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PART - 7, 15TH APRIL 2022)

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SUBJECT - INDEX

CIVIL PROCEDURE CODE - A.P. COURT FEES AND SUIT VALUATION ACT, Sec.11 - Application filed to condone the delay of 1691 days in preferring appeal against the Judgment and Decree in O.S.

HELD: Even though adequate time was available and trial Court accommodated, for the reasons best known, the plaintiffs did not choose to pay the court fee - Further, as per Section 11 of the Andhra Pradesh Court Fees and Suit Valuation Act, the plaint is liable to be rejected if the deficit fee is not paid - It is the duty of plaintiffs to pay proper court fee - Plaintiffs were required to persuade the trial Court to determine the value of the property and to fix the court fee and pay the court fee as assessed - Statements are made to mislead the Court to believe as if injustice is inflicted on him - Application is liable to be dismissed. **(T.S.)** ***192***

CIVIL PROCEDURE CODE, Or.34, Rule 11 - **USURIOUS LOANS ACT, 1918** - Appeal against Judgment and preliminary Decree passed by the Trial Court - Plaintiff filed a suit for recovery of some amount - 1st defendant and her husband had borrowed a sum of money from the plaintiff - Money was to be repaid with interest @ 30% p.a. compounded on a yearly basis - As security for repayment of the money, Defendants created a mortgage, in favour of the Plaintiff, on the plaint schedule property - Thereafter, the 1st Defendant and her husband repaid a certain sum of towards part payment of principal and interest and thereafter, defaulted in repayment of the debt - 1st defendant sold the mortgaged suit schedule property to the 2nd defendant - After purchasing the property, 2nd defendant called on the plaintiff to bring the title deeds of the plaint schedule property and receive the remaining debt amount from the 2nd defendant - 2nd defendant did not make any payment despite the Plaintiff having approached the 2nd defendant, for receiving the said payment, promised by the 2nd defendant - As the defendants had not paid the amount due to the Plaintiff, he filed suit, against the 1st and 2nd defendants for recovery - 2nd defendant passed away during the pendency of the suit and his legal heirs, defendants 3 to 6 were impleaded as Defendants in the suit.

HELD: Even in cases where the rate of interest is fixed in the contract, it would be open to the Court to vary the rate of contract from the date of the suit till the date of recovery

of the amount - Contractual rate of interest is 30% p.a compounded annually and contract was drawn up in the year 1992 and the suit has been filed in the year 1997 - Permitting the said rate of interest would result in the debt being multiplied - Keeping in view the passage of time since the suit has been filed, it would be appropriate to reduce the interest rate substantially – A rate of 14% p.a., compounded annually, would be equitable and fair to both sides - Judgment and preliminary Decree under appeal is modified to the extent of calculating and collecting interest at the rate of 14% per annum, compounded annually, from the date of the filing of the suit till payment - Appeal stands partly allowed. **(A.P.) 258**

CIVIL PROCEDURE CODE, Or. XV-A, r/w Sec.151 - Civil Revision Petition, assailing the Order in IA in OS - Application in IA was filed by the plaintiff to direct the defendant to pay arrears of rent and mesne profits from the date of suit till the date of delivery of vacant possession.

HELD: Jural relationship is admitted in the written statement, there is no specific denial of the plaint averments - When the suit is filed for recovery of possession and recovery of arrears of rent, mesne profits, considering the scheme of Order XV-A of CPC, and request of the plaintiff, in view of admitted jural relationship of landlord and tenant, such direction to pay the admitted arrears and to continue to deposit the amount which becomes payable during pendency of proceedings is necessary - If the defendant commits default in making such payments/deposits, the Court shall strike of the defence and the plaintiff is also entitled to withdraw the said amount after deposit - Court below failed to appreciate the facts of the case, in conformity with the Legislative intention under Order-XV-A, Rules-1 & 2 CPC - Matter is remanded back to the trial Court for fresh disposal - Trial Court shall ascertain the arrears of rent, monthly rents and fix the time schedule for payment of arrears of rent and monthly rents regularly in terms of Order XV-A of CPC - Civil Revision stands allowed - Order impugned in IA stands set aside. **(T.S.) *171***

(INDIAN) EVIDENCE ACT, Sec. 45 - Civil Revision Petition preferred by Petitioner/ Defendant aggrieved by Orders passed in I.A. in Suit - Respondent/Plaintiff filed the suit seeking Specific Performance of an Agreement of Sale - In the written statement a plea was taken that the Agreement of Sale was fabricated by forging the signatures of the Petitioner and her husband - After the completion of the Respondent's/Plaintiff's arguments in the said suit and when the matter came up for Petitioner's/defendant's arguments, I.A. was filed by the under Section 45 of the Indian Evidence Act R/w Section 151 of the Code of Civil Procedure seeking a direction to send Ex.A.1 agreement of sale and the papers on which the signatures of the petitioner would be taken in open Court and other documents containing her signatures i.e., the suit summons, vakalat, postal acknowledgement, written statement etc., to the Government Handwriting Expert for comparison of the said signatures and to give expert's opinion – Trial Court dismissed the I.A. - Hence, the present Civil Revision Petition.

HELD: Direction sought, for referring the documents to expert for opinion for comparison of signatures cannot be granted in the light of the expression of this Court in P.Padmanabhaiah vs. G.Srinivasa Rao - There is no point in sending to an expert the documents of doubtful nature and character and add one more piece of unreliable evidence and burden the record by wasting the time and money of the parties – Civil Revision stands dismissed. **(A.P.) *254***

ENVIRONMENT, FORESTS, SCIENCE AND TECHNOLOGY (ENVIRONMENT) DEPARTMENT, G.O.Ms.No.80 - Writ Petition against the Notice issued by the 3rd respondent/ Tahsildar directing the Petitioner to shut down the brick kiln within 30 days - Notice was issued on the ground that the petitioner had violated the guidelines for establishment of brick kilns, issued under G.O.Ms.No.80.

HELD: Notice has been issued without giving any opportunity to the Petitioner to set-forth her case and would have to be treated as a violation of principles of natural justice - Writ Petition stands allowed setting aside the impugned proceedings with a further direction that the said notice shall be treated as a show cause notice with liberty to the Petitioner to file her objections before the 3rd Respondent, within a period of four weeks - 3rd Respondent shall consider the objections filed by the Petitioner and pass Orders containing reasons after giving the Petitioner an opportunity of hearing. **(A.P.)** ***215***

GUARDIANS AND WARDS ACT, Secs.7 & 8 - **LEGAL SERVICES AUTHORITIES ACT,1987,** Sec.20 - Petitioner is challenging the award passed in Pre Litigation Case passed by Lok Adalat Bench - Petitioner worked as an Assistant Line Man in A.P.Transoco and was married with Padmaja, daughter of the respondents 2 and 3, and out of their wedlock, the respondents 4 and 5 were born, who are minors and studying in junior classes - Padmaja committed suicide and the respondents 2 and 3 lodged FIR under Section 304-B Indian Penal Code (IPC) against the petitioner, but petitioner was acquitted by the Sessions Judge - Minor children respondents 4 and 5 filed P.L.C. through respondents 2 and 3, before the 1st respondent the District Legal Services Authority (Lok Adalat Bench) against the Petitioner and the Petitioner's superior officers, in which the respondents 2 and 3 and their relatives and followers pressurized and threatened the Petitioner to settle the issue - Consequently under pressure and threat the petitioner signed illegal and improper settlement - Lok Adalat, passed the award on 02.11.2017, on such settlement with as many as eleven conditions

HELD: Award of the Lok Adalat passed on the settlement can be challenged only by way of filing writ petition under Article 226/227 of the Constitution of India, on limited grounds and when writ petition is filed it is for the writ court to decide whether any sufficient ground is made out or not for quashment of the Lok Adalat award - Lack of inherent jurisdiction in Lok Adalat, is one of the limited grounds to challenge its award.

No application for appointment of the guardian - Application was only for maintenance - In view of Sections 7 and 8 of the Guardians and Wards Act, no order for appointment of a guardian can be passed without an application by the proposed guardian which application must comply with the conditions of Section 10 - Matter for appointment of guardian was not the subject matter before the Lok Adalat - Lok Adalat was not presided over by the District Judge/Additional District Judge - No award could be passed on the basis of the settlement or compromise between the parties for appointment of guardian - Signing of the settlement is admitted by the Petitioner - Whether there was threat or compulsion is a disputed question of fact which cannot be gone into in the Writ proceedings - Impugned award of the Lok Adalat only to the extent of appointment of guardian of respondents 4 and 5 is hereby quashed - Petitioner is the natural guardian being father of the minor respondents 4 and 5 - However, the parties are at liberty, if so require, to seek the remedy for appointment of guardianship of the minors, or for their custody, before competent Court of law - Writ Petition stands allowed in part. **(A.P.)** ***225***

LAND ACQUISITION ACT - Appeal challenging the Order and decree in O.P whereby, the market value fixed by the Land Acquisition Officer for the acquired lands belonging to the respondents was enhanced - Lands were acquired for excavation of canal.

HELD: Findings of the reference Court with regard to enhancement of market value is confirmed - Amount granted by the reference Court in the form of 12% additional interest from the date of taking possession (prior to the notification) is modified to that of granting 12% additional market value under Section 23(1-A) of the Act from the date of notification till the date of Award on the market value fixed under Section 23(1) of the Act - Grant of benefits under Section 34 of the Act by the Appellant/Land Acquisition Officer or under Section 28 by the reference Court from the date of taking possession which is prior to the notification is modified by directing to pay such interest from the date on which the Government gets right to take notional possession either under Section 17 or under Section 16 of the Act - Respondents/ Claimants are entitled for such interest from the date of Award till the date of deposit - Respondents are also entitled to additional interest @ 15% per annum on compensation i.e., market value, additional market value and solatium towards rent/damages for use and occupation of the land from the date of possession (prior to the valid notification) still the date of passing of Award – Appeal stands partly allowed. **(T.S.)** ***179***

MOTOR VEHICLES ACT, Sec.166 - Appeal challenging the decree and award, in M.V.O.P. passed by the Chairman, Motor Accidents Claims Tribunal-cum- Addl. District Judge - Tribunal below held that Petitioners failed to establish their entitlement to ask for compensation from any of the respondents and accordingly, dismissed the claim petition by its decree and award - Aggrieved by the same, Petitioners filed the present appeal.

HELD: Parliament with its wisdom deleted the sub-section to Section 166 of the Motor Vehicles Act which stipulates limitation to file the claim petition considering the pathetic condition of the victims and their family members - Courts have to show some liberal approach, while deciding the claim petitions filed under Motor Vehicles Act - Courts have to keep in mind that the victims and their dependents have to come out from the hardships being faced by them due to sudden demise of the bread earner of the family, instead of rejecting the claims on technical grounds.

Finding of the Tribunal below that the Petitioners failed to establish the claim is live and surviving claim is unsustainable - Appellants are entitled for total compensation amount of Rs.10,33,900/- with interest @ 6% per annum and proportionate costs - Compensation amount shall carry interest @ 6% per annum from the date of claim application to till the date of realization - Respondent Nos.1 to 3 are jointly and severally liable to pay compensation to the Appellants. **(A.P.)** ***216***

MOTOR VEHICLES ACT, Sec.166 - Appeal is preferred National Insurance Company Limited, questioning the Order and decree of the Motor Vehicle Accidents Claims Tribunal-cum-Principal District Judge - After considering the oral and documentary evidence, Tribunal came to the conclusion that the accident occurred due to negligent parking of the lorry by its driver and awarded total compensation of Rs.24,71,500/- together with interest @ 6% per annum from the date of petition till the date of realization payable by the respondents 1 and 2 jointly and severally.

HELD: No reason to interfere with the finding of the Tribunal that the accident occurred due to the negligent parking of the driver of the Lorry in the middle of the road without indicator lights - At the time of his death, the deceased was running a Wine Shop and he was 27 years - When the deceased was a bachelor, the age of the deceased has to be considered while determining the multiplier and not the age of the mother, therefore the Tribunal has rightly adopted the multiplier as '17'

For the year 2012-2013, the income of the deceased was shown only Rs.1,89,700/- per annum from other sources and Rs.1,00,000/- towards agriculture income - Though the income tax returns shows the entire amount of Rs.2,89,700/-, Rs.1.00 lakh which was shown as agriculture income is not a loss to the dependents - Tribunal ought to have considered the said fact and ought to have shown the loss of income at Rs.1,90,000/- instead of Rs.2,89,000 M.A.C.M.A. is disposed of and the compensation amount awarded by the Tribunal is reduced from Rs.24,71,500 to Rs.24,55,500. **(T.S.)** ***174***

(INDIAN) PENAL CODE, Secs. 302 r/w Sections 34, 379 and 201 r/w. Sec.34 - A.1 to A.3 in Sessions Case preferred instant appeal against the Judgment of the Sessions Court, whereby, A1 to A3 were guilty of all the charges – It was alleged that A.1 beat deceased with a stick on the head while A.2 and A.3 tried a rope around the neck of the deceased.

HELD: Investigating Officer, in his evidence admits that though he claims to have taken the signatures of the accused and mediators on the property seized by him, he did not mention the same in the mediators report and affixing slips on the properties - As the mandatory requirement as contemplated in Criminal Rules of Practice is not followed and as there is a doubt with regard to the seizure of gold ornaments, the same cannot be accepted as proved

When the two circumstances namely extra-judicial confession leading to discovery of body and the recovery of articles from A.1 are not proved beyond doubt, the only circumstance namely the accused being last seen with the company of the deceased may not be sufficient to convict the accused - Circumstance of last seen by itself cannot inculpate the accused, unless the case is seen in its entirety - Not safe to convict the accused basing on the theory of last seen, when the accused and the deceased are friends who used to consume alcohol everyday evening - Criminal stands allowed - Conviction and sentence recorded against the Appellants/A.1 to A.3 in the Judgment of Sessions Case stand set aside. **(A.P.)** ***262***

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2022(1) L.S. 215 (A.P.)

IN THE HIGH COURT OF
ANDHRA PRADESH

Present
The Hon'ble Mr.Justice
R. Raghunandan Rao

Ravi Kumar Brick Industry ..Petitioner
Vs.
State of A.P. & Ors., ..Respondents

ENVIRONMENT, FORESTS, SCIENCE AND TECHNOLOGY (ENVIRONMENT) DEPARTMENT, G.O.Ms.No.80 - Writ Petition against the Notice issued by the 3rd respondent/Tahsildar directing the Petitioner to shut down the brick kiln within 30 days - Notice was issued on the ground that the petitioner had violated the guidelines for establishment of brick kilns, issued under G.O.Ms.No.80.

