the local limits of whose jurisdiction the said person ordinarily resides or carries on business, in respect of property which the State Government believes the said person to have procured by means of the offences. It is incomprehensible, therefore, that such an application could have been made in regard to a dead person who obviously cannot be said to be ordinarily resident or carrying on business anywhere. There is no legal provision which enables continuance of prosecution upon death of the accused. We must record that the proceedings and the decisions of the courts below are disturbing, to say the least. In the first place, though the accused had died, the trial court proceeded with the trial and recorded a conviction two years after his death. Then, this

4 *State of Punjab* v. *Jagir Singh*, (1974) 3 SCC 277 : 1973 SCC (Cri) 886 : AIR 1973 SC 2407

null and void conviction was used as a basis for making an attachment of his properties before the Sessions Court. Astonishingly, all applications succeeded, the attachment was made absolute and over and above all, the High Court upheld the attachment.

13. The orders of the criminal court vis-à-vis Ramachandraiah are illegal and liable to be set aside. We also find that the impugned judgment in appeal is unsustainable and is liable to be set aside. The orders of the courts below are accordingly set aside. The appeal succeeds.

END OF THE VOLUME

exercise of his duties and applying the test laid down in *Matajog Dubey's case* held that the acts complained of, namely, kicking the complainant and abusing him could not be said to have been done in the course of the performance of the duty by the second respondent."

One more decision in *State Vs. Gorakh Fulaji Mahale, 1965 (2) Crl.L.J 193* rendered by a Division Bench of the Bombay High Court which is material, needs to be referred. In this decision one of the questions referred in an appeal by a Single Judge was whether the special rule of limitation contained in Section 161(1) of the Bombay Police Act applies to prosecution under Section 161 IPC and Section 5 of the Prevention of Corruption Act. It is pertinent to state that Section 140(1) of the Delhi Police Act, 1978 is verbatim reproduction of said Section 161(1) excepting that in addition to police officials, protection has also been extended to the Revenue Commissioner, Commissioner and Magistrate and the limitation prescribed for launching prosecution is six months therein. As is evident from the discussion made in para No. 15 of the report on page 197, It was urged on behalf of the appellant that the wording of Section 161(1) of the Bombay Police Act was in material respects different from the wordings of Sections 197(1) Cr.P.C. and 270(1) of Government of India Act, 1935 but that argument was held to be having no substance.

Applying the ratio/test enunciated in the aforementioned decisions to the facts of the present case, the act of the petitioner in pushing Manoj Kumar from the roof of the house which resulted in fracture in the left leg, cannot lie within the scope of his official duties as there is no reasonable nexus between that act and the duties attached to his office. The defence as reflected in the reply affidavit filed in said Crl.W.No. 624/92 can only be examined at an appropriate stage in the trial by the concerned court. Thus, Section 140 of Delhi Police Act or Section 197 Cr.P.C. are not attracted to the facts of this case as contended by the learned Additional Solicitor General. Decisions in *Nandu Zambauliker Vs. Shrikant Naik & Anr., 1999 Crl.L.J. 109 and R.Ninge Gowda Vs. A.N. Gopal, 1999 Crl.L.J. 884* relied on behalf of the petitioner were rendered on the facts of those cases and have no applicability whatsoever to the facts of the present case, Petition thus deserves to be dismissed being without merit.

For the foregoing discussion, the petition is dismissed. Petitioner is directed to appear before the concerned Court on 27th January, 2000 for directions.

*** *** ***

2000 (52) DRJ

HIGH COURT OF DELHI

Crl.M(M) No. 3420 of 1999

Rajiv Gandhi Ekta Samiti.....Petitioner

Versus

Union of India & Anr.....Respondent

Cyriac Joseph, J.

Decided on : December 23, 1999

Criminal Procedure Code, 1973

Section 173—Charge Sheet by police—Mention of name of deceased Prime Minister as accused not sent for trial—The name of even a dead person can be shown in the column meant accused persons not sent for trial.

Held : The provisions contained in Section 173(2) of the Code show that a report forwarded to the Magistrate should contain the statement as to "whether any offence appears to have been committed and, if so, by whom." Naturally the names of the persons by whom the offence appears to have been committed should necessarily be mentioned in the charge sheet, whether they are alive or not and whether they have been arrested or not and whether they are absconding or not. Hence if the Officer Incharge was of the opinion that the offences in this case appeared to have been committed by the late Shri Rajiv Gandhi also, the Officer Incharge had no escape from the legal and statutory obligation to mention Shri Rajiv Gandhi's name in the charge sheet even though he was not alive when the report was sent. When the accused is dead the only thing the Officer Incharge can do is to indicate in the report that the accused is dead and that he is not sent up for trial.

There is no challenge against the form prescribed by the Government. There is no contention that the prescribed form is not in accordance with the statutory provisions. Hence while furnishing the details mentioned in column No. 5 the Officer-in-Charge had to mention the offences and the circumstances connected with the offences and the names of persons who appear to have committed the offence. Since Shri Rajiv Gandhi could not be sent up for trial, his name had to be shown in column No. 2 meant for names of accused persons not sent up for trial. Thus by including the late Shri Rajiv Gandhi's name in column No. 2 the CBI has not committed any illegality. The CBI has done only its statutory duty under Section 173 of the Code. According to the petitioner there was no evidence and materials to enable the Officer Incharge to form an opinion that the alleged offences appear to have been committed by the late Shri Rajiv Gandhi. I make it clear that I have not considered whether there is sufficient justification for forming such an opinion. I do not propose to consider that aspect in this case because the late Shri Rajiv Gandhi has not been sent up for trial. I refrain from considering the said aspect for another reason also. The Trial Court has not yet heard the accused persons sent up for trial on the question of charge and charges have not been framed in the case. It is for the Trial Court to consider whether there is prima facie case to proceed against the accused persons sent up for trial. It is not proper for this Court to express any opinion on the merit of the charges while considering a petition filed by a third party stated to be interested in the accused who has not been sent up for trial.