HELD: Notice has been issued without giving any opportunity to the Petitioner to set-forth her case and would have to be treated as a violation of principles of natural justice - Writ Petition stands allowed setting aside the impugned proceedings with a further direction that the said notice shall be treated as a show cause notice with liberty to the Petitioner to file her objections before the 3rd Respondent, within a period of four weeks - 3rd Respondent shall consider the objections filed by the Petitioner and pass Orders containing reasons after giving the Petitioner an opportunity of hearing.

W.P.No.5815/2022 Date: 18-2-2022

G.P. for Panchayat Raj, Adlvocate for Respondent No.1.
G.P. for Revenue, Advocate for Respondent Nos.2&3.
Mr.I.Koti Reddy, Advocate for Respondent No.4.
Mr.V.Surendar, Advocate for Respondent No.5.

O R D E R

The petitioner submits that her husband had started a Brick Making Unit in the year 1998 along with her father-in-law. Subsequently, a factory licence was also obtained in the year 2004 and another unit was started in the year 2014 in Survey No.192-11 near Maisakapuram, Birlangi Village, Ichapuram Mandal, Srikakulam District. The petitioner submits that the brick kiln was operated strictly in accordance with law and after payment of all licence fee etc. At that stage, the 3rd respondent-Tahsildar has issued a notice bearing Rc.No.379/2021 B, dated 04.02.2022 directing the petitioner herein to shut down the brick kiln within 30 days. This notice is said to have been issued on the ground that the petitioner had violated the guidelines for establishment of brick kilns, issued under G.O.Ms.No.80, Environment, Forests, Science and Technology (Environment) Department, dated 22.04.2010.

2.The petitioner has approached this Court being aggrieved by the said notice. It is the contention of the petitioner that the said notice is in effect an order of closure and the same has been passed without any

enquiry and without any opportunity being given to the petitioner to set-forth her case.

3.The petitioner further contends that the brick kiln of the petitioner falls within the white category and as such, there is no violation of any of the guidelines issued under G.O.Ms.No. 80, Environment, Forests, Science and Technology (Environment) Department, dated 22.04.2010.

4.Heard Smt.Santhisree Vallabhaneni learned counsel, appearing on behalf of Sri Venkat Chalasani learned counsel for the petitioners, Sri I.Koti Reddy learned standing counsel for the Gram Panchayat and the learned Government Pleader for Revenue.

5.A perusal of the impugned show cause notice shows that it is, for all practical purposes, an order of closure. It is also clear from the contents of the said show cause notice that the said notice has been issued without giving any opportunity to the petitioner to set-forth her case and would have to be treated as a violation of principles of natural justice.

6.In the circumstances, the writ petition is allowed setting aside the impugned proceedings bearing Rc.No.379/2021 B, dated 04.02.2022 with a further direction that the said notice shall be treated as a show cause notice with liberty to the petitioner to file her objections with such material as she deems fit before the 3rd respondent, within a period of four weeks. The 3rd respondent shall consider the objections filed by the petitioner and pass orders containing reasons after giving the petitioner an opportunity of hearing. This exercise shall be conducted expeditiously and preferably within three months from the date of receipt of this order. There shall be no order as to costs.

Miscellaneous petitions, pending if any, in this Writ Petition shall stand closed.

–X--

2022(1) L.S. 216 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present
The Hon'ble Mr.Justice
Battu Devanand

Dintakurthi Naga Kamala & Ors., ..Petitioners
Vs.
B. Srinivasulu & Ors., ..Respondents

MOTOR VEHICLES ACT, Sec.166 - Appeal challenging the decree and award, in M.V.O.P. passed by the Chairman, Motor Accidents Claims Tribunal-cum- Addl. District Judge - Tribunal below held that Petitioners failed to establish their entitlement to ask for compensation from any of the respondents and accordingly, dismissed the claim petition by its decree and award - Aggrieved by the same, Petitioners filed the present appeal.

HELD: Parliament with its wisdom deleted the sub-section to Section 166 of the Motor Vehicles Act which stipulates limitation to file the

M.A.C.M.A.No.2971/2018 Date: 21-3-2022

claim petition considering the pathetic condition of the victims and their family members - Courts have to show some liberal approach, while deciding the claim petitions filed under Motor Vehicles Act - Courts have to keep in mind that the victims and their dependents have to come out from the hardships being faced by them due to sudden demise of the bread earner of the family, instead of rejecting the claims on technical grounds.

Finding of the Tribunal below that the Petitioners failed to establish the claim is live and surviving claim is unsustainable - Appellants are entitled for total compensation amount of Rs.10,33,900/- with interest @ 6% per annum and proportionate costs - Compensation amount shall carry interest @ 6% per annum from the date of claim application to till the date of realization - Respondent Nos.1 to 3 are jointly and severally liable to pay compensation to the Appellants.

Mr.Sai Gangadhar Chamarty,, Advocates for the Appellants.
Mr.N. Rama Krishna, Advocate, Advocate. for the Respondents.

J U D G M E N T

1. Challenging the decree and award, dated 20.07.2018 in M.V.O.P.No.377 of 2014 passed by the Chairman, Motor Accidents Claims Tribunal-cum-XIV Addl. District Judge, Vijayawada (for short "the tribunal"), the petitioners preferred this appeal.

2. The parties hereinafter called as petitioners and respondents as arrayed in the Tribunal.

3. The factual matrix of the case of the petitioners is that on 27.12.2006 at about 3-00 p.m., one D. Seshu Kumar (hereinafter called as "Deceased") along with his wife and son started on a motor cycle bearing No.A.P.16 AS 5856 from Kesarapalli to Gannavaram to purchase a cake at Venus Snacks Bakery. After purchasing cake, while returning to home from Gannavaram to Kesarapalli and reached near R.T.C. Academy, Gannavaram, one lorry bearing No.A.P.16W 8966 (hereinafter called as "offending vehicle") came in rash and negligent manner at high speed, behind the motor cycle of deceased and dashed the motor cycle, as a result, the deceased, his wife and son fell on the road and the deceased sustained multiple injuries and head injury. Immediately he was shifted to Dr. Siddhardha Institute of Medical Sciences at China Avutupalli Village wherein after examination of deceased, the doctor declared the deceased as dead. The doctor opined that the deceased died due to multiple injuries and head injury.

4. The report of wife of deceased is registered as a case in Crime No.317/2006 U/Sec.337, 304-A IPC on 27.12.2006. The 1st respondent is the driver of the offending vehicle, the 2nd respondent is owner of the offending vehicle having valid registration of offending vehicle and the 3rd respondent is insurer of the offending vehicle, having insurance policy in force as on the date of accident. They are proper and necessary parties to pay compensation to the

petitioners.

5. The deceased is an agriculturist and having departmental stores and getting income of Rs.15,000/- per month and spending the entire amount for the welfare of the family members. The deceased is aged about 29 years, hale and healthy at the time of accident. He died leaving behind his wife, son and parents. Hence, claiming compensation of Rs.16,00,000/-.

6. The 1st respondent filed counter by denying the averments of petition, while admitting that he is driver of the offending vehicle, having valid driving license at the time of accident. He contended that the injury sustained by the deceased was only due to fall on the road and accident was occurred due to negligence driving of the deceased without following traffic rules, without giving any signal, etc., as such, the accident was occurred not due to rash and negligent driving of the 1st respondent.

7. The 1st respondent submitted that the offending vehicle belongs to the 2nd respondent. He is only an employee under 2nd respondent, as such, he is not liable to pay compensation to the petitioners. The M.V. Inspector did not express any different opinion regarding the cause of accident in M.V.I. report. The insurance policy of the offending vehicle was in force at the time of accident. Therefore, the insurer/3rd respondent alone is liable to pay compensation as indemnifier to the petitioners, if any payable to the petitioners. He contended that the claim of the petitioners is excessive and exorbitant and they are put to strict proof of the averments regarding age, earning capacity of the deceased at the time of accident. Hence, he requested to dismiss the claim petition.

8. The 2nd respondent remained exparte without filing counter.

9. The 3rd respondent filed counter by denying the averments of the petition and contending that the 3rd respondent is not received any intimation about the accident or any documents from the insured U/Sec.137(3) of Motor Vehicles Act. He contended that the insurer and insured of the motor cycle bearing No.A.P.16 AC 5856 are also proper and necessary parties for proper adjudication of the matter as accident was due to collision of the vehicles.

10. The 3rd respondent submitted that the deceased had driven the motor cycle in a rash and negligent manner without observing traffic rules by violating traffic rules like triple riding, as such, the 3rd respondent is not liable to pay compensation to the petitioners.

11. The 3rd respondent contended that the claim of Rs.16,00,000/- is highly excessive and exorbitant and the claim of the petitioners is time barred and the petition is not maintainable under law. The Gannavaram police have not forwarded relevant documents to the Insurance Company within 30 days from the date of accident. The 1st respondent is not having valid driving license and the offending vehicle was not validly insured. There is no privity of contract between the petitioners and the 3rd respondent, as such, it is not liable to pay compensation to the petitioners.

Hence, the 3rd respondent requested to dismiss the claim petition.

12. Basing on the strength of the above said pleadings, the Tribunal framed the following issues:

(1) Whether the accident took place due to rash and negligent driving of Lorry bearing No.A.P.16 AW 8966 by the 1st respondent?

(2) Whether the petitioners are entitled to the compensation as prayed for? If so, from whom?

(3) To what Relief?

13. During the course of enquiry, the 1st petitioner got examined herself as PW.1 and Exs.A.1 to A.9 are marked on behalf of the petitioners. R.Ws.1 and 2 are examined and Exs.B.1 and B.2 are marked on behalf of the Respondent No.3.

14. Having considered the oral and documentary evidence available on record, the Tribunal below answered the issue No.1 in favour of the petitioners holding that the petitioners are able to establish that the accident was occurred due to rash and negligent driving of the 1st respondent. While answering issue Nos.2 and 3, the Tribunal below held that the petitioners failed to establish their entitlement to ask for compensation from any of the respondents. Accordingly, the Tribunal below dismissed the claim petition by its decree and award, dated 20.07.2018. Aggrieved by the same, the petitioners filed the present appeal.

15. Heard Sri Sai Gangadhar Chamarthy, learned counsel appearing for the appellants and Sri N. Rama Krishna, learned counsel for the Respondent/ Insurance Company. Perused the material available on record.

16. The learned counsel for the petitioners submitted that the Tribunal below failed to consider the case of the petitioners in correct perspective and in the light of the principles laid down in decided cases. He contended that the Tribunal below erred in interpreting Sub Section (2) of Section 166 of M.V. Act in the light of the fact that the accident took place on 27.12.2006, after 1994 amendment wherein the question of limitation would not arise. Learned counsel further submitted that the Tribunal below ought not to have held that there is no surveying claim and the petitioners are not entitled to ask for the compensation from the Respondents. Finally, the learned counsel sought to allow the appeal.

17. Learned counsel for the 3rd Respondent (i.e.) the Oriental Insurance Company Limited submitted that the Tribunal below passed the decree and award basing on the evidence available on record, and as such, interference of this Court is not required.

18. Having heard the submissions of the respective counsel and upon perusal of the material available on record, this Court noticed that it is an admitted fact that on 27.12.2006, on the unfortunate day, the deceased D. Seshu Kumar while riding on a motor cycle along with his wife and so sustained multiple injuries and head

injury in accident caused due to rash and negligent driving of the Lorry bearing No.A.P.16 W 8966. The Tribunal below on appreciation of evidence found that the accident occurred due to rash and negligent driving of the 1st Respondent.

19. Admittedly, the offending vehicle is having valid registration as on the date of the accident and also having the valid insurance coverage as per the insurance policy, dated 01.07.2006, which was marked as Ex.B.1. But, the Tribunal below considering the delay in filing the claim petition found that there is no any survival claim to the petitioners.

20. Admittedly, the petitioners filed claim petition on 15.07.2014, though the accident was occurred on 20.12.2006. The Tribunal below considering the judgment of the Hon'ble Apex Court in **Purohit and Company vs. Khatoonbee and others (**AIR 2017 Supreme Court 1612)came to a conclusion that that in the claim petition filed by the petitioners failed to establish that the claim of the petitioners is live and surviving claim and filed within reasonable time and accordingly, held that the petitioners are not entitled to ask for compensation from the Respondents.

21. It is to be noted that after 14.11.1994, in view of the amendment to Section 166 of the Motor Vehicles Act, there is no limitation to file claim petition. Prior to 14.11.1994, there was limitation prescribed to file claim petitions. In the present case, admittedly, the accident occurred on 27.12.2006, subsequent to 1994 amendment to the Motor Vehicles Act, wherein there is no limitation to file claim petition U/Sec.166 of the Motor Vehicles Act. Under these circumstances, the Tribunal below having considered the Motor Vehicles Act is a beneficial legislation enacted by the Parliament for the benefit of the victims and their family members, the Tribunal ought not to have considered the case on technical grounds.

22. The 1st Petitioner is the wife of the deceased, the 2nd Petitioner is minor son of the deceased and the Petitioners 3 and 4 are old aged parents of the deceased. After sudden demise of the bread earner of the family, the family members of the deceased, definitely, under shock for some days and to come into normal life, some time is required. Moreover, the petitioners may not have the knowledge of filing the claim petition. They may not be in a position to get the particulars of the vehicle, its driver and owner and policy of insurance. Due to that reasons, the delay might be caused.

23. In fact, the Parliament with its wisdom deleted the sub-section to Section 166 of the Motor Vehicles Act which stipulates limitation to file the claim petition considering the pathetic condition of the victims and their family members. The intention of the Parliament is to entitle the victims and their families to file claim petitions without any obstruction of limitation period.

24. In our considered opinion, the Courts have to show some liberal approach, while deciding the claim petitions filed under Motor Vehicles Act, which is a beneficial

legislation. The Courts have to keep in mind that the victims and their dependants have to come out from the hardships being faced by them due to sudden demise of the bread earner of the family, instead of rejecting the claims on technical grounds.

25. The opinion of this Court is fortified by the observations made by the Hon'ble Apex Court in **Dhannalal v. D.P. Vijayvargiya and others (**AIR 1996 Supreme Court 2155)which are extracted hereunder:

> 6. Before the scope of sub-section (3) of Section 166 of the Act is examined, it may be pointed out that the aforesaid sub-section (3) of Section 166 of the Act has been omitted by Section 53 of the Motor Vehicles (Amendment) Act, 1994 which came in force w.e.f. 14.11.1994. The effect of the Amending Act is that w.e.f. 14.11.1994 there is no limitation for filing claims before the Tribunal in respect of any accident. It can be said that Parliament realised the grave injustice and injury which was being caused to the heirs and legal representatives of the victims who died in accidents by rejecting their claim petitions only on ground of limitation. It is a matter of common knowledge that majority of the claimants for such compensation are ignorant about the period during which such claims should be preferred. After the death due to the accident, of the bread earner of the family, in many cases such claimants are virtually on the streets. Even in cases where the victims escape death some of such victims are hospitalized for months if not for years.

26. In **Brahampal alias Sammay and another vs. National Insurance Company** (2021) 6 Supreme Court Cases 512)**,** the Hon'ble Apex Court held as extracted hereunder:

> "The legislation intends to provide appropriate compensation for the victims and to protect their substantive rights, in pursuit of the same, the interpretation should not be as strict as commercial claims."

> The Hon'ble Apex Court at para Nos.6 and 7 of the judgment opined as hereunder:

> 6. At the outset, we must note that Chapter XII of the Act is a beneficial legislation intended at protecting the rights of victims affected in road accidents. Moreover, the Act is a self-contained code and itself which provides procedures for filing claims, for passing of award and for preferring an appeal. Even the limitations for preferring the remedies are contained in the code itself.

> 7. The interpretation of a beneficial legislation must be remedial and must be in furtherance with the purpose which the statue seeks to serve. The aforesaid view has been reiterated by this Court on multiple occasions wherein this Court has highlighted the importance

acknowledging legislative intention while interpreting the provisions of the statue."

27. The Hon'ble Apex in **Bombay Anand Bhavan Restaurant v. ESI Corporation** (2009) 9 SCC 61), while interpreting the provisions of the Employees State Insurance Act held that:

> "It being a beneficial legislation who receive a liberal construction so as to promote its objects."

28. In **Vimla Devi v. National Insurance Co. Ltd.,** (2019) 2 SCC 186) the Hon'ble Apex Court while interpreting the provisions of the Act held that strict compliance of procedures can be relaxed in order to ensure that victims receive just compensation. At para No.25, it is observed as extracted hereunder:

"15. At the outset, we may reiterate as has been consistently said by this Court in a series of cases that the Act is a beneficial piece of legislation enacted to give solace to the victims of the motor accident who suffer bodily injury or die untimely. The Act is designed in a manner, which relieves the victims from ensuring strict compliance provided in law, which are otherwise applicable to the suits and other proceedings while prosecuting the claim petition filed under the Act for claiming compensation for the loss sustained by them in the accident."

29. In view of the above discussions, we hold that, the finding of the Tribunal below that the petitioners failed to establish the claim is live and surviving claim is unsustainable and untenable.

30. As per the material available on record, the petitioners contended that the deceased was running General Stores and also doing agricultural work. They filed Ex.A.8 (i.e.) certificate of registration in the name of the deceased. It reveals that the deceased is the Proprietor of Sri Srinivasa General Stores. Ex.A.8 and evidence of PW.1 is not disputed with regard to occupation of deceased. The appellants herein filed I.A.No.1 of 2021 seeking leave of this Court to file copy of Return of Turnover tax (Quarterly) as additional evidence on behalf of the appellants in this appeal. Considering the reasons stated in the affidavit filed along with said Interlocutory Application, this Court ordered I.A.No.1 of 2021.

31. On careful perusal of the return of turnover tax (quarterly) filed in Form TOT 007 before the Commercial Tax Office, Katuru Road, Vuyyuru on 31.10.2006 filed on behalf of Srinivasa General Stores, the taxable turnover for the period mentioned from 01.07.2006 to 30.09.2006 is Rs.1,24,960/- and the turnover tax @ 10% i.e., Rs.1,250/- was paid vide Challan No.7607, dated 31.10.2006, much prior to the date of accident i.e., 27.12.2006.

32. On careful perusal of Ex.A.8, the Certificate of Registration of Srinivasa General Stores, for which the deceased is the Proprietor and the copy of the return of turnover tax, dated 31.10.2006 filed on behalf of Srinivasa General Stores, this Court satisfied that the deceased at the time of

death in road accident is running Srinivasa General Stores and paying turnover tax. As per the evidence of PW.1, the deceased used to earn Rs.15,000/- per month, but she has not produced any document to establish the monthly income of the deceased. Under the circumstances, the Tribunal found that the petitioners failed to establish the actual income of the deceased. But, in consideration of Ex.A.8 and a copy of turnover tax received as additional evidence in this appeal and the evidence of PW.1, in the opinion of this Court, the deceased definitely is having substantial income through his business. As there is no any specific evidence on record with regard to the income of the deceased, some amount of guess work is required to be done. Merely because claimants were unable to produce documentary evidence to show the monthly income of the deceased, same does not justify to consider the income on lower side. Admittedly, this appeal is filed by 4 appellants, who are the parents, wife and son of the deceased. The deceased would have earned sufficient income to maintain his entire family by running the General Stores.

33. In fact, as per the judgment of the Hon'ble Apex Court in **Latha Wadhawa vs. State of Bihar (**2001(8) SCC 197)in which it was held that in the absence of the proof of earnings, minimum of Rs.3,000/ - per month can be taken. In the light of the said judgment, a learned single judge of the High Court of Telangana and Andhra Pradesh at Hyderabad in **T. Rama Krishna vs. Valluri Babu Rao and 3 others (**2007(1) ALD 453) fixed the income of the deceased in the absence of any proof at the rate of Rs.3,500/- was taken to determine the compensation therein.

34. Considering the above judgments and the evidence available on record, in the considered opinion of this Court, it is appropriate and reasonable to consider the monthly income of the deceased @ Rs.4,500/- per month.

35. The age of the deceased is 29 years as on the date of accident as per the postmortem report which is marked as Ex.A.2. In the claim petition and evidence also the same is mentioned. In the claim petition filed in the year, 2014, the age of the 1st petitioner (i.e.) wife of the deceased is mentioned as 33 years. So, on 27.12.2006 (i.e.) the date of accident her age is 25 years. As such, her husband (i.e.) deceased age may be 29 years at that time. Hence, the age of the deceased is considered as "29 years. As per the judgment of the Hon'ble Apex Court in **National Insurance Co. Ltd. Vs. Pranay Sethi and others (**2017 ACJ 2700 (SC) the relevant multiplier to the age group of 26 to 30 is "17". As such, the appropriate multiplier to be applied in the present case is "17". The appeal filed by 4 dependants of the deceased. Out of the income of the deceased, 1/4th has to be deducted towards his personal expenses, if he had alive while determining the compensation. As per the settled law in Pranay Sethi's case (6th supra) 40% income has to be calculated for future prospectus. Considering all these aspects, in the light of the settled law, the appellants are entitled for compensation under various heads can be detailed as below:

(a)loss of dependency	
Rs.4,500/-x12x15-1/4+40%	Rs.9,63,900-00
(b)loss to estate	Rs. 15,000-00
(c)loss of consortium	Rs. 40,000-00
(d)funeral expenses	Rs. 15,000-00

Total	Rs.10,33,900-00
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36. As per the decision of the Hon'ble Apex Court in **Chandra @ Chanda @ Chandraram and another vs. Mukesh Kumar Yadav and others (**LL 2021 SC 531) wherein the Hon'ble Apex Court awarded interest @ 6% per annum. By following the same, we hold that the appellants are entitled for the total compensation of Rs.10,33,900/- with interest @ 6% per annum from the date of claim application i.e., 19.07.2014 to till the date of realization.

37. In the result, the MACMA No.2971 of 2018 is allowed and ordered as follows:

(i) The decree and award, dated 20.07.2018 in M.V.O.P.No.377 of 2014 passed by the Chairman, Motor Accidents Claims Tribunal-cum-XIV Addl. District Judge, Vijayawada, is set aside;

(ii) The Appellants are entitled for total compensation amount of Rs.10,33,900/- (Rupees ten lakh thirty three thousand and nine hundred only) with interest @ 6% per annum and proportionate costs;

(iii) The compensation amount shall carry interest @ 6% per annum from the date of claim application i.e., 19.07.2014 to till the date of realization.

(iv) The Respondent Nos.1 to 3 are jointly and several liable to pay compensation to the Appellants;

(v) Out of total compensation awarded, the 1st appellant being the wife of the deceased is entitled Rs.4,00,000/- (Rupees four lakh only); the 2nd appellant being the son of the deceased is entitled Rs.3,83,900/- (Rupees three lakh eighty three thousand and nine hundred only) and the appellant Nos.3 and 4 being the parents of the deceased are entitled Rs.1,25,000/- (Rupees one lakh and twenty five thousand only) each.

(vi) The respondents are directed to deposit the compensation amount along with accrued interest and costs within one (01) month from the date of this judgment; failing which execution can be taken out against them.

(vii) On such deposit, the appellant Nos.1, 3 and 4 are entitled to withdraw the entire amount with accrued interest thereon and costs;

(viii) The share of the Appellant No.2 shall be kept in Fixed Deposit in any nationalized bank till he attain majority. However, he is entitled to withdraw interest every month for his educational purpose.

38. There shall, however, be no order as to costs.

Miscellaneous Petitions pending, if any, shall stand closed in consequence.

–X--

2022(1) L.S. 225 (A.P.) (D.B.)

IN THE HIGH COURT OF
ANDHRA PRADESH

Present
The Hon'ble Mr.Justice
C. Praveen Kumar &
The Hon'ble Mr.Justice
Ravi Nath Tilhari

Badugu Panduranga Rao ..Petitioner
Vs.
The Legal Services Authority
& Ors., ..Respondents

GUARDIANS AND WARDS ACT, Secs.7 & 8 - LEGAL SERVICES AUTHORITIES ACT,1987, Sec.20 - Petitioner is challenging the award passed in Pre Litigation Case passed by Lok Adalat Bench - Petitioner worked as an Assistant Line Man in A.P.Transoco and was married with Padmaja, daughter of the respondents 2 and 3, and out of their wedlock, the respondents 4 and 5 were born, who are minors and studying in junior classes - Padmaja committed suicide and the respondents 2 and 3 lodged FIR under Section 304-B Indian Penal Code (IPC) against the petitioner, but petitioner was acquitted by the Sessions Judge - Minor children respondents 4 and 5 filed P.L.C. through respondents 2 and 3, before the 1st respondent the District Legal Services Authority (Lok Adalat Bench) against the Petitioner and the Petitioner's superior officers, in which the respondents 2 and 3 and their relatives and followers pressurized and threatened the Petitioner to settle the issue - Consequently under pressure and threat the petitioner signed illegal and improper settlement - Lok Adalat, passed the award on 02.11.2017, on such settlement with as many as eleven conditions

W.P.No. 20458/2019 Date: 24-3-2022

HELD: Award of the Lok Adalat passed on the settlement can be challenged only by way of filing writ petition under Article 226/227 of the Constitution of India, on limited grounds and when writ petition is filed it is for the writ court to decide whether any sufficient ground is made out or not for quashment of the Lok Adalat award - Lack of inherent jurisdiction in Lok Adalat, is one of the limited grounds to challenge its award.

No application for appointment of the guardian - Application was only for maintenance - In view of Sections 7 and 8 of the Guardians and Wards Act, no order for appointment of a guardian can be passed without an application by the proposed guardian which application must comply with the conditions of Section 10 - Matter for appointment of guardian was not the subject matter before the Lok Adalat - Lok Adalat was not presided over by the District Judge/Additional District Judge - No award could be passed on the basis of the settlement or compromise between the parties for appointment of guardian - Signing of the settlement is admitted by the Petitioner - Whether there was threat

or compulsion is a disputed question of fact which cannot be gone into in the Writ proceedings - Impugned award of the Lok Adalat only to the extent of appointment of guardian of respondents 4 and 5 is hereby quashed - Petitioner is the natural guardian being father of the minor respondents 4 and 5 - However, the parties are at liberty, if so require, to seek the remedy for appointment of guardianship of the minors, or for their custody, before competent Court of law - Writ Petition stands allowed in part.

Mr.Narasimha Rao Gudiseva, Advocate for the Petitioner.
Mr.S. Lakshmi Narayana Reddy,Advocate for the Respondents: R1
Mr.K. Venkatesh, Advocate for the Respondents: R2 to R5,
Mr.Y. Nagi Reddy, Standing Counsel, Advocate for the Respondents: R6 to R9,

J U D G M E N T

(per the Hon'ble Mr.Justice Ravi Nath Tilhari)

1. Heard Sri Narasimha Rao Gudiseva, learned counsel for the petitioner, Sri S. Lakshmi Narayana Reddy, learned counsel for the 1st respondent-Legal Services Authority, Sri K. Venkatesh, learned counsel for the respondents 2 to 5 and Sri Y. Nagi Reddy, learned standing counsel for the respondents 6 to 9.

2. By means of this writ petition under Article 226 of the Constitution of India, the petitioner-Badugu Panduranga Rao is challenging the award dated 02.11.2017 passed in Pre Litigation Case P.L.C.No.636 of 2017 by Lok Adalat Bench, Machilipatnam, Krishna District presided over by Additional Senior Civil Judge, Machilipatnam.

3. The facts of the case are that the petitioner who worked as Assistant Line Man in A.P.Transoco was married on 24.08.2000 with one Padmaja, daughter of the respondents 2 and 3, and out of their wedlock, the respondents 4 and 5 were born, who are minors and studying in junior classes. On 06.09.2012, Padmaja committed suicide and the respondents 2 and 3 lodged FIR in Crime No.67 of 2012 dated 06.09.2012 under Section 304-B Indian Penal Code (IPC) against the petitioner in Banthumilli Police Station, but finally, in S.C.No.165 of 2013 the petitioner was acquitted by the court of VI Additional District and Sessions Judge, Machilpatnam at Krishna District, vide judgment dated 26.06.2018.

4. The minor children respondents 4 and 5 filed P.L.C.No.636 of 2017 through respondents 2 and 3, before the 1st respondent the District Legal Services Authority, Machilipatnam (Lok Adalat Bench) against the petitioner and the petitioner's superior officers, in which the respondents 2 and 3 and their relatives and followers pressurized and threatened the petitioner to settle the issue. Consequently under pressure and threat the petitioner signed illegal and improper settlement. Even the terms and conditions of such settlement were neither shown to the petitioner nor to his superior officers to which they had not

consented. The Lok Adalat at Machilipatnam, passed the award on 02.11.2017, on such settlement with as many as eleven conditions, as under:-

"Award

At the intervention of the members of Lok Adalat, this matter between both the parties with the following conditions:

"1. Both the parties agreed to withdraw the cases filed against each other.