There is no merit in the contention of the petitioner that the name of a person who is not alive cannot be shown in column No. 2 of the charge sheet. There is no such restriction or prohibition either in the Code or in the prescribed form. Column No. 2 is meant for names and addresses of accused persons not sent up for trial, irrespective of the reason for not sending them up for trial. Hence the name of an accused person who is not sent up for trial due to his death also can be included in column No. 2.

Section 482 — Quashing of proceedings — Petition seeking removal of name of deceased Prime Minister from the FIR stated to as accused not sent for trial — Petition filed by a social organization established in the memory of deceased Prime Minister — Liberal view has to be adopted by the Court — The petition is maintainable.

Held : The petitioner claims to be a social service organisation engaged in social work. It was established in the memory of the late Shri Rajiv Gandhi. Alongwith an affidavit dated 18.11.1999 of the petitioner, a copy of the constitution of Rajiv Gandhi Ekta Samiti and photocopies of some correspondence between the petitioner and others were produced. As per its constitution, the aims and objects of the organisation the learned Counsel for the petitoner admitted it is not a registered association. As per its constitution, the aims and objects of the organisation include, (i) to preach and propagate all over India the principles and ideologies cherished and expounded by Amar Shaheed Shri Rajiv Gandhi; (ii) to take up programmes for keeping the name of late Shri Rajiv Gandhi alive and to approach the concerned officials for implementation of such programmes or schemes; (iii) to organise Rajiv Gandhi's martyrdom day, i.e. 21st May, as Anti Terrorism Day and to make efforts to get this day declared by Government as Anti Terrorist Day; (iv) to arrange functions for spreading goodwill on the birth day of Shri Rajiv Gandhi; and (v) to take appropriate action wherever necessary in Courts and other Forums for questioning action or design to malign the name of the late Shri Rajiv Gandhi. The photocopies of the correspondence produced by the petitioner relate to the period from 1992 to 1999.

The inherent power recognised in this section can be exercised by the High Court, (i) to give effect to any order passed under the Code; or (ii) to prevent abuse of process of any Court; or (iii) otherwise to secure the ends of justice. Section 482 does not say who is entitled to move the Court for invoking the jurisdiction of the Court under that section. There is no reference to 'person aggrieved' or 'person interested'. There is no mention of persons entitled to move the Court or prohibited from invoking the jurisdiction under this section. It is a provision devised to advance justice and not to frustrate it. Hence a liberal view has to be taken on the question of locus standi of a person to move the Court under the said provision. The anxiety and endeavour of the Court should be to prevent the abuse of the process of Court and to secure the ends of justice. The High Court should not be bogged down by hyper technical arguments on the locus standi of the person who brings any abuse of the process of the Court or any injustice to the notice of the High Court. If there is any abuse of the process of the Court or any injustice ordinarily it should not be allowed to continue after it is brought to the notice of the High Court. At the same time the High Court must be prudent and careful to see that the person who approaches the Court is acting bona fide and not for personal gain or private profit or political motive or oblique considerations. The High Court must not allow its process to be abused by self seeking and self serving persons under the garb of public interest litigants. Hence it is difficult to lay down a hard and fast rule or a straight jacket formula for deciding the locus standi of persons who invoke the jurisdiction of the High Court under Section 482 of the

Code. Each case has to be considered on the particular facts and circumstances of the case bearing in mind the scope and spirit of the statutory provision.

Cases referred

A.R. Antulay v. Ramdas Siriniwas Nayak and Another	*AIR 1984 SC 718*
Janata Dal v. H.S. Chaudhary & Others	*JT 1991 (3) SC 497*
Simranjit Singh Mann v. Union of India and Another	*AIR 1993 SC 280*
Janta Dal v. H.S. Choudhary	*(1992) 4 SCC 305*

Mr. V.K. Shukla, Adv. for the Petitioner.

Mr. S.B. Jaisinghani, Additional Solicitor General with Mr. Maninder Singh, Adv. for the Respondents.

Mr. N.Natrajan, Sr. Adv. with Mr. A.K. Dutt, Adv. for the CBI.

Cyriac Joseph, J.

1. This is an unusual petition filed under extraordinary circumstances. In this petition filed under Section 482 of the Criminal Procedure Code, 1973 (hereinafter referred to as 'the Code') the petitioner prays for quashing or deleting the name of a dead person from column No. 2 of a charge sheet filed by the Central Bureau of Investigation (CBI) in the Court of the Special Judge, CBI, Delhi.

2. The petitioner is the Rajiv Gandhi Ekta Samiti through its President Shri Ravindra Gupta. The respondents are the Union of India, through its Secretary (Home) and the Central Bureau of Investigation through its Director. Even though this Court did not issue any formal notice to the respondents, the learned Additional Solicitor General Mr. S.B.Jaisinghani volunteered to assist the Court on behalf of the respondents. Hence in deciding this case this Court had the assistance of Mr. V.K. Shukla, learned Counsel for the petitioner and Mr. S.B.Jaisinghani, the learned Additional Solicitor General.

3. It is necessary to state the background of this case. The name of the late Shri Rajiv Gandhi, a former Prime Minister of India, was included in the charge sheet dated 22.10.1999 filed by the CBI in the Court of the Special Judge, CBI, Delhi in connection with FIR No. R.O.1[A]/90-ACU-IV which had been registered by the CBI on 22.10.1990. According to the said charge sheet, information received by the CBI had revealed that between 1982 and 1987 certain public servants entered into a criminal conspiracy with W.N. Chadha, Martin Ardbo, G.P. Hinduja and others in India and abroad, and in pursuance thereof, committed offences of criminal conspiracy, bribery, criminal misconduct by public servant, cheating, criminal breach of trust, forgery for the purpose of cheating and using as genuine a forged document in respect of the contract dated March 24, 1986 entered into between the Government of India and M/s. A.B. Bofors of Sweden for a value of Swedish Kroners 8410.66 million (Rs. 1,437.72 crores) for the supply of four hundred 155 mm. FH 77-B guns (towed), vehicles and ammunition etc., by M/s. A.B. Bofors. Investigation conducted in India and abroad revealed that the accused S.K. Bhatnagar, W.N. Chadha @ Win Chadha, Ottavio Quattrocchi, Martin Ardbo, M/s. A.B. Bofors and the late Shri Rajiv Gandhi entered

into/were parties to a criminal conspiracy with some other persons at New Delhi, Sweden, Switzerland and other places during the period 1985-1987 and thereafter, with an object to award a contract by Government of India in favour of M/s. A.B. Bofors for the purchase of 400 numbers of 155 mm FH-77-B gun systems by abuse of official position by the above said public servants and for causing wrongful gain to private persons/others and corresponding wrongful loss to the Government of India in the said gun deal. Investigation also revealed that the accused S.K. Bhatnagar and others, in pursuance of the said criminal conspiracy, committed various acts of omission and commission in the award of contract to M/s. A.B. Bofors. It is also stated in the charge sheet that the late Shri Rajiv Gandhi was the Prime Minister during the relevant period and was holding the portfolio of Ministry of Defence also from September, 1985 to January, 1987. According to the charge sheet, in tune with the policy of the Government of India not to allow middlemen/agents in the deal, no commissions were to be paid by M/s. A.B. Bofors in connection with the contract. But the accused persons dishonestly led the Government of India to believe that there were no agents and induced the Government to part with an amount of SEK 242.6 million which eventually was passed on by M/s. A.B. Bofors to its agents as commissions. It is further stated that the late Shri Rajiv Gandhi, S.K. Bhatnagar, Ottavio Quattrocchi, W.N. Chadha, Martin Ardbo, former President of M/s. A.B. Bofors and M/s. A.B. Bofors of Sweden, in pursuance of the aforesaid criminal conspiracy, showed undue favour to M/s. A.B. Bofors in the award of the above said contract dated March 24, 1986 causing wrongful gain to M/s. A.B. Bofors, Ottavio Quattrocchi and W.N. Chadha and corresponding loss to the Government of India and that the Government of India was cheated to the tune of the commission amount (SEK 242.62 million) paid by M/s. A.B. Bofors to its agents in the said deal. It is also stated in the charge sheet that the facts revealed during the investigation constitute commission of offences punishable under Section 120B read with Section 420 of the Indian Penal Code and Section 5(2) read with Section 5(2)(d) of the Prevention of Corruption Act, 1947 by late Shri Rajiv Gandhi, S.K. Bhatnagar, Ottavio Quattrocchi, W.N. Chadha, Martin Arbdo, former President of M/s. A.B. Bofors and M/s. A.B. Bofors, Sweden. As per the charge sheet, the late Shri Rajiv Gandhi committed substantive offences punishable under Section 5(2)r/w Section 5(1)(d) of the Prevention of Corruption Act, 1947. It is also stated that sufficient oral and documentary evidence is available against the accused persons to prove the said offences. The prayer at the end of the charge sheet is that cognizance of the offences may be taken against S.K. Bhatnagar, Ottavio Quattrocchi, W.N. Chadha, Martin Ardbo and M/s. A.B. Bofors of Sweden and that they may be tried in accordance with law. It is also stated that none of the said accused persons was arrested during the investigation.

4. It has to be pointed out that the above mentioned charge sheet does not contain any prayer or request to take cognizance of any offence against the late Shri Rajiv Gandhi. The name of the late Shri Rajiv Gandhi is not shown in column No. 1 of the charge sheet which is meant for "names and addresses of accused persons not sent up for trial, whether in custody or on bail or recognizance."His name appears only in column

No. 2 which is meant for "names and addresses of accused persons not sent up for trial whether arrested or not arrested, including absconders." The name is shown in column No. 2 as "late Shri Rajiv Gandhi s/o Shri Firoze Gandhi, former Prime Minister of India." Thus, from the charge sheet it is clear that, notwithstanding the alleged involvement of the late Shri Rajiv Gandhi in the commission of the offences, he is not sent up for trial and there is no prayer to the Court to take cognizance of any offence against him or to try him. The learned Additional Solicitor General also stated that the charge sheet was filed only against the persons whose names were mentioned in column No. 1 and not against the late Shri Rajiv Gandhi and that the late Shri Rajiv Gandhi would not be tried in the case he was not among the accused sent up for trial. He also clarified that though it was not specifically stated in the charge sheet, it was obvious that the late Shri Rajiv Gandhi was not sent up for trial as he was not alive.