2. The 1st respondent agreed to pay the arrears amount during the period i.e from September, 2012 to December, 2017 (Suspension period of 1st respondent). Out of the said arrears amount 75% of the amount shall be kept in a fixed deposit in any Nationalised Bank in the name of Badugu Venu Gopal till attaining his majority. The remaining 25% of the arrears amount shall be kept in any nationalized bank in the name of Minor Badugu Dindi Akshita till attaining her majority. The maternal grand mother by name Rajulapati Gopi Kumari will act as a guardian and nominee for those amounts. She shall not misappropriate the said amount. During the said period if the nominee will expire, the maternal uncle Rajulapati Venkateswara Rao will act as a guardian.

3. The 1st respondent has executed gift deed in favour of Minor girl Dindi Akshitha, an extent of 291 sq. yards situated at Movva Village, vide document No.2603 on dt. 25.10.2017. The said gift deed kept in the name of maternal grand mother, in case the maternal grand mother will expire the maternal uncle R. Venkateswara Rao will act as guardian, the said property shall not be alienated to anybody till the minor attains majority.

4. Petitioners agreed not to object the 1st respondent to marry any person at his wish.

5. The 1st respondent agreed to pay half of his salary amount in the name of Minors by name Badugu Venugopal and B. Dindi Akshita. The respondent agreed to pay the said amount till the marriage of Dindi Akshitha. The 1st respondent also agreed to pay the said amount till the minor by name B. Venu Gopal attaining majority, for the said amount the maternal grand mother R. Gopi Kumari will act as a guardian, in case of her death the maternal uncle R. Venkateswara Rao will act as guardian. The said person shall not miss-appropriate the said amount and the same will be deducted from the salary of 1st respondent by R3 to the account of guardian R. Gopi Kumari vide A/c No.6268887866, Indian Bank, Movva Branch with IFSC Code No.IDIB000MO43. the maternal grand mother agreed to deposit the remaining maintenance amount in the FDR in the name of minors.

6. The 1st respondent shall pay an

amount of Rs.4,00,000/- to the in-laws of the 1st respondent by name R. Nageswara Rao and R. Gopi Kumri.

7. The 1st respondent has got every right to see the minors at the house of petitioners and at school.

8. The 1st respondent is willing to pay 50% of the retirement benefits to the 1st minor ward B. Venu Gopal.

9. In event of any death of 1st respondent the job under compassionate grounds will be given to the 1st minor ward B. Venu Gopal.

10. The petitioner received all the silver and gold articles from the 1st respondent.

11. The petitioners and respondent No.1 shall not claim any right or dispute over the movable or immovable property against each other in future."

Accordingly, an Award is passed."

5. The petitioner's further case is that as per the terms of the award, the petitioner has paid an amount of Rs.4,00,000/- to the respondents 2 and 3 and has executed a registered gift deed in favour of the minor daughter respondent No.5, for an area of 291 sq. yards worth of Rs.20,00,000/-; and 50% of his salary is being paid to the account of the 2nd respondent through petitioner's Disbursing Officer, regularly. The petitioner submitted that he shall not claim any right or dispute over the movable or immovable property against each other in terms of the Award.

6. Learned counsel for the petitioner submitted that as per the terms of the award, the respondent No.2, petitioner's mother-in-law was appointed to act as guardian and incase of her death, her son R. Venkateswara Rao was to act as guardian of the minor children. However, the respondent No.2 utterly failed to pay the school fees, to provide medical aid and other basic amenities to the minor children. The petitioner being the natural guardian is the only person to take good care of the minor. The petitioner's son is staying with the petitioner and he is looking after his welfare. The petitioner filed G.W.O.P.No. Nil in 2019 in G.L.No.6769 of 2019, under Section 7 read with Section 10 of the Guardian and Wards Act, 1890, for his appointment as guardian of the minor children, but the learned District Judge rejected the same by order dated 17.09.2019, in view of the Lok Adalat Award in P.L.C.No.636 of 2007.

7. Learned counsel for the petitioner submitted further that the Lok Adalat Bench, passed the Award without jurisdiction, as the matter of appointment of guardian of the minor is governed by the Guardian and Wards Act, 1890 (for short, "the Act") under which it is the learned District Judge which has the jurisdiction to appoint guardian of the person or property or both, of the minor. The Lok Adalat in the present case was presided over by the Additional Senior Civil

Judge, and was not even presided by the learned District Judge, or Additional District Judge. He submitted that apart from the fact that the award not having signed by the petitioner voluntarily but under threat deserves to be quashed, but even if the settlement was entered voluntarily and was signed by the petitioner, the award is not binding and is open to challenge, being nullity and void abinitio for want of jurisdiction in the Lok Adalat.

8. Learned counsel for the petitioner placed reliance on the judgments in the cases of 1) Karuturi Satyanarayana and another vs. K. Krishnaveni Durga Kumari (2011 (1) ALD 174 (DB), 2) Bhargavi Construction and another vs. Kothakapu Muthyam Reddy and others (AIR 2017 Supreme Court 4428), 3) State of Punjab and another vs. Jalour Singh and others (AIR 2008 Supreme Court 1209) and 4) P.T. Thomas vs. Thomas Job (2005) 6 SCC 478).

9. Learned counsel for the respondents 2 and 3 has submitted that the writ petition is not maintainable as the award was passed by the Lok Adalat on the settlement arrived at between the parties which was signed by the petitioner and his advocate being fully aware of the terms and conditions of the settlement. The award was passed way back in the year 2017 and it is only after the rejection of the petitioner's application for his appointment as guardian, by the Principal District Judge, Machilipatnam on 17.09.2019 that the petitioner has filed the writ petition and that too without challenging the order dated 17.09.2019. He has further submitted that except the allegation, that the petitioner was forced to sign the award, there is no evidence/material to substantiate such a plea. He has placed reliance in the case of Balla Veera Venkata Satayanarayan @ Sathi Babu v. State of Andhra Pradesh (2020(1) Andh LD 527).

10. Sri S. Lakshmi Narayana Reddy, learned counsel for the Legal Services Authority, submitted that the respondents 4 and 5, the minor children of the petitioner, filed application seeking maintenance through respondents 2 and 3, against the petitioner, upon which in P.L.C.No.636 of 2017, the parties entered into settlement and thereupon the award was passed. He submitted that since it was a case for grant of maintenance and not a case for appointment of guardianship, the submission of the petitioner's counsel that the award was without jurisdiction, as the Lok Adalat was not presided over by the learned District Judge or Additional District Judge, is misconceived. The Lok Adalat had the jurisdiction. He further submitted that the award of the Lok Adalat based on the settlement, is final and binding and cannot be challenged in writ petition under Article 226 of the Constitution of India and particularly when signing of the award by the petitioner is not in dispute. He has placed reliance on the judgments in the cases of Kataru Anjamma vs. Chairman Lok Adlaat Bench-cum-I Additional Senior civil Judge, Guntur and others (2010 SCC OnLine AP 925) and P.T. Thomas vs. Thomas JOB (2005) 6 SCC 478).

11. Respondents 6 to 9 have filed counter affidavit submitting that they are

duly complying with the terms of the Award without any deviation and primarily the dispute is between the petitioner and the other respondents. They are in no way concerned with their personal allegations.

12. We have considered the submissions advanced by the learned counsel for the parties and perused the material on record.

13. The points which arise for our consideration are:

i) Whether the writ petition challenging the Award of the Lok Adalat is maintainable?

ii) Whether the Lok Adalat had the jurisdiction in the present mater and whether the award under challenge is null and void for want of jurisdiction?

14. We first proceed to consider the point of maintainability of the writ petition challenging the award of the Lok Adalat.

15. The point is no more res-integra.

16. In State of Punjab vs. Jalour Singh and others (AIR 2008 Supreme Court 1209), the Hon'ble Supreme Court held that where an award is made by Lok Adalat in terms of a settlement arrived at between the parties, which is duly signed by parties and annexed to the award of the Lok Adalat, it becomes final and binding on the parties to the settlement and becomes executable as if it is a decree of a civil court and no appeal lies against it to any court. If any party wants to challenge such an award based on settlement, it can be done only by filing a petition under Article 226 and/ or Article 227 of the Constitution of India and that too on very limited grounds.

17. It is apt to refer paragraph No.12 of Jalour Singh (supra) as under:-

> "12. It is true that where an award is made by Lok Adalat in terms of a settlement arrived at between the parties, (which is duly signed by parties and annexed to the award of the Lok Adalat), it becomes final and binding on the parties to the settlement and becomes executable as if it is a decree of a civil court, and no appeal lies against it to any court. If any party wants to challenge such an award based on settlement, it can be done only by filing a petition under Article 226 and/or Article 227 of the Constitution, that too on very limited grounds. But where no compromise or settlement is signed by the parties and the order of the Lok Adalat does not refer to any settlement, but directs the respondent to either make payment if it agrees to the order, or approach the High Court for disposal of appeal on merits, if it does not agree, is not an award of the Lok Adalat. The question of challenging such an order in a petition under Article 227 does not arise……………….….."

18. In Bhargavi Construction and another vs. Kothakapu Murthyam Reddy and others (AIR 2017 Supreme Court 4428), the Hon'ble Supreme Court held that the law laid down in Jalour Singh (supra) is

binding on all the courts by virtue of Article 141 of the Constitution of India and the only remedy available to the aggrieved person is to file a writ petition under Article 226/ 227 of the Constitution of India in the High Court for challenging the award passed by the Lok Adalat and it is then for the writ court to decide as to whether any ground is made out by the writ petitioner for quashing the award and, if so, whether those grounds are sufficient for quashing the award.

19. It is apt to reproduce paragraphs 26 to 28 of Bhargavi Construction (supra) as under:-

> 26) This is what Their Lordships held in Para:
>
> "12. It is true that where an award is made by the Lok Adalat in terms of a settlement arrived at between the parties (which is duly signed by parties and annexed to the award of the Lok Adalat), it becomes final and binding on the parties to the settlement and becomes executable as if it is a decree of a civil court, and no appeal lies against it to any court. If any party wants to challenge such an award based on settlement, it can be done only by filing a petition under Article 226 and/or Article 227 of the Constitution, that too on very limited grounds. But where no compromise or settlement is signed by the parties and the order of the Lok Adalat does not refer to any settlement, but directs the respondent to either make payment if it agrees to the order, or approach the High Court for disposal of appeal on merits, if it does not agree, is not an award of the Lok Adalat. The question of challenging such an order in a petition under Article 227 does not arise. As already noticed, in such a situation, the High Court ought to have heard and disposed of the appeal on merits."
>
> 27) In our considered view, the aforesaid law laid down by this Court is binding on all the Courts in the country by virtue of mandate of Article 141 of the Constitution. This Court, in no uncertain terms, has laid down that challenge to the award of Lok Adalat can be done only by filing a writ petition under Article 226 and/ or Article 227 of the Constitution of India in the High Court and that too on very limited grounds.
>
> 28) In the light of clear pronouncement of the law by this Court, we are of the opinion that the only remedy available to the aggrieved person (respondents herein/plaintiffs) was to file a writ petition under Article 226 and/or 227 of the Constitution of India in the High Court for challenging the award dated 22.08.2007 passed by the Lok Adalat. It was then for the writ Court to decide as to whether any ground was made out by the writ petitioners for quashing the award and, if so, whether those grounds are sufficient for its quashing.

20. Thus, it has been well settled in law that the award of the Lok Adalat

passed on the settlement can be challenged only by way of filing writ petition under Article 226/227 of the Constitution of India, on limited grounds and when writ petition is filed it is for the writ court to decide whether any sufficient ground is made out or not for quashment of the Lok Adalat award.

21. However, on this point learned counsel for the respondents 1 to 5 have vehemently placed reliance on paragraph No.23 of P.T. Thomas (supra) to contend that the award of the Lok Adalat passed on settlement cannot be challenged by any of the regular remedies available under law, including by inviting Article 226 of the Constitution of India challenging the correctness of the award on any ground.

22. In P.T. Thomas (supra), the Honb'le Supreme Court held that the Lok Adalat will pass the award with consent of the parties, therefore, there is no need either to reconsider or review the matter again and again, as the award passed by the Lok Adalat shall be final and permanent which is equal to a decree executable and the same is an ending to the litigation among parties. Therefore, an appeal shall not lie from an award of the Lok Adalat under Section 96(3) CPC. It is apt to reproduce paragraphs 20 and 24 of P.T. Thomas (supra) as under:-

> "20. The Lok Adalat shall proceed and dispose the cases and arrive at a compromise or settlement by following the legal principles, equity and natural justice. Ultimately the Lok Adalat passes an award, and every such award shall be deemed to be a decree of Civil Court or as the case may be, which is final".
>
> "24. The award of Lok Adalat is final and permanent which is equivalent to a decree executable, and the same is an ending to the litigation among parties."

23. In paragraph 23 of P.T. Thomas (supra), the Hon'ble Supreme Court only referred to what was held by the Andhra Pradesh High Court in the case of Board of Trustees of the Port of Visakhapatnam vs. Presiding Officer, District Legal Service Authority, Visakhapatnam and another (2000 SCC OnLine AP 462). Paragraph 23 of P.T. Thomas (supra) reads as under:

> "23. The High Court of Andhra Pradesh held that, in Board of Trustees of the Port of Visakhapatnam vs. Presiding Officer, Permanent, Lok Adalat-cum-Secretary, District Legal Services Authority, Visakhapatnam and another reported in 2000(5) ALT 577, " The award is enforceable as a decree and it is final. In all fours, the endeavour is only to see that the disputes are narrowed down and make the final settlement so that the parties are not again driven to further litigation or any dispute. Though the award of a Lok Adalat is not a result of a contest on merits just as a regular suit by a Court in a regular trial, however, it is as equal and on par with a decree on compromise and will have the same binding effect

> and conclusive just as the decree passed on the compromises cannot be challenged in a regular appeal, the award of the Lok Adalat being akin to the same, cannot be challenged by any regular remedies available under law including invoking Article 226 of the Constitution of India challenging the correctness of the award on any ground. Judicial review cannot be invoked in such awards especially on the grounds as raised in this writ petition."