5. The petitioner, Rajiv Gandhi Ekta Samiti, claims to be is a social service organisation engaged in social work. It was established in the memory of Shri Rajiv Gandhi. According to the petitioner the inclusion of the name of the late Shri Rajiv Gandhi in the above mentioned charge sheet submitted by the CBI is illegal and an abuse of the process of the Court and by including his name in the charge sheet injustice has been caused to him. It is contended that there is no provision of law to file a charge sheet against a dead person. It is also contended that column No. 2 in the charge sheet is meant for names and addresses of the accused persons not sent up for trial, whether arrested or not arrested, including the absconders. It is not meant for dead persons and, therefore, the name of Shri Rajiv Gandhi who was assassinated on 21.5.1991 and is not alive, cannot be included in column No. 2 of the charge sheet. It is also contended that the late Shri Rajiv Gandhi cannot be tried by the Court as there is no provision in the Code for posthumous trial of a person. According to the petitioner the names of only those persons who can be either acquitted or convicted after trial by the Court can be included in the charge sheet. Since no order of acquittal or conviction can be passed by a Court in respect of a dead person the name of the late Shri Rajiv Gandhi could not have been included in the charge sheet. It is further contended that a dead person who cannot defend himself cannot be called an accused or arrayed as an accused in a charge sheet. The petitioner has also pointed out that the late Shri Rajiv Gandhi was not named in the FIR in the case and that he was never interrogated by the CBI during the life time. The late Shri Rajiv Gandhi had no occasion or opportunity to admit or deny the allegations based on which he has been arrayed as an accused. He will not get such an opportunity now since he is not alive. Even his statement cannot be recorded under Section 313 of the Code as he is not alive. Another contention of the petitioner is that on the basis of the evidence so far collected by the CBI no charge can be framed against the late Shri Rajiv Gandhi even if he is alive. According to the petitioner, even a prima facie case is not made out against Sh. Rajiv Gandhi and there is absolutely no evidence to show that any part of the alleged commission amount was received by the late Shri Rajiv Gandhi. He has been made an accused on the basis of his approval of the decision to award the contract to M/s. A.B. Bofors. The said approval was given by late Shri Rajiv Gandhi on the basis

of the recommendation made by the officers and the Ministers concerned. It was part of his official duty as Defence Minister/Prime Minister. It cannot be questioned in a Court of law even if Shri Rajiv Gandhi was alive. It is further contended that the name of Shri Rajiv Gandhi is included in the charge sheet as an accused without obtaining the sanction required under Section 197 of the Code. According to the petitioner the inclusion for the name of Shri Rajiv Gandhi in column No. 2 of the charge sheet is unlawful and unnecessary and it is an abuse of the process of the Court and a deliberate act of injustice against the late Shri Rajiv Gandhi. The petitioner apprehends that if the name of the late Shri Rajiv Gandhi is not deleted from the charge sheet he would be branded as an accused in this case for ever. According to the petitioner the name of Shri Rajiv Gandhi has been tarnished by the inclusion of his name in the charge sheet and his prestige has suffered a major set back. The petitioner and crores of admirers and well wishers of the late Shri Rajiv Gandhi have been hurt by the treatment meted out to their beloved leader who was also a recipient of 'Bharat Ratna' the highest award of the country. The petitioner expected that the respondents would order deletion of the name of Shri Rajiv Gandhi from the charge sheet keeping in view the sentiments of his admirers and well wishers. Since the Prime Minister has ruled out the possibility of deleting the name of the late Shri Rajiv Gandhi from the impugned charge sheet, the petitioner has filed this petition under Section 482 of the Code for preventing the abuse of the process of Court and to secure the ends of justice. During his oral submissions the learned Counsel for the petitioner reiterated the above contentions. He also argued that an accused has to be a living person and that a dead person cannot be described as an accused. The petitioner has made the following prayers in this petition:

> "(i) Quash or delete the name/entry of words "late Shri Rajiv Gandhi's/of Late Shri Feroze Gandhi, former Prime Minister of India", from column No. 2 of the charge sheet No. 01 [Annexure P- 1] in the F.I.R. No. R.O.1[A] 90-ACU-IV submitted and forwarded by the Special Investigation Cell, C.B.I. on 22.10.1999 in the Court of Special Judge, [C.B.I. Cases], Delhi presided over presently by Mr. Ajit Bharihoke be quashed under inherent powers of this Hon'ble Court as provided under Section 482 of the Cr.P.C;
>
> (ii) Pass such other or further orders as may deem fit and proper in the interests of justice".

6. The learned Additional Solicitor General questioned the very locus standi of the petitioner to file this petition. He contended that a third party had no locus standi to file a petition to delete the name of an accused from the charge sheet and that, at any rate, the petitioner was not aggrieved by the inclusion of the name of the late Shri Rajiv Gandhi in the charge sheet. He also contended that even assuming (and not conceding) that the inclusion of the name of the late Shri Rajiv Gandhi in the charge sheet was wrong or illegal, only his legal representatives could be allowed to challenge it. When the widow and the children of Shri Rajiv Gandhi have not chosen to approach the Court, why should a third party like the petitioner be entertained by the Court, asked the learned Additional Solicitor General. It was also submitted that many of the