24. We also reproduce paragraph No.10 of Board of Trustees (supra) to show that in Para No.23 of P.T. Thomas (Supra), part of para 10 of Board of Trustees (supra) was only referred, as under:-

> "10. Under this provision, the Lok Adalat is vested with jurisdiction in respect of any case pending before a Court or any matter which is not before the Court. The expressions used and the purposes behind are very clear and distinct. This is in consonance with the objects which are intended to be achieved and furthering the aims under Article 39-A of the Constitution of India. Thus, it has all the powers not only to take up the dispute pending before the Court but also in pursuance of the applications filed before it during the proceedings. In fact the 'Legal Services' as defined Under Section 2(c) of the said Act includes rendering of any service in the conduct of any case or other legal proceeding before any Court or other authority or Tribunal and the giving of advice on any legal matter, the object being to provide free legal aid service which is also the one enshrined under Article 39-A. Therefore, the assistance as contemplated is at all levels, not restricted to only those on approaching the Court of law or authority or Tribunal. Further it is not only with a view to settle pending cases but to settle any impending matters and to provide such assistance, this Legislation has stepped in. As per Section 22 of the Act, the procedure vested in a Civil Court under the Code of Civil Procedure while trying a suit in respect of the matters provided thereunder have been made fully applicable, apart from enabling to frame its own procedure. Under Section 21 of the said Act, an award of Lok Adalat shall be deemed to be a decree of a civil Court and the same shall be final and binding on all the parties and no appeal shall lie against the said award. Therefore, the award is enforceable as a decree and it is final. In all fours, the endeavour is only to see that the disputes are narrowed down and make the final settlement so that the parties are not again driven to further litigation or any dispute. Though the award of a Lok Adalat is not a result of a contest on merits just as a regular suit by a Court on a regular trial, however, it is as equal and on par with a decree on compromise and will have the same binding effect and conclusive. Just as the decree

passed on compromise it cannot be challenged in a regular appeal, the award of the Lok Adalat being akin to the same, it cannot be challenged by any regular remedies available under law including invoking Article 226 of the Constitution of India challenging the correctness of the award on any ground. Judicial review cannot be invoked in such awards especially on the grounds as raised in this writ petition."

25. It is thus evident that in P.T. Thomas (supra), it was not held that the award of the Lok Adalat cannot be challenged invoking Article 226 of the Constitution of India on any ground. What was held, is in paragraphs 20 & 24 of the judgment as mentioned above. Reliance placed on para 23 in P.T. Thomas (supra) by the respondents counsel is misplaced.

26. Learned counsel for the petitioner submitted that as per Regulation 12(3) of the National Legal Services Authority (Lok Adalats) Regulations, 2009 ("the Regulations, 2009"), writ petition is maintainable to challenge the award of the Lok Adalat.

27. Replying to the above submission, the learned counsel for the respondents, submitted that, then, the challenge can be only on the ground of violation of the procedure prescribed in Section 20 of the Legal Services Authorities Act, 1987 (the Act, 1987), but any such procedural violation has not been established by the petitioner.

28. The Regulations, 2009, have been framed by the Central Authority, in exercise of the power conferred by Section 49 of the Act, 1987.

29. Regulation 12, of the Regulations, 2009 provides as under:-

"12. Pre-Litigation matters:-

(1) In a Pre-litigation matter it may be ensured that the court for which a Lok Adalat is organised has territorial jurisdiction to adjudicate in the matter.

(2) Before referring a Pre-litigation matter to Lok Adalat the Authority concerned or Committee, as the case may be, shall give a reasonable hearing to the parties concerned.

Provided that the version of each party, shall be obtained by the Authority concerned or, as the case may be, the Committee for placing it before the Lok Adalat,

(3) An award based on settlement between the parties can be challenged only on violation of procedure prescribed in Section 20 of the Act by filing a petition under Articles 226 and 227 of the Constitution of India".

30. A reading of the Regulation 12(3) shows that the only ground to challenge the award of the Lok Adalat, based on the settlement between the parties, by way of writ petition under Article 226/227 of the Constitution of India, is, violation of the

procedure prescribed in Section 20 of the Act, 1987. In other words, any challenge to the Lok Adalat award based on settlement, cannot be made on any ground other than the ground of violation of the procedure prescribed in Section 20 of the Act, 1987, as per this regulation which uses the expression “only .

31. In view of Regulation 12(3), it requires consideration if the jurisdiction of the High Court under Article 226/227 of the Constitution of India can be restricted to a particular ground by such a Regulation.

32. Recently, in Maharashtra Chess Association vs. Union of India (2020) 13 SCC 285), the Hon’ble Supreme Court has held that the role of the High Court under the constitution is crucial to ensuring the rule of law throughout its territorial jurisdiction. In order to achieve these transactional goals, the powers of High Court under its writ jurisdiction are necessarily broad. They are, in aid of justice. No limitation can be placed on the powers of the High Court in exercise of its writ jurisdiction. The nature of power exercised by the High Court under its writ jurisdiction is inherently depending on the threat to the rule of law arising in the case before it. The powers of the High Court in exercise of its writ jurisdiction cannot be circumscribed by strict legal principles so as to hobble the High Court in fulfilling its mandate to uphold the rule of law. It has been reiterated that there are two clear principles which emerge with respect to when a High Court’s writ jurisdiction may be engaged; firstly, the decision of the High Court to entertain or not to entertain a particular action in its writ jurisdiction is fundamentally discretionary; and secondly, the limitations placed on the court’s decision to exercise or refuse to exercise its writ jurisdiction are self imposed. If a High Court is tasked with being the final recourse to upholding the rule of law within its territorial jurisdiction, it must necessarily have the power to examine any case before it and make a determination of whether or not its writ jurisdiction is engaged. Judicial review under Article 226 is an intrinsic feature of the basic structure of the Constitution.

33. It is apt to refer paragraphs 11 to 15 of Maharashtra Chess Association vs. Union of India (supra) as under:-

> 11. Article 226 (1) of the Constitution confers on High Courts the power to issue writs, and consequently, the jurisdiction to entertain actions for the issuance of writs. The text of Article 226 (1) provides that a High Court may issue writs for the enforcement of the fundamental rights in Part III of the Constitution, or “for any other purpose”. A citizen may seek out the writ jurisdiction of the High Court not only in cases where her fundamental right may be infringed, but a much wider Article 226. (1) Notwithstanding anything in article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including [writs in the nature of habeas

corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose] array of situations. Lord Coke, commenting on the use of writs by courts in England stated:

"The Court of King's Bench hath not only the authority to correct errors in judicial proceedings, but other errors and misdemeanors […] tending to the breach of peace, or oppression of the subjects, or raising of faction, controversy, debate or any other manner of misgovernment; so that no wrong or injury, public or private, can be done, but that this shall be reformed or punished by due course of law…."6 Echoing the sentiments of Lord Coke, this Court in Uttar Pradesh State Sugar Corporation Limited v Kamal Swaroop Tondon7 observed that:

"35…It is well settled that the jurisdiction of the High Court under Article 226 of the Constitution is equitable and discretionary. The power under that Article can be exercised by the High Court "to reach injustice wherever it is found."

12. The role of the High Court under the Constitution is crucial to ensuring the rule of law throughout its territorial jurisdiction. In order to achieve these transcendental goals, the powers of the High Court under its writ jurisdiction are necessarily broad. They are conferred in aid of justice. This Court has repeatedly held that no limitation can be placed on the powers of the High Court in exercise of its writ jurisdiction. In A V Venkateswaran, Collector of Customs, Bombay v Ramchand Sobhraj Wadhwani8 a Constitution Bench of this Court held that the nature of power exercised by the High Court under its writ jurisdiction is inherently dependent on the threat to the rule of law arising in the case before it:

"10…We need only add that the broad lines of the general principles on which the court should act having been clearly James Bagg's Case (1572) 77 ER 1271 7 (2008) 2 SCC 41 8 (1962) 1 SCR 753, laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible Rules which should be applied with rigidity in every case which comes up before the court." The powers of the High Court in exercise of its writ jurisdiction cannot be circumscribed by strict legal principles so as to hobble the High Court in fulfilling its mandate to uphold the rule of law.

13. While the powers the High Court

may exercise under its writ jurisdiction are not subject to strict legal principles, two clear principles emerge with respect to when a High Court's writ jurisdiction may be engaged. First, the decision of the High Court to entertain or not entertain a particular action under its writ jurisdiction is fundamentally discretionary. Secondly, limitations placed on the court's decision to exercise or refuse to exercise its writ jurisdiction are self- imposed. It is a well settled principle that the writ jurisdiction of a High Court cannot be completely excluded by statute. If a High Court is tasked with being the final recourse to upholding the rule of law within its territorial jurisdiction, it must necessarily have the power to examine any case before it and make a determination of whether or not its writ jurisdiction is engaged. Judicial review under Article 226 is an intrinsic feature of the basic structure of the Constitution.

14. These principles are set out in the decisions of this Court in numerous cases and we need only mention a few to demonstrate the consistent manner in Minerva Mills v Union of India (1980) 3 SCC 625; L Chandra Kumar v Union of India (1997) 3 SCC 261, which they have been re-iterated. In State of Uttar Pradesh v Indian Hume Pipe Co. Limited, this Court observed that the High Court's decision to exercise its writ jurisdiction is essentially discretionary:

"4…It is always a matter of discretion with the Court and if the discretion has been exercised by the High Court not unreasonably, or perversely, it is the settled practice of this Court not to interfere with the exercise of discretion by the High Court."

15. The principle was dwelt upon even prior to this. In Sangram Singh v Election Tribunal, Kotah11 the court highlighted the discretionary nature of the High Court's writ jurisdiction. The court added that courts had themselves imposed certain constraints on the exercise of their writ jurisdiction to ensure that the jurisdiction did not become an appellate mechanism for all disputes within a High Court's territorial jurisdiction. The court stated:

"14… The High Courts do not, and should not, act as courts of appeal under Article 226. Their powers are purely discretionary and though no limits can be placed upon that discretion it must be exercised along recognized lines and not arbitrarily; and one of the limitations imposed by the courts on themselves is that they will not exercise jurisdiction in this class of case unless substantial injustice has ensued, or is likely to ensue. They will not allow themselves to be turned into courts of appeal or revision to set right mere errors of law which do not occasion injustice in a broad and general sense, for,

> though no legislature can impose limitations on these constitutional powers it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as speedily as may be." (Emphasis supplied) 10 (1977) 2 SCC 724 11 (1955) 2 SCR 1. The intention behind this self-imposed rule is clear. If High Courts were to exercise their writ jurisdiction so widely as to regularly override statutory appellate procedures, they would themselves become inundated with a vast number of cases to the detriment of the litigants in those cases. This would also defeat the legislature's intention in enacting statutory appeal mechanisms to ensure the speedy disposal of cases......................"

34. In Jalour Singh (supra), the Hon'ble Supreme Court clearly laid down that the challenge to the award of the Lok Adalat can be done only by filing the writ petition under Article 226/227 of the Constitution of India but on limited grounds. Simultaneously, it has been laid down that it is for the writ court to decide as to whether any ground is made out by the writ petitioners for quashing the award and if so whether those grounds are sufficient for its quashing.

35. Thus, the writ jurisdiction of the High Court under Article 226 of the Constitution of India being in aid of justice and to ensure rule of law is of wide scope. The limitations on the High Court's power in exercise of writ jurisdiction cannot be circumscribed by any statute. In every case this court, considering various factors would determine its exercise of discretionary power.

36. The interference in the exercise of writ jurisdiction, with an award of the Lok Adalat based on settlement between parties, would certainly be on limited grounds, but whether a particular ground of challenge falls within the "limited grounds or not, and whether on such ground the award is to be interfered or not is to be determined only by the High Court when the matter comes before it. Any limitation, that the power will be exercised only on a specified ground can not be placed by a statute. Similarly, a statute cannot provide that on existence of a particular ground the power is to be exercised necessarily by the High Court in the exercise of writ jurisdiction. Therefore, Regulation 12(3) of the Regulations, 2009 providing that the award of the Lok Adalat can be challenged by way of writ petition under Article 226/227 of the Constitution of India only on the ground of violation of the provisions of Section 20 of the Legal Services Authorities Act, 1907, cannot place such restriction on the power of the High Court under Article 226 of the Constitution of India, to quash the award of the Lok Adalalat on other grounds as well, which the High Court may determine to be one of the "limited grounds .

37. Procedural violation under Section 20 of the Act, 1987, may be one of the limited grounds to quash the award of the Lok Adalat, in a particular case, but it does not mean that merely because such a ground is provided by Regulation 12(3), the High Court is bound to interfere. If, in totality of

various factors, the High Court determines that inspite of procedural violation it is not proper to invoke the discretionary jurisdiction, the High Court may also refuse to invoke its jurisdiction.

38. The exercise of discretion is guided by the judicial principles, observing the self imposed restrictions. In a challenge to the Lok Adalat award based on settlement, the Court will certainly keep in mind that such awards are final and binding between the parties and are at par the consent decree, executable as a decree of the civil court, against which legislature did not provide for any statutory remedy of appeal or revision and therefore would not act while exercising of writ jurisdiction, as an appellate or the revisional court.

39. The ground of challenge here is the inherent lack of jurisdiction in the Lok Adalat to appoint guardian of the minor.

40. In Om Prakash Agarwal vs. Vishan Dayal Rajpoot and another (2019) 14 SCC 526) referring to the judgment in the case of Kiran Singh v. Chaman Paswan (AIR 1954 SC 340) followed in various later decisions, the Hon'ble Apex Court reiterated that a decree passed by a court lacking in inherent jurisdiction is a nullity. It was held that the jurisdiction as to subject matter, is totally distinct and stands on a different footing than no objection to the lack of pecuniary or territorial jurisdiction. Where a court has no jurisdiction at all over the subject matter by reason of any limitation imposed by the statute it cannot take up that matter and an order passed by such a court having no jurisdiction is a nullity.

41. It is apt to reproduce Paragraph 61 of Om Prakash Agarwal (supra) as under:-

> "61. In Harshad Chiman Lal Modi vs. DLF Universal Ltd., (2005) 7 SCC 791) this court had again considered Section 21 and other provisions of Code of Civil Procedure. In paragraph 30, following has been laid down:
>
> "30...........The jurisdiction of a court may be classified into several categories. The important categories are (i) territorial or local jurisdiction; (ii) pecuniary jurisdiction; and (iii) jurisdiction over the subject matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter.
>
> An order passed by a court having no jurisdiction is a nullity."

42. In Nusli Neville Wadia vs. Ivory Properties and others (2020)6 Supreme Court Cases 557) the Hon'ble Supreme Court held that the jurisdiction is the

authority of law to act finally in a particular matter in hand. It is the power to take cognizance and decide the cases. Jurisdiction is the foundation of judicial proceedings. If the law confers a power to render a judgment or decree then the Court has jurisdiction. The test of having no jurisdiction by the court is that its judgment is amenable to attack in collateral proceedings. If the court has inherent lack of jurisdiction, its decision is open to attack as a nullity. When there is want of general power to act the court has no jurisdiction. Judgment within a jurisdiction is to be immuned from collateral attack on the ground of nullity.