contentions raised by the petitioner were misconceived and irrelevant because they were based on a wrong assumption that the charge sheet was filed against the late Shri Rajiv Gandhi and that he also would be tried in the case. It was pointed out that the charge sheet did not contain any prayer to the Court to take cognizance of any offence against the late Shri Rajiv Gandhi or to try him for any offence. The prayer in the charge sheet was to take cognizance of the offences against Shri S.K. Bhatnagar, Ottavio Quattrocchi, W.N. Chadha, Martin Ardbo and M/s. A.B. Bofors of Sweden and to try them in accordance with law. The name of the late Shri Rajiv Gandhi was shown only in column No. 2 meant for the accused who were not sent up for trial whereas the names of the above mentioned persons were shown in column No. 1 meant for the accused persons sent up for trial. According to the learned Additional Solicitor General when the late Shri Rajiv Gandhi is not being tried as an accused in the case, it is unnecessary for this Court to consider the merits of the allegations contained in the charge sheet against the late Shri Rajiv Gandhi or to examine whether a prima facie case was made out against him. The Additional Solicitor General defended the action of the CBI in mentioning the name of the late Shri Rajiv Gandhi in the charge sheet. He pointed out that the offences included conspiracy entered into by several persons and the unlawful acts done in pursuance of the said conspiracy. Since the late Shri Rajiv Gandhi was allegedly involved in the commission of the offences his name had to be mentioned and his role had to be stated in the charge sheet submitted in terms of Section 173(2) of the Code. There was nothing unusual or abnormal about it. The CBI was only discharging its statutory duty. At the same time, realising that Shri Rajiv Gandhi was not alive and could not be tried as an accused, his name was not included in column No. 1 meant for names of accused persons sent up for trial. Instead, his name was shown in column No. 2 meant for names of accused persons not sent up for trial. However, the learned Additional Solicitor General clarified that even though the late Shri Rajiv Gandhi would not be tried in this case, the alleged involvement of the late Shri Rajiv Gandhi in the commission of the offences would come under scrutiny as part of the trial of those accused who were sent up for trial. According to the learned Additional Solicitor General, because of the death of one of the accused persons the co-accused who are alive cannot escape the trial and the case against the co-accused cannot be given up on account of the death of one of the accused persons. Otherwise, in a case in which the offence was committed by several persons the co-accused could escape trial and conviction by ensuring the death of one of the accused persons. According to the learned Additional Solicitor General, when the co-accused sent up for trial in this case are tried and the evidence in the case is considered by the Court for the purpose of deciding whether they are guilty or not, the alleged involvement of the late Shri Rajiv Gandhi in the commission of the offences might incidentally come up for consideration despite the fact that he is not alive and is not being tried. This situation can be avoided only by deciding not to proceed against the co-accused who are alive. Such a decision cannot be taken as it will be wrong and against public interest. Even if this situation might cause some harm to the reputation and prestige of a person who is not alive and is not in a position to defend himself, it cannot be helped

and it should be taken as unavoidable and necessary evil in the system of administration of justice and it should be ignored in the larger public interest. The learned Additional Solicitor General further contended that if the references to the name of the late Shri Rajiv Gandhi were omitted from the charge sheet, such omission would weaken the prosecution case against the co-accused. Hence, according to the learned Additional Solicitor General, there is no justification for the prayer for deleting the name of the late Shri Rajiv Gandhi from the charge sheet. He also pointed out that the prayer in the petition is only for deleting the name of Shri Rajiv Gandhi from column No. 2 of the charge sheet and that there is no prayer for deleting his name from wherever it appears in the charge sheet or for deleting all references to the late Shri Rajiv Gandhi in the charge sheet. He wondered what consolation the petitioner would get even if the name is deleted from column No. 2 and all the references in column No. 5 remain.

7. Since the learned Additional solicitor General questioned the *locus standi* of the petitioner of file this petition, I shall first deal with the question of *locus standi* of the petitioner. The petitioner claims to be a social service organisation engaged in social work. It was established in the memory of the late Shri Rajiv Gandhi. Alongwith an affidavit dated 18.11.1999 of the petitioner, a copy of the constitution of Rajiv Gandhi Ekta Samiti and photocopies of some correspondence between the petitioner and others were produced. As per its constitution, the aims and objects of the organisation the learned Counsel for the petitoner admitted it is not a registered association. As per its constitution, the aims and objects of the organisation include, (i) to preach and propagate all over India the principles and ideologies cherished and expounded by Amar Shaheed Shri Rajiv Gandhi; (ii) to take up programmes for keeping the name of late Shri Rajiv Gandhi alive and to approach the concerned officials for implementation of such programmes or schemes; (iii) to organise Rajiv Gandhi's martyrdom day, i.e. 21st May, as Anti Terrorism Day and to make efforts to get this day declared by Government as Anti Terrorist Day; (iv) to arrange functions for spreading goodwill on the birth day of Shri Rajiv Gandhi; and (v) to take appropriate action wherever necessary in Courts and other Forums for questioning action or design to malign the name of the late Shri Rajiv Gandhi. The photocopies of the correspondence produced by the petitioner relate to the period from 1992 to 1999.

They include letters received by the petitioner from the O.S.D. to the Chief Minister, Delhi, the Minister, Urban Development, Government of India; the Minister of Textiles India, General Secretary, All India Congress Committee (I), Personal Assistant to the Minister of Railways; the Assistant Private Secretary to the Minister of State, Ministry of Mines, Government of India; the Minister, Surface Transport, India, the D.D.A., New Delhi; the Prime Minister's Office; the Rajiv Gandhi Foundation; the General Manager, Delhi Transport Corporation; the Minister of State for Textiles, Government of India; the Minister of State Youth Affairs and Sports; Smt. Sonia Gandhi; the Minister for Health and Family Welfare, Government of India etc. The above documents indicate that the petitioner organisation was founded in the name of the late Shri Rajiv Gandhi and it has been in existence since 1992 and that the Presi-

dent of the organisation has been corresponding with responsible people and authorities. The petitioner's interest in the late Shri Rajiv Gandhi and the petitioner's commitment to him are evident from the documents produced.