43. It is apt to refer paragraph 88 of Nusli Neville Wadia (supra) which reads as under:-

> "Given the discussion above, we are of the considered opinion that the jurisdiction to entertain has different connotation from the jurisdictional error committed in exercise thereof. There is a difference between the existence of jurisdiction and the exercise of jurisdiction. The expression jurisdiction has been used in CPC at several places in different contexts and takes colour from the context in which it has been used. The existence of jurisdiction is reflected by the fact of amenability of the judgment to attack in the collateral proceedings. If the court has an inherent lack of jurisdiction, its decision is open to attack as a nullity. While deciding the issues of the bar created by the law of limitation, res judicata, the Court must have jurisdiction to decide these issues."

44. In Yakoob vs. K.S. Radhakrishnan (AIR 1964 SC 477), the Constitution Bench of the Hon'ble Supreme Court laid down that a writ of Certiorari under Article 226 of the Constitution of India can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals and these are the cases where orders are passed without jurisdiction or in excess of jurisdiction or as a result of failure to exercise jurisdiction In General Manager, Electrical Rengali Hydro Electric Project, Orissa and others vs. Giridhari Sahu and others (2019) 10 SCC 695), it has been reiterated that the writ of Certiorari is intended to correct jurisdictional excesses which are clearly established. The jurisdictional error may be from failure to observe the limits of its jurisdiction, or procedure adopted by the body after validly assuming jurisdiction or violation of principles of natural justice.

45. Therefore, in our considered view lack of inherent jurisdiction in Lok Adalat, is one of the limited grounds to challenge its award.

46. Now we proceed to consider the second point i.e if the impugned award of the Lok Adalat suffers from inherent lack of jurisdiction. In other words, if the Lok Adalat has jurisdiction in the matter of appointment of guardian of minor by way of settlement between parties.

47. The brief look at the provisions under the Guardian & Wards Act, 1890 is necessary:-

Section 7 of the Act, 1890 provides for power of the court to order for guardianship. It reads as under:

"7. Power of the Court to make order as to guardianship.—

(1) Where the Court is satisfied that it is for the welfare of a minor that an order should be made — (a) appointing a guardian of his person or property or both, or (b) declaring a person to be such a guardian the Court may make an order accordingly.

(2) An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed or declared by the Court.

(3) Where a guardian has been appointed by will or other instrument or appointed or declared by the Court, an order under this section appointing or declaring another person to be guardian in his stead shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provisions of this Act.

48. Section 9 of the Act, 1890 provides for the jurisdiction of the Court to entertain application.

49. Section 4(5) of the Act defines "Court as under:-

4. Definitions.— In this Act, unless there is something repugnant in the subject or context,—

(5) "the Court" means—

(a) the District Court having jurisdiction to entertain an application under this Act for an order appointing or declaring a person to be a guardian; or

(b) where a guardian has been appointed or declared in pursuance of any such application—

(i) the Court which, or the Court of the officer who, appointed or declared the guardian or is under this Act deemed to have appointed or declared the guardian; or

(ii) in any matter relating to the person of the ward the District Court having jurisdiction in the place where the ward for the time being ordinarily resides; or

(c) in respect of any proceeding transferred under section 4A, the Court of the officer to whom such proceeding has been transferred."

50. Section 10 provides for form of application, which reads as under:—

"10. Form of application.—

(i) If the application is not made by the Collector, it shall be by petition signed and verified in manner prescribed by the Code of Civil Procedure, 1882 (14 of 1882)1, for

the signing and verification of a plaint, and stating, so far as can be ascertained,—

(a) the name, sex, religion, date of birth and ordinary residence of the minor;

(b) where the minor is a female, whether she is married and if so, the name and age of her husband;

(c) the nature, situation and approximate value of the property, if any, of the minor;

(d) the name and residence of the person having the custody or possession of the person or property of the minor;

(e) what near relations the minor has and where they reside;

(f) whether a guardian of the person or property or both, of the minor has been appointed by any person entitled or claiming to be entitled by the law to which the minor is subject to make such an appointment;

(g) whether an application has at any time been made to the Court or to any other Court with respect to the guardianship of the person or property or both, of the minor and if so, when, to what Court and with what result;

(h) whether the application is for the appointment or declaration of a guardian of the person of the minor, or of his property, or of both;

(I) where the application is to appoint a guardian, the qualifications of the proposed guardian;

(j) where the application is to declare a person to be a guardian, the grounds on which that person claims;

(k) the causes which have led to the making of the application; and

(l) such other particulars, if any, as may be prescribed or as the nature of the application renders it necessary to state.

(2) If the application is made by the Collector, it shall be by letter addressed to the Court and forwarded by post or in such other manner as may be found convenient, and shall state as far as possible the particulars mentioned in sub-section (1).

(3) The application must be accompanied by a declaration of the willingness of the proposed guardian to act, and the declaration must be signed by him and attested by at least two witnesses."

51. Section 11 of the Act, 1890 provides for the procedure, on admission of application, which reads as under:—

"11. Procedure on admission of application.-

(1) If the Court is satisfied that there is ground for proceeding on the application, it shall fix a day for the hearing thereof and cause notice of

the application and of the date fixed for the hearing—

(a) to be served in the manner directed in the Code of Civil Procedure, 1882 (14 of 1882)1 on—

(i) the parents of the minor if they are residing in 2[any State to which this Act extends];

(ii) the person, if any, named in the petition or letter as having the custody or possession of the person or property of the minor;

(iii) the person proposed in the application or letter to be appointed or declared guardian, unless that person is himself the applicant, and

(iv) any other person to whom, in the opinion of the Court, special notice of the application should be given; and (b) to be posted on some conspicuous part of the Court-house and of the residence of the minor, and otherwise published in such manner as the Court, subject to any rules made by the High Court under this Act, thinks fit.

(2) The State Government may, by general or special order, re-quire that when any part of the property described in a petition under section 10, sub-section (1), is land of which a Court of Wards could assume the superintendence, the Court shall also cause a notice as aforesaid to be served on the Collector in whose district the minor ordinarily resides and on every Collector in whose district any portion of the land is situate, and the Collector may cause the notice to be published in any manner he deems fit.

(3) No charge shall be made by the Court or the Collector for the service or publication of any notice served or published under sub-section (2)."

52. Section 12 provides for power to make interlocutory order for production of minor and for interim protection of person or property of minor. Section 13 provides for hearing of the application and evidences on the date fixed before making an order.

53. Section 17 of the Act, 1890 provides for the matters to be considered by the Court in appointing or declaring the guardian.

54. Section 17 of the Act, 1890 reads as under:—

"17. Matters to be considered by the Court in appointing guardian.—

(1) In appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.

(2) In considering what will be for the welfare of the minor, the Court shall have regard to the age, sex and religion of the minor, the character

and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.

(3) If minor is old enough to form an intelligent preference, the Court may consider that preference.

(4) The Court shall not appoint or declare any person to be a guardian against his will."

55. Thus, from the aforesaid legal provisions of the Act, 1890, it is clear that as per Section 7, where the Court is satisfied that it is for the welfare of a minor that an order should be made appointing a guardian of his person or property or both, or declaring a person to be such a guardian, the Court may make an order accordingly. Section 8, however, specifically provides that an order shall not be made under Section 7, except on the application of (a) the person desirous of being, or claiming to be the guardian of the minor or (b) any relative or friend of the minor; or (c) the Collector of the District or other local area within which the minor ordinarily resides or in which he has property; or (d) the Collector having authority with respect to the class to which the minor belongs. Section 8, therefore, clearly provides that no order under Section 7 shall be passed except on an application by the person or authority as mentioned in clause (a) to (d). It shows the legislative intent to make the provision mandatory. In the case of Lachmi Narain v. Union of India, [(1976) 2 SCC 953], the Hon'ble Supreme Court held that if the provision is couched in prohibitive or negative language, it can rarely be directory, the use of peremptory language in a negative form is per se indicative of the intent that the provision is to be mandatory. In Nasiruddin v. Sita Ram Agarwal, [(2003) 2 SCC 577], the Hon'ble Supreme Court held that when negative words are used, the courts will presume that the intention of the legislature was that the provisions are mandatory in character.

56. The form of the application is to be as per Section 10, according to which if the application for appointment is not made by the Collector, it shall be by petition signed and verified in the manner prescribed by the Code of Civil Procedure, for the signing and verification of a plaint, and stating, so far as can be ascertained, the points/information as mentioned in Clauses (a) to (l). As per sub Section (3) the application must be accompanied by a declaration of the willingness of the proposed guardian to act, which declaration must be signed by the proposed guardian and attested by at least two witnesses. In the view of this Court, the above requirements of the application are with an object i.e, in the interest of the child, to secure his welfare. In Dhaninder Kumar v. Deep Chand, [1991 ALJ 25], the High Court of Allahabad followed the Division Bench in Narottam v. Tapesra, [1934 ALJ 652] and held that "a Judge is not authorized by law, in the absence of an application for appointment of a guardian to pass an order appointing the guardian of a minor. But, once an application has been filed in accordance with the provisions of Section 10, the jurisdiction of the court comes into play".

57. In the exercise of guardianship or custody jurisdiction, the welfare of the minor and minor alone is of paramount consideration. Its neither the rights of parents nor of anyone even under a statute. The court shall be guided generally by Section 17 of the Act, 1890 i.e. guided by what consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor, having regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property and if minor is old enough to form an intelligent preference, the Court will also give due weight to such preference.

58. In ABC v. State (NCT of Delhi) (2015) 10 SCC 1), the Hon'ble Supreme Court has held that in the matter of appointment or declaration of guardian of the minor, the Court is called upon to discharge its parens patriae jurisdiction. Upon a guardianship petition, being laid before the Court, the child concerned ceases to be in the exclusive custody of the parents; thereafter, until the attainment of majority, the child continues in curial curatorship. In Smriti Madan Kansagra v. Perry Kansagra (2020 SCC OnLine SC 887), the Hon'ble Supreme Court held that it is a well-settled principle of law that the courts while exercising parens patriae jurisdiction would be guided by the sole and paramount consideration of what would best subserve the interest and welfare of the child, to which all other considerations must yield. The welfare and benefit of the minor child would remain the dominant consideration throughout. In Laxmi Kant Pandey v. Union of India (1984) 2 SCC 244), the Hon'ble Supreme Court held that the welfare of the child takes priority above all else, including the rights of the parents.

59. In Nil Ratan Kundu v. Abhijit Kundu (2008) 9 SCC 413), it was held that it is the welfare of the minor and of the minor alone, which is the paramount consideration. In paragraph 52 of the case of Nil Ratan Kundu (supra), the Hon'ble Supreme Court summarised the principles of the custody of minor children, which reads as under:—

> "Principles governing custody of minor children:
>
> 52. In our judgment, the law relating to custody of a child is fairly well settled and it is this : in deciding a difficult and complex question as to the custody of a minor, a court of law should keep in mind the relevant statutes and the rights flowing therefrom. But such cases cannot be decided solely by interpreting legal provisions. It is a human problem and is required to be solved with human touch. A court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and well -being of the child. In selecting a guardian, the court is exercising parens patriae jurisdiction and is expected, nay bound, to give due weight to a child's ordinary

comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the court must consider such preference as well, though the final decision should rest with the court as to what is conducive to the welfare of the minor."

60. In ABC (supra), the Hon'ble Supreme Court has further held that as the intention of the Act is to protect the welfare of the child the applicability of Section 11 which is procedural would have to be read accordingly. There is no harm or mischief in relaxing its requirements to attain the intendment of the Act, if the child's welfare is in peril. Thus, it is also settled that the purely procedural provisions can be relaxed or even dispensed with, to attain the intendment of the Act, if there is no harm or mischief in relaxing those requirements, in the welfare of the child, which takes priority above all else. If by relaxing the procedural provision, the welfare of the child would be undermined or if the procedural law itself is intended for the welfare of the minor, such provisions are not to be relaxed.

61. The welfare of the minor is to be considered and determined by the Court with the proposed guardian; the factors under Section 17 of the Act, 1890 are to be considered generally. It involves adjudication by Court. In a pre litigation case, the Lok Adalat can pass an award only on the basis of settlement. It has no adjudicatory role and cannot decide the cases on merits. In Interglobe aviation Limited vs. N. Satchidanand (2011) 7 SCC 463), the Hon'ble Apex Court held that the Lok Adalat constituted under Section 19 of the Act has no adjudicatory functions or powers and it discharges purely conciliatory functions. In Estate Officer vs. Colonel H.V. Mankotia (Retired) (2021 SCC OnLine SC 898), the Hon'ble Supreme Court held that as per Sub Section (5) of Section 19 of the Act, 1897, the Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute. The Lok Adalat has no jurisdiction at all to decide the matter on merits. Consequently, in our view, Lok Adalat cannot pass award on settlement in cases which necessarily involves adjudication. The law therefore, does not contemplate appointment of guardian of minor by agreement between parties.

62. Further, the jurisdiction to appoint guardian of a minor is parens patriae jurisdiction, which literally means parent of the country and refers traditionally to the role of the State as a sovereign and guardian of persons under legal disability. When the court exercises the power as parens patriae, it means that the court has to act as parent or guardian of the person under legal disability. In the case of Charan Lal Sahu v. Union of India, [(1990) 1 SCC 613], the Hon'ble Supreme Court has held as under:—

"35. There is the concept known both in this country and abroad,

called parens patriae. Dr. B.K. Mukherjea in his "Hindu Law of Religious and Charitable Trust", Tagore Law Lectures, Fifth Edition, at page 404, referring to the concept of parens patriae, has noted that in English law, the Crown as parens patriae is the constitutional protector of all property subject to charitable trusts, such trusts being essentially matters of public concern. Thus the position is that according to Indian concept parens patriae doctrine recognized King as the protector of all citizens and as parent. In Budhkaran Chaukhani v. Thakur Prosad Shah, [AIR 1942 Cal 331 : (1941-42) 46 CWN 425] the position was explained by the Calcutta High Court at page 318 of the report. The same position was reiterated by the said High Court in Banku Behary Mondal v. Banku Behary Hazra, [AIR 1943 Cal 203 : (1942-43) 47 CWN 89] at page 205 of the report. The position was further elaborated and explained by the Madras High Court in Medai Dalavoi T. Kumaraswami Mudaliar v. Medai Dalavoi Rajammal, [AIR 1957 Mad 563 : (1957) 2 Mad LJ 211] at page 567 of the report. This Court also recognized the concept of parens patriae relying on the observations of Dr. Mukherjea aforesaid in Ram Saroop v. S.P. Sahi, [1959 Supp (2) SCR 583 : AIR 1959 SC 951] at pages 598 and 599. In the "Words and Phrases" Permanent Edition, Vol. 33 at page 99, it is stated that parens patriae is the inherent power and authority of a legislature to provide protection to the person and property of persons non sui juris, such as minor, insane, and incompetent persons, but the words parens patriae meaning thereby "the father of the country , were applied originally to the King and are used to designate the State referring to its sovereign power of guardinaship over persons under disability. (emphasis supplied) Parens patriae jurisdiction, it has been explained, is the right of the sovereign and imposes a duty on sovereign, in public interest, to protect persons under disability who have no rightful protector. The connotation of the term parens patriae differs from country to country, for instance, in England it is the King, in America it is the people, etc. The Government is within its duty to protect and to control persons under disability. Conceptually, the parens patriae theory is the obligation of the State to protect and takes into custody the rights and the privileges of its citizens for discharging its obligations. Our Constitution makes it imperative for the State to secure to all its citizens the rights guaranteed by the Constitution and where the citizens are not in a position to assert and secure their rights, the State must come into picture and protect and fight for the rights of the citizens. The Preamble to the Constitution, read with the Directive Principles, Articles 38, 39 and 39-A enjoin the State to take up these responsibilities. It is the protective measure to which the

social welfare state is committed. It is necessary for the State to ensure the fundamental rights in conjunction with the Directive Principles of State Policy to effectively discharge its obligation and for this purpose, if necessary, to deprive some rights and privileges of the individual victims or their heirs to protect their rights better and secure these further. Reference may be made to Alfred L. Snapp & Son, Inc. v. Puerto Rico, [73 L.Ed.2d 995 : 458 US 592 (1982) : 102 SCR 3260] in this connection. There it was held by the Supreme Court of the United States of America that Commonwealth of Puerto Rico have standing to sue as parens patriae to enjoin apple growers' discrimination against Puerto Rico migrant farm workers. This case illustrates in some aspect the scope of parens patriae. The Commonwealth of Puerto Rico sued in the United States District Court for the Western District of Virginia, as parens patriae for Puerto Rican migrant farmworkers, and against Virginia apple growers, to enjoin discrimination against Puerto Ricans in favour of Jamaican workers in violation of the Wagner-Peyser Act, and the Immigration and Nationality Act. The District Court dismissed the action on the ground that the Commonwealth lacked standing to sue, but the Court of Appeal for the Fourth Circuit reversed it. On certiorari, the United States Supreme Court affirmed. In the opinion by White, J., joined by Burger, C.J. and Brennan, Marshall, Blackmun, Rehnquist, Stevens, and O'Connor, JJ., it was held that Puerto Rico had a claim to represent its quasi-sovereign interests in federal court at least which was as strong as that of any State, and that it had parens patriae standing to sue to secure its residents from the harmful effects of discrimination and to obtain full and equal participation in the federal employment service scheme established pursuant to the Wagner-Peyser Act and the Immigration and Nationality Act of 1952. Justice White referred to the meaning of the expression parens patriae. According to Black's Law Dictionary, 5 edn. 1979, page 10003, it means literally "parent of the country and refers traditionally to the role of the State as a sovereign and guardian of persons under legal disability. Justice White at page 1003 of the report emphasised that the parens patriae action had its roots in the common law concept of the "royal prerogative". The royal prerogative included the right or responsibility to take care of persons who were legally unable, on account of mental incapacity, whether it proceeds from nonage, idiocy or lunacy to take proper care of themselves and their property. This prerogative of parens patriae is inherent in the supreme power of every state, whether that power is lodged in a royal person or in the legislature and is a most beneficent function. After discussing several cases Justice White observed at page

1007 of the report that in order to maintain an action, in parens patriae, the State must articulate an interest apart from the interests of particular parties, i.e. the State must be more than a nominal party. The State must express a quasi-sovereign interest. Again an instructive insight can be obtained from the observations of Justice Holmes of the American Supreme Court in the case of State of Georgia v. Tennessee Copper Co., [51 L.Ed. 1038 : 206 US 230 (1906) : 27 SCR 618], which was a case involving air pollution in Georgia caused by the discharge of noxious gases from the defendant's plant in Tennesee. Justice Holmes at page 1044 of the report described the State's interest as follows: "This is a suit by a State for an injury to it in its capacity of quasi-sovereign. In that capacity the State has an interest independent of and behind the titles of its citizens, in all the earth and air within its domain. It has the last word as to whether its mountains shall be stripped of their forests and its inhabitants shall breathe pure air. It might have to pay individuals before it could utter that word, but with it remains the final power…. … When the States by their union made the forcible abatement of outside nuisances impossible to each, they did not thereby agree to submit to whatever might be done. They did not renounce the possibility of making reasonable demands on the ground of their still remaining quasi-sovereign interests…"

63. Now it is apt to refer Section 19 of the Act, 1987 which provides for organization of Lok Adalat and reads as under:

> Section 19 in The Legal Services Authorities Act, 1987 19. Organisation of Lok Adalats.—
>
> (1) Every State Authority or District Authority or the Supreme Court Legal Services Committee or every High Court Legal Services Committee or, as the case may be, Taluk Legal Services Committee may organise Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit.
>
> (1) Every State Authority or District Authority or the Supreme Court Legal Services Committee or every High Court Legal Services Committee or, as the case may be, Taluk Legal Services Committee may organise Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit."
>
> (2) Every Lok Adalat organised for an area shall consist of such number of—
>
> (a) serving or retired judicial officers; and
>
> (b) other persons, of the area as may be specified by the State Authority or the District Authority or the Supreme Court Legal Services

Committee or the High Court Legal Services Committee, or as the case may be, the Taluk Legal Services Committee, organising such Lok Adalat.

(3) The experience and qualifications of other persons referred to in clause (b) of sub-section (2) for Lok Adalats organised by the Supreme Court Legal Services Committee shall be such as may be prescribed by the Central Government in consultation with the Chief Justice of India.

(4) The experience and qualifications of other persons referred to in clause (b) of sub-section (2) for Lok Adalats other than referred to in sub-section (3) shall be such as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

(5) A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of—

(i) any case pending before; or

(ii) any matter which is falling within the jurisdiction of, and is not brought before, any court for which the Lok Adalat is organized Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law."

64. Section 19(5) of the Act, 1987 clearly provides for the jurisdiction of the Lok Adalat in respect of any case pending before any Court for which the Lok Adalat is organized and also with respect to any matter which is falling within the jurisdiction of and is not brought before any court for which the Lok Adalat is organized. The dispute in respect of second kind of cases before the Lok Adalat is the pre-litigation case. However, there is no jurisdiction in Lok Adalat in respect of any case or matter relating to an offence not compoundable under any law.

65. In Karuturi Satyanarayana (supra), this court, held that Section 19(5)(ii) requires a pre-litigation case to be heard by Lok Adalat organized for the court which had jurisdiction to hear the matter had it been instituted. The reference of a case which is yet to be brought before the Court can only be to a Lok Adalat which is organized for such Court. In Karuturi Satyanarayana (supra), the subject matter of the complaint before the Lok Adalat was with regard to the declaration of a guardian for the children. This Court held that such declaratory relief did not fall within the realm of the Lok Adalat. However, it was further observed that even if the matter was entertained by Lok Adalat it ought to have been referred to the Lok Adalat constituted for a District Court and as the Lok Adalat passing the award was not organized for a District Court, but was presided over by the IV Additional Junior Civil Judge, the award was held to be non est in the eye of law, null and void for want of jurisdiction.

66. It is apt to refer para Nos.38 and 39 of Karuturi Satyanarayana (supra) as under:

"38. In the present case also, the subject matter of the complaint before the Lok Adalat was with regard to the declaration of a guardian for the children. Such a declaratory relief did not fall within the realm of the Lok Adalat and at that, upon a petition filed by the paternal grandparents portraying themselves as the guardians of the children against their natural guardian. This aspect was completely overlooked by the Lok Adalat.

39. Even if entertained, the case ought to have been referred to the Lok Adalat constituted for a District Court. Though such a Lok Adalat was constituted and heard MVOPs the present case was referred to the other Bench which was not organized for a District Court, Ergo, the Lok Adalat presided over by the IV Additional Junior Civil Judge, Rajahmundry, had not jurisdiction as per Section 19(5)(ii) of the Act of 1987 and the Award passed by the said Lok Adalat is non est in the ye of law. It is null and void for want of jurisdiction."

67. In the present case there was no application for appointment of the guardian. The application was only for maintenance. In view of Sections 7 and 8 of the Act, 1890, no order for appointment of a guardian can be passed without an application by the proposed guardian which application must comply with the conditions of Section 10. Infact, the matter for appointment of guardian was not the subject matter before the Lok Adalat. The Lok Adalat was not presided over by the District Judge/ Additional District Judge. No award could be passed on the basis of the settlement or compromise between the parties for appointment of guardian.

68. The submission of the learned counsel for the petitioner that the compromise/settlement was not signed voluntarily but was under threat and compulsion, deserves rejection. The signing of the settlement is admitted to the petitioner. Whether there was threat or compulsion is a disputed question of fact which cannot be gone into in the writ proceedings. The settlement is signed by the petitioner, the other parties, the petitioner's superior officers and the respective counsel of the parties. The award is not open to challenge on this ground.

69. Learned counsel for respondents submitted that the petitioner by signing the award before the Lok Adalat without raising any objection to its jurisdiction, consented to the jurisdiction of the Lok Adalat and now he cannot challenge the award as without jurisdiction. This submission deserves rejection. It is well settled that consent cannot confer jurisdiction when there is lack of inherent jurisdiction. In Sushil Kumar Metha vs. Gobind Ram Bohra (1990(1) SCC 193), the Hon'ble Apex Court held that if the court inherently lacks jurisdiction consent cannot confer jurisdiction. Further, reference is to the case of Sarup Singh and others vs. Union of India (UOI) and others (AIR 2011 SC 514), wherein the Hon'ble Apex Court held in para No.20, as under:

"20. The aforesaid position is well-settled and not open for any dispute as the defect of jurisdiction strikes at the very root and authority of the court to pass decree which cannot be cured by consent or waiver of the parties. This court in several decisions has specifically laid down that validity of any such decree or order could be challenged at any stage. In Union of India v. Subbe Ram and ors., reported in MANU/SC/1433/1997: (1997) 9SCC 69 this Court held thus:

5. (…) here is the case of entertaining the application itself; in other words, the question of jurisdiction of the court. Since the appellate court has no power to amend the decree and grant the enhanced compensation by way of solatium and interest under Section 23(2) and proviso to Section 28 of the Act, as amended by Act 68 of 1984, it is a question of jurisdiction of the court. Since courts have no jurisdiction, it is the settled legal position that it is a nullity and it can be raised at any stage."

70. In Balla Veera Venkata Satyanarayana @ Sathi Babu vs. State of Andhra Pradesh (DB) (2020(1) Andh LD 527), upon which learned counsel for the respondents placed reliance is of no help to them as in that case, this Court found that the award was perfectly valid under law and was passed by Lok Adalat having jurisdiction. Whereas, in the present case, we find that the Lok Adalat has passed the award without jurisdiction with respect to appointment of the guardian of the minor.

71. Kataru Anjamma (supra), upon which reliance is placed by the respondents counsel is also not a case of the Award having been passed by Lok Adalat without jurisdiction and is of no help to the respondents.

72. We, therefore, hold as under:

1) The award of the Lok Adalat can be challenged only by way of writ petition under Article 226/227 of the Constitution of India on limited grounds.

2) When such a challenge is made, it is for the High Court to determine if a particular ground of challenge falls within the limited grounds or not and if on such a ground, the discretionary writ jurisdiction should or should not be invoked, on consideration of various factors also keeping in view that the Lok Adalat award is final and binding between the parties, at par the consent decree and is executable as a decree of the Court against which the legislature did not provide for any statutory remedy.

3. The exercise of writ jurisdiction of the High Court under Article 226/227 of the Constitution of India cannot be restricted to a particular ground only. The award of the Lok Adalat can be challenged by way of writ petition, also on a ground, other than violation of the procedural provisions under Section 20 of the Legal Services Authorities Act, 1987 and then it is for the High Court to determine if

such a ground is one of the limited grounds or not.

4. Regulation 12(3) of the Regulations, 2009 is to be considered in the above manner, as no limitation can be placed on the power of the High court in exercise of its writ jurisdiction by regulations.

5. The inherent lack of jurisdiction in the Lok Adalat to pass the award is one of the limited grounds of challenge.

6. The Lok Adalat has no jurisdiction in the matters of appointment of guardian of a minor as it involves the determination of the welfare of the minor with the proposed guardian, keeping in view various factors, including those in Section 17 of the Guardians and Wards Act, 1890, and as the Lok Adalats do not have adjudicatory power to determine such an issue on merits.

7. In the matter of appointment of guardian of a minor, the court exercises its parens patriae jurisdiction which cannot be left in the hands of the litigating parties to settle or compromise. Even if there is an agreement between parties such an agreement would require adjudication by the court to satisfy if the welfare of the minor is secured by such agreement on the ambit of Section 17 of the Act, 1890 and other settled principles.

73. The award of the Lok Adalat to the extent of appointment of guardianship of the minors in favour of the 2nd respondent and after her in favour of R. Venkateswara Rao is without jurisdiction and is also not as per the provision of law under the Act, 1890. It is a nullity and not binding on the petitioner to that extent. The impugned award of the Lok Adalat only to the extent of appointment of guardian of respondents 4 and 5 is hereby quashed.

74. The petitioner is the natural guardian being father of the minor respondents 4 and 5. However, the parties are at liberty, if so require, to seek the remedy for appointment of guardianship of the minors, or for their custody, before competent court of law, in accordance with law.

75. Writ petition is allowed in part. No order as to costs.

Consequently, Miscellaneous Petitions, if any pending shall stand closed.

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2022(1) L.S. 254 (A.P.)