8. Since this petition has been filed under Section 482 of the Code it is also necessary to refer to the provisions contained therein. Section 482 of the Code reads thus:

> "Section 482: Saving of inherent powers of High Court-
>
> Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

The inherent power recognised in this section can be exercised by the High Court, (i) to give effect to any order passed under the Code; or (ii) to prevent abuse of process of any Court; or (iii) otherwise to secure the ends of justice. Section 482 does not say who is entitled to move the Court for invoking the jurisdiction of the Court under that section. There is no reference to 'person aggrieved' or 'person interested'. There is no mention of persons entitled to move the Court or prohibited from invoking the jurisdiction under this section. It is a provision devised to advance justice and not to frustrate it. Hence a liberal view has to be taken on the question of *locus standi* of a person to move the Court under the said provision. The anxiety and endeavour of the Court should be to prevent the abuse of the process of Court and to secure the ends of justice. The High Court should not be bogged down by hyper technical arguments on the *locus standi* of the person who brings any abuse of the process of the Court or any injustice to the notice of the High Court. If there is any abuse of the process of the Court or any injustice ordinarily it should not be allowed to continue after it is brought to the notice of the High Court. At the same time the High Court must be prudent and careful to see that the person who approaches the Court is acting bona fide and not for personal gain or private profit or political motive or oblique considerations. The High Court must not allow its process to be abused by self seeking and self serving persons under the garb of public interest litigants. Hence it is difficult to lay down a hard and fast rule or a straight jacket formula for deciding the *locus standi* of persons who invoke the jurisdiction of the High Court under Section 482 of the Code. Each case has to be considered on the particular facts and circumstances of the case bearing in mind the scope and spirit of the statutory provision.

9. In *A.R. Antulay v. Ramdas Sriniwas Nayak and Another, AIR 1984 SC 718* the Hon'ble Supreme Court had occasion to consider the question of *locus standi* in criminal proceedings. In paragraph (6) of the judgment in the said case the Hon'ble Supreme Court held as follows:

> "It is a well recognised principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary. The scheme of the Criminal Procedure Code envisages two parallel and independent agencies for taking criminal offences to Court. Even for the most serious offences of murder, it was not disputed that a private complaint can, not only be filed but can be

> entertained and proceeded with according to law. *Locus standi* of the complainant is a concept foreign to criminal jurisprudence save and except that where the statute creating an offence provides for the eligibility of the complainant, by necessary implication the general principle gets excluded by such statutory provision.....In other words, the principle that anyone can set or put the criminal law in motion remains intact unless contra-indicated by a statutory provision. This general principle of nearly universal application is founded on a policy that an offence i.e. an act or omission made punishable by any law for the time being in force (See Section 2(n), Cr.P.C.) is not merely an offence committed in relation to the person who suffers harm but is also an offence against society. The society for its orderly and peaceful development is interested in the punishment of the offender. Therefore, prosecution for serious offences is undertaken in the name of the State representing the people which would exclude any element of private vendetta or vengeance. If such is the public policy underlying penal statutes, who brings an act or omission made punishable by law to the notice of the authority competent to deal with it, is immaterial and irrelevant unless the statute indicates to the contrary. Punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a straight-jacket formula of *locus standi* unknown to criminal jurisprudence, save and except specific statutory exception."

It is true that in the above case the Hon'ble Supreme Court was considering the locus standi to set or put the criminal law into motion against persons alleged to have committed an offence. In the case at hand the petitioner has approached the Court to protect the interest of a person who is an accused but is not alive to defend himself and to protect his interest. In my view, providing a fair opportunity to an accused to counter the allegations against him an to prove his innocence is equally important as punishing the offender. If the accused is disabled from defending himself and protecting his interest due to reasons beyond his control, there is no harm in permitting a third person, genuinely interested in the said accused, to move the Court for ensuring that no injustice is done to the said accused. Section 482 of the Code should come to the aid and protection of such accused persons.

10. In the *Janata Dal v. H.S. Chaudhary & Others, JT 1991 (3) SC 497* the Hon'ble Supreme Court held that even if there are million questions of law to be deeply gone into and examined in a criminal case registered against specific accused persons, it is for them and they alone to raise all such questions and challenge the proceedings initiated against them at the appropriate time before the proper Forum and not for third parties under the garb of public interest litigants. It was further held that the petitioner in that case (H.S Chaudhary) had no *locus standi* to invoke the extraordinary jurisdiction of the High Court under Section 482 of the Code for quashing the FIR and all other proceedings arising therefrom on the plea of preventing the abuse of process of the Court. In the above mentioned case the accused persons were alive and were

capable of defending themselves and protecting their interests and it was also not shown that the petitioner Mr. H.S. Chaudhary had any particular or special interest in the accused persons. But in the present case the position is different. The accused, Shri Rajiv Gandhi is not alive and is disabled from moving the Court and the petitioner is a voluntary organisation named after Shri Rajiv Gandhi and founded in his memory to uphold the principles and ideology cherished and expounded by him.

11. In *Simranjit Singh Mann v. Union of India and Another, AIR 1993 SC 280* the Hon'ble Supreme Curt held that ordinarily the aggrieved party which is affected by any order has the right to seek redress by questioning the legal validity or correctness of the order, unless such party is a minor, an insane person or is suffering from any other disability which the law recognises as sufficient to permit any other person, e.g. next friend, to move the Court on his behalf. It was also held that if a guardian or a next friend initiates proceedings for and on behalf of such a disabled aggrieved party it is in effect proceedings initiated by the party aggrieved and not by a total stranger who has no direct personal stake in the outcome thereof. In the above mentioned case a leader of a political party approached the Supreme Court under Article 32 of the Constitution of India challenging the conviction and sentence of the assassins of Genl. Vaidya. The two convicts were alive but did not file any appeal against the conviction and sentence and they also had not authorised the petitioner to move the Court on their behalf. The Supreme Court held that the petitioner in that case had no *locus standi* to invoke the jurisdiction under Article 32 of the Constitution. The facts in the case before the Supreme Court were different from the facts in the present case. However it is significant that the Hon'ble Supreme Court has indicated that if the aggrieved party is suffering from disability which the law recognizes as sufficient to permit any another person to move the Court on his behalf, another person can move the Court. Even if, by inclusion of his name as an accused in the charge sheet, the late Shri Rajiv Gandhi has become a victim of abuse of the process of the Court or injustice has been done to him, if he is unable to move the Court due to the disability caused by death. In such a situation it may not be just, fair or proper to prevent another person genuinely interested in him, from approaching the Court to prevent the abuse, if any, of the Court or to secure the ends of justice.

12. The learned Additional Solicitor General referred to paragraph 137 of the judgment in *Janta Dal v. H.S. Choudhary reported in (1992) 4 SCC 305* and contended that the inherent power conferred by Section 482 of the Code should not be exercised to stifle a legitimate prosecution. This contention may be relevant for considering the merits of this petition but nor for considering the *locus standi* of the petitioner.

13. Even though the late Shri Rajiv Gandhi is not sent up for trial due to his death it cannot be disputed that by the inclusion of his name as an accused in the charge sheet a shadow of doubt has been cast on his integrity and reputation and to that extent his honour and prestige are at stake. But he is not alive and hence he cannot appear in the Court to prove his innocence or to save his honour and prestige. If the inclusion of the name of the late Shri Rajiv Gandhi in the charge sheet is illegal and unjustified, it is only just and necessary that any person who is genuinely interested in him is allowed to

bring such illegality and injustice to the notice of the Court. Such person could be his relative or close associate or an admirer who has no oblique motive. As pointed out by the learned Additional Solicitor General no member of the family of the late Shri Rajiv Gandhi has approached the Court. That does not mean that a bona fide person who is genuinely interested in the late Shri Rajiv Gandhi should be prevented from approaching the Court. The late Shri Rajiv Gandhi was a prominent leader in public life who, according to the petitioner, still commands respect, reverence and admiration of millions of people in this country. Admittedly Shri Rajiv Gandhi is a former Prime Minister of India, a former leader or the Opposition in the Lok Sabha and a former President of Congress (I) Party. Considering the particular facts and the peculiar circumstances of this case I am not inclined to throw out this petition on the ground that the petitioner has no *locus standi* to file the petition. It is necessary in the interest of justice to consider whether there is any merit in the contentions of the petitioner against the inclusion of the name of the late Shri Rajiv Gandhi in the charge sheet.

14. The charge sheet is nothing but the report forwarded to the Court by the Officer Incharge of the Police Station under Section 173(2) of the Code. The provisions of Sections 173(1) and (2) of the Code are extracted below:

> "173. Report of police officer on completion of investigation--(1) Every investigation under this Chapter shall be completed without unnecessary delay.
>
> (2)(i) As soon as it is completed, the Officer Incharge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating:
>
> (a) the names of the parties;
>
> (b) the nature of the information;
>
> (c) the names of the persons who appear to be acquainted with the circumstances of the case;
>
> (d) whether any offence appears to have been committed and, if so, by whom;
>
> (e) whether the accused has been arrested;
>
> (f) whether he has been released on his bond and, if so, whether with or without sureties;
>
> (g) whether he has been forwarded in custody under Section 170.
>
> (ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given.

The provisions contained in Section 173(2) of the Code show that a report forwarded to the Magistrate should contain the statement as to "whether any offence appears to have been committed and, if so, by whom." Naturally the names of the persons by whom the offence appears to have been committed should necessarily be men-

tioned in the charge sheet, whether they are alive or not and whether they have been arrested or not and whether they are absconding or not. Hence if the Officer Incharge was of the opinion that the offences in this case appeared to have been committed by the late Shri Rajiv Gandhi also, the Officer Incharge had no escape from the legal and statutory obligation to mention Shri Rajiv Gandhi's name in the charge sheet even though he was not alive when the report was sent. When the accused is dead the only thing the Officer Incharge can do is to indicate in the report that the accused is dead and that he is not sent up for trial.

15. According to Section 173(2) of the Code the report to be forwarded to the Court under that section should be in the form prescribed by the Government. It is not disputed that the charge sheet sent by the CBI in this case was in the form prescribed under Section 173(2) of the Code. The said form contains five columns for furnishing the following details:

> (i) Names and addresses of the accused persons sent up for trial, whether in custody or on bail or recognizance.
>
> (ii) Names and addresses of accused persons not sent up for trial whether arrested or not arrested, including absconders (show absconders in red ink).
>
> (iii) Property (including weapons) found with particulars of where, when and by whom found and whether forwarded to Magistrate.
>
> (iv) Names and addresses of witnesses.
>
> (v) Charge or information, name of offence and circumstances connected with it in concise details and under what section of law charged?

There is no challenge against the form prescribed by the Government. There is no contention that the prescribed form is not in accordance with the statutory provisions. Hence while furnishing the details mentioned in column No. 5 the Officer-in-Charge had to mention the offences and the circumstances connected with the offences and the names of persons who appear to have committed the offence. Since Shri Rajiv Gandhi could not be sent up for trial, his name had to be shown in column No. 2 meant for names of accused persons not sent up for trial. Thus by including the late Shri Rajiv Gandhi's name in column No. 2 the CBI has not committed any illegality. The CBI has done only its statutory duty under Section 173 of the Code. According to the petitioner there was no evidence and materials to enable the Officer Incharge to form an opinion that the alleged offences appear to have been committed by the late Shri Rajiv Gandhi. I make it clear that I have not considered whether there is sufficient justification for forming such an opinion. I do not propose to consider that aspect in this case because the late Shri Rajiv Gandhi has not been sent up for trial. I refrain from considering the said aspect for another reason also. The Trial Court has not yet heard the accused persons sent up for trial on the question of charge and charges have not been framed in the case. It is for the Trial Court to consider whether there is prima facie case to proceed against the accused persons sent up for trial. It is not proper for this Court to express any opinion on the merit of the charges while con-

sidering a petition filed by a third party stated to be interested in the accused who has not been sent up for trial.

16. There is no merit in the contention of the petitioner that the name of a person who is not alive cannot be shown in column No. 2 of the charge sheet. There is no such restriction or prohibition either in the Code or in the prescribed form. Column No. 2 is meant for names and addresses of accused persons not sent up for trial, irrespective of the reason for not sending them up for trial. Hence the name of an accused person who is not sent up for trial due to his death also can be included in column No. 2.

17. The contention that only a living person can be described as 'accused' is not correct. 'Accused' is a person against whom an allegation has been made that he has committed an offence. Even if that person dies after committing the offence, still the allegation that he committed the offence can exist and hence even after his death, the said person could be described as 'accused' in the sense that he is alleged to have committed the offence. But only if the 'accused' is alive, he can be tried. In the absence of a trial in which the accused is found guilty, the allegation will remain as an unsubstantiated allegation. Hence an accused person not sent up for trial is entitled to the presumption that he is not guilty.

18. There is no posthumous trial of the late Shri Rajiv Gandhi as apprehended by the petitioner. There is no trial at all in respect of the late Shri Rajiv Gandhi. The question of obtaining sanction under Section 197 of the Code or recording statement under Section 313 of the Code does not arise in the case of the late Shri Rajiv Gandhi since he has not been sent up for trial.

19. The extraordinary or unusual circumstance in this case is that in the charge sheet filed by the CBI the late Shri Rajiv Gandhi is accused of committing criminal offence, but, he is not sent up for trial because he is not alive. If Shri Rajiv Gandhi was alive he would have been sent up for trial and he would have got an opportunity to defend himself and to prove his innocence and to protect his prestige and reputation. The prosecution is not responsible for the death of Shri Rajiv Gandhi and the prosecution cannot be blamed for not doing the impossible and impermissible act of sending up a dead person for trial. A former Prime Minister of this country and a national leader who is still held in very high esteem by his followers and admirers is accused of offences of conspiracy and corruption. But destiny has denied him an opportunity to prove his innocence in a fair trial which is guaranteed even to an ordinary citizen of this country. It is true that in the eyes of law a person is presumed to be innocent until he is tried and found guilty following the due process of law. Since no trial is possible and is contemplated in the case of the late Shri Rajiv Gandhi, in the eyes of law, he is entitled to be seen as innocent and not guilty of the offences alleged against him. Legally speaking, there is no criminal case or criminal proceedings pending against the late Shri Rajiv Gandhi. Notwithstanding the above mentioned charge sheet and the proceedings against the accused persons sent up for trial, the late Shri Rajiv Gandhi is entitled to the benefit of the legal perception that he is innocent and not guilty. In that sense, by the continuance of his name in the charge sheet no injustice will be caused to him and hence there is no need for any intervention by this Court under Section 482 of

the Code. Learned Counsel for the petitioner submitted that if the name of Shri Rajiv Gandhi remained in the charge sheet he would appear to be guilty of the charges in the eyes of the public. But this Court is concerned only with the legal perception. Political or public perceptions need not bother this Court. Bearing in mind the basic principles of criminal jurisprudence, this Court can only observe that in the given situation the late Shri Rajiv Gandhi is entitled to the benefit of the legal presumption that he is innocent and not guilty.

20. In the light of the above discussion there is no merit in this petition and hence it is dismissed.

*** *** ***

2000 (52) DRJ

HIGH COURT OF DELHI

S.No. 168A of 1995

Prem Chand Sharma & Co.....Petitioner

Versus

Delhi Development Authority.....Respondent

Manmohan Sarin, J.

Decided on : November 30, 1999

Arbitration Act, 1940

Section 20—Reference of dispute—Arbitrary denial of claim—Mindless and mechanical stand of department—Matter referred to arbitration.

Mr. K.M. Sharma, Adv. for the Petitioner.

Ms. Ansuya Salwan, Adv. for the Respondent.

Manmohan Sarin, J. (Oral):

1. This is a petition filed by the petitioner under Section 20 of the Arbitration Act seeking reference of disputes mentioned in Annexure D to the petition.

The petitioner filed the above petition on 18.1.1995, giving complete particulars of the work of construction as :- 656/672 MIG Houses at Paschimpuri Pocket GH-9, Zone G-17, i/c Water Supply, sanitary installations and Group-II (Balance work) at estimated cost of Rs. 34,72,788/-. Not only this, the petitioner also mentioned that the division has been re-named as Executive Engineer, Western Division-12, DDA, Lakkar Mandi, Kirti Nagar, New Delhi.

2. Notice in the petition was issued on 23.1.1995. The respondent DDA was duly served and it filed a reply. The respondent DDA took preliminary objection on the maintainability of the petition stating that no agreement bearing Agreement No. 101/EE/WD-12/DDA/87-88, had been entered into by the Authority with the claimant/petitioner in the year 1987-88. Curiously, in the very next sentence of the reply after the above averment, it is mentioned that the agreements entered into were

BEFORE THE HON'BLE

NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE

BENCH AT CHENNAI

O. A. NO. 156 OF 2021

Mr. B. Pasumpon Anand

...Applicant

Vs.

State of Tamil Nadu and 8 Others

…Respondents

INDEX TO ADDITIONAL

TYPED SET OF PAPERS

BY 9TH RESPONDENT

COUNSEL FOR RESPONDENT-9