IN THE HIGH COURT OF
ANDHRA PRADESH

Present
The Hon'ble Mr.Justice
Ninala Jayasurya

Lakkapamula Rani ...Petitioner
Vs.
Manda Batasari ..Respondents

INDIAN EVIDENCE ACT, Sec. 45 - Civil Revision Petition preferred by Petitioner/Defendant aggrieved by Orders passed in I.A. in Suit - Respondent/Plaintiff filed the suit seeking Specific Performance of an Agreement of Sale - In the written statement a plea was taken that the Agreement of Sale was fabricated by forging the signatures of the Petitioner and her husband - After the completion of the Respondent's/Plaintiff's arguments in the said suit and when the matter came up for Petitioner's/ defendant's arguments, I.A. was filed by the under Section 45 of the Indian Evidence Act R/w Section 151 of the Code of Civil Procedure seeking a direction to send Ex.A.1 agreement of sale and the papers on which the signatures of the petitioner would be taken in open Court and other documents containing her signatures i.e., the suit summons, vakalat, postal acknowledgement, written statement etc., to the Government Handwriting Expert for comparison of the said signatures and to give expert's opinion – Trial Court dismissed the I.A. - Hence, the present Civil Revision Petition.

HELD: Direction sought, for referring the documents to expert for opinion for comparison of signatures cannot be granted in the light of the expression of this Court in P.Padmanabhaiah vs. G.Srinivasa Rao - There is no point in sending to an expert the documents of doubtful nature and character and add one more piece of unreliable evidence and burden the record by wasting the time and money of the parties – Civil Revision stands dismissed.

Mr.Ch.B.R.P.Sekhar, Advocate for the Petitioner
Smt.Santhi Sree Vallabhaneni, Advocate for Respondents.

O R D E R

The present Civil Revision Petition is filed aggrieved by the Orders passed in I.A.No.268 of 2021 in O.S.No.244 of 2014 on the file of the Senior Civil Judge, Nuzvid, Krishna District.

2.Heard the learned counsel for the petitioner Mr.Ch.B.R.P. Sekhar and the learned counsel for the respondent Smt.Santhi Sree Vallabhaneni.

3.The petitioner herein is the defendant in the above referred suit.

The respondent/plaintiff filed the above

CRP.NO.1361/2021 DATE: 23.03.2022

said suit seeking Specific Performance of an Agreement of Sale dated 20.01.2014 and for other reliefs. In the written statement a plea was taken that the Agreement of Sale was fabricated by forging the signatures of the petitioner/defendant and her husband. After the completion of the respondent's/ plaintiff's arguments in the said suit and when the matter is coming up for petitioner's/ defendant's arguments, I.A.No.268 of 2021 was filed by the petitioner/defendant under Section 45 of the Indian Evidence Act R/ w Section 151 of the Code of Civil Procedure seeking a direction to send Ex.A.1 Agreement of Sale dated 20.01.2014 and the papers on which the signatures of the petitioner/defendant would be taken in open Court and other documents containing her signatures i.e., the suit summons, vakalat, postal acknowledgement, written statement etc., to the Government Handwriting Expert for comparison of the said signatures and to give expert's opinion. The said application was resisted by the respondent/plaintiff by filing a counter. The learned Senior Civil Judge after considering the matter, by an order dated 07.10.2021 dismissed the said application. Hence, the present Civil Revision Petition.

4.The learned counsel for the petitioner, inter alia, contended that the alleged Agreement of Sale was executed on 20.01.2014 and the suit was filed on 21.07.2014 and thereafter written statement was immediately filed on 05.09.2014. He submits that a specific plea was taken in the written statement that the alleged Agreement of Sale is a forged document, not executed by the petitioner/defendant. He submits that in the light of the said categorical stand of defence, it is all the more appropriate to refer the alleged Agreement of Sale for expert's opinion, so that the truth would come out. He submits that no prejudice would be caused to the respondent/plaintiff as the signatures would be taken in the open Court and the same would be sent along with the other documents which are already available before the Court i.e., suit summons, vakalat, written statement, postal acknowledgements for comparison to the expert. He further submits that the report of the expert on comparing the signatures on the documents referred to him would aid the Court in evaluation of evidence and in the event of any adverse opinion, it would be open to the aggrieved party to challenge the same. He submits that the learned Senior Civil Judge instead of considering the application in the correct perspective went wrong in dismissing the same, on the ground that the same was not filed at an appropriate stage, but belatedly after completion of the arguments of the respondent/plaintiff, which is totally unsustainable. He submits that it is settled Law that an application seeking expert's opinion under Section 45 of the Indian Evidence Act can be filed at any stage of the Trial, even after conclusion of the arguments and ignoring the said aspect, the learned Trial Court had dismissed the I.A, which constitutes failure to exercise jurisdiction vested in it. He submits that mere delay cannot be a ground for rejecting the application seeking expert's opinion and the learned Trial Court, in the event was of the opinion that there was delay, the same should have been condoned by imposing costs. Making the said

submissions, the learned counsel seeks setting aside of the Order of the learned Trial Court and prays for allowing the Civil Revision Petition.

5.On the other hand, the learned counsel for the respondent/plaintiff refuted the submissions made on behalf of the petitioner. She submits that the Order of the learned Trial Court is well considered and based on sound reasoning. She submits that as rightly observed by the learned Trial Court, the petitioner/defendant was dragging on the matter without advancing the arguments and took as many as six adjournments for arguments on behalf of the petitioner/defendant. She submits that instead of proceeding with the arguments, the petitioner/defendant came up with the above I.A only with a view to prolong the disposal of the suit, with evil motives. While submitting that the learned Trial Court had assigned cogent reasons for rejection of the I.A filed by the petitioner/defendant and the Order does not suffer from any perversity or irregular exercise of jurisdiction she submits that there are no valid grounds calling for interference by this Court.

6.This Court has considered the submissions made by the learned counsel for both sides. On a scrutiny of the contentions, the point that falls for consideration by this Court is as to whether the Order of the Trial Court dismissing the application under Section 45 of the Indian Evidence Act is justified in the facts and circumstances of the case?

7.As seen from the pleadings available on record with reference to the plaint averments and the relief sought, the petitioner/defendant filed her written statement denying the execution of the Agreement of Sale dated 20.01.2014. It is her case that the said Agreement was fabricated by forging the signatures of the petitioner/defendant. To substantiate her stand, the petitioner/defendant sought for sending all the signatures obtained in the open Court along with the suit summons, vakalat, written statement etc., for comparison to the expert. However, the said application was dismissed primarily on the premise that the application was filed after closure of plaintiff's arguments and the matter is coming up for arguments of the defendants and was adjourned more than six times. In so far as the said view of the learned Trial Court with regard to the delay is concerned, the same cannot be accepted.

8.Though the Order under Revision is liable for interference on that score, the direction sought, for referring the documents to expert for opinion for comparison of signatures cannot be granted in the light of the expression of this Court in **P.Padmanabhaiah vs. G.Srinivasa Rao** C.R.P.No.2121 of 2016 dt.07.12.2016, wherein the learned Judge dealt with a matter regarding an application of the defendant in the suit to send the vakalat and written statement containing her signatures along with the promissory note to handwriting expert for comparison of signatures of the petitioner/defendant on the vakalat and written statement with the signatures said to be of him and furnish a report with opinion as to the genuineness or otherwise of the disputed signatures on the exhibits. The

learned Judge while interfering with the orders of the Trial Court in allowing the application, had dealt with the matter with reference to comparison of signatures on vakalat and written statement with the disputed documents and inter alia, held as follows:-

> "In the well considered view of this Court, the defendants signatures on the Vakalat and the Written Statement cannot be considered as signatures of comparable and assured standard as according to the plaintiff even by the date of the filing of the vakalat the defendant is clear in his mind about his stand in regard to the denial of his signatures on the suit promissory note and the endorsement thereon and as the contention of the plaintiff that the defendant might have designedly disguised his signatures on the Vakalat and the Written Statement cannot be ruled out prima facie. The view point being projected by the plaintiff that if the defendant is called upon to furnish his signatures in open Court, he might designedly disguise his signatures while making his signatures on papers in open court is also having considerable force and merit. Unless the defendant makes available to the Court below any documents, with his signatures, of authentic and reliable nature more or less of a contemporaneous period, and unless such documents are in turn made available to the expert along with the suit promissory note, the expert will not be in a position to furnish an assured opinion, in the well considered view of this Court There is no point in sending to

an expert the documents of doubtful nature and character and add one more piece of unreliable evidence and burden the record by wasting the time and money of the parties. When there are no signatures of comparable and assured standard on the material record before the trial Court, it is unsafe to obtain the signatures of the defendant in open Court and send the said signatures and also his vakalat and written statement to an expert for obtaining his opinion after comparison of the signatures thereon with the disputed signatures on the suit promissory note, as any such opinion obtained from a handwriting expert on such material is not going to be of any help to the trial Court in effectively adjudicating the lis more particularly in the light of the admitted legal position that expert's opinion evidence as to handwriting or signatures can rarely, if ever, take the place of substantive evidence."

9.In the light of the above well considered view of the learned Judge, this Court is not inclined to interfere with the order passed by the learned Trial Judge, though the view taken with regard to stage of filing of the application is contrary to the judgment of the Full Bench in **Bande Siva Shankara Srinivasa Prasad vs. Ravi Surya Prakash Babu** 2016(2) ALT 248. The Civil Revision Petition therefore fails and the same is liable to be dismissed.

10.Accordingly, the Civil Revision Petition is dismissed. No order as to costs.

As a sequel, miscellaneous applications, if any, pending shall stand closed.

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2022(1) L.S. 258 (A.P.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present
The Hon'ble Mr.Justice
R. Raghunandan Rao

Anaparthi Satyanarayana ..Petitioner
Vs.
Majeti Panduranga Rao
& Ors., ..Respondents

CIVIL PROCEDURE CODE, Or.34, Rule 11 - USURIOUS LOANS ACT, 1918 - Appeal against Judgment and preliminary Decree passed by the Trial Court - Plaintiff filed a suit for recovery of some amount - 1st defendant and her husband had borrowed a sum of money from the plaintiff - Money was to be repaid with interest @ 30% p.a. compounded on a yearly basis - As security for repayment of the money, Defendants created a mortgage, in favour of the Plaintiff, on the plaint schedule property - Thereafter, the 1st Defendant and her husband repaid a certain sum of towards part payment of principal and interest and thereafter, defaulted in repayment of the debt - 1st defendant sold the mortgaged suit schedule property to the 2nd defendant - After purchasing the property, 2nd defendant called on the plaintiff to bring the title deeds of the plaint schedule property and receive the remaining debt amount from the 2nd defendant - 2nd defendant did not make any payment despite the Plaintiff having approached the 2nd defendant, for receiving the said payment, promised by the 2nd defendant - As the defendants had not paid the amount due to the Plaintiff, he filed suit, against the 1st and 2nd defendants for recovery - 2nd defendant passed away during the pendency of the suit and his legal heirs, defendants 3 to 6 were impleaded as Defendants in the suit.

HELD: Even in cases where the rate of interest is fixed in the contract, it would be open to the Court to vary the rate of contract from the date of the suit till the date of recovery of the amount - Contractual rate of interest is 30% p.a compounded annually and contract was drawn up in the year 1992 and the suit has been filed in the year 1997 - Permitting the said rate of interest would result in the debt being multiplied - Keeping in view the passage of time since the suit has been filed, it would be appropriate to reduce the interest rate substantially – A rate of 14% p.a., compounded annually, would be equitable and fair to both sides - Judgment and preliminary Decree under appeal is modified to the extent of calculating and collecting interest at the rate of 14% per annum, compounded annually, from the date of the filing of the suit till payment - Appeal stands partly allowed.

A.S.No.666/2000 Date: 25-3-2022

Mr.N. Vijay, Advocate for the Appellant.
Mr.E.V.V.S. Ravi Kumar, Advocate for the Respondents..

O R D E R

The parties in the present appeal are referred as they are arrayed in the suit. The plaintiff filed a suit for recovery of Rs.2,63,832/- with subsequent interest at 30% p.a., compounded on a yearly basis.

2. The case of the plaintiff is:

A. The 1st defendant and her husband had borrowed a sum of Rs.90,000/- from the plaintiff on 08.09.1992. This money was to be repaid with interest @ 30% p.a. compounded on a yearly basis. As security for repayment of the said money, the defendants created a mortgage, in favour of the plaintiff, on the plaint schedule property. Thereafter, the 1st defendant and her husband repaid a sum of Rs.24,000/- on 05.01.1993 towards part payment of principal and interest and had thereafter, defaulted in repayment of the debt.

B. The husband of the 1st defendant, after some time, passed away. The 1st defendant sold the mortgaged suit schedule property to the 2nd defendant. After purchasing the property, the 2nd defendant called on the plaintiff to bring the title deeds of the plaint schedule property and receive the remaining debt amount from the 2nd defendant. However, the 2nd defendant did not make any payment despite the plaintiff having approached the 2nd defendant, for receiving the said payment, promised by the 2nd defendant.

C. As the defendants had not paid the amount due to the Plaintiff, he filed O.S. No.55 of 1997, in the court of Senior Civil Judge, Pithapuram against the 1st and 2nd defendants for recovery of Rs.2,63,832/- with subsequent interest @ 30% p.a. compounded on a yearly basis, against the defendants. The 2nd defendant passed away during the pendency of the suit and his legal heirs, defendants 3 to 6 were impleaded as defendants in the suit.

3. The defendants contested the suit by filing a written statement. In the written statement, the defendants do not appear to have disputed the loan transaction or the mortgage of the property. However, the defendants claimed that the 3rd defendant had obtained two demand drafts for Rs.45,000/- and sought to deliver these two demand drafts along with cash of Rs.75,000/- for a full and final settlement of the deed. As the plaintiff insisted for payment of interest calculated at 30% p.a. compounded interest from the date of mortgage, the debt could not be cleared. The defendants also took the stand that interest @ 30% compounded annually is usurious as per A.P. Act 26 of 1961 and the plaintiff cannot claim more than 18% p.a. as defendants are agriculturists and further, the receipt issued by the plaintiff in the monies paid by the 1st defendant on 05.01.1993 demonstrates that the rate of interest was only 24% p.a. and not 30% p.a.

4. On the basis of these pleadings, the trial Court framed the following issues:

1. Whether the interest claimed is usurious?

2. Whether the plaintiff demanded 30% compound interest when D.3 approached him with Rs.75,000/- on 03.07.1997?

3. Whether the defendants 3 to 6 are entitled to the benefits of Act 4/38?

4. To what relief?

5. After a trial in the matter, the trial Court decided all the three issues in favour of the plaintiff and passed a preliminary decree, dated 11.10.1999 in the suit as prayed for.

6. Aggrieved by the said judgment and preliminary decree dated 11.10.1999, the 3rd defendant filed the present appeal.

7. Heard Sri N.Vijay, learned counsel for the appellant and Sri E.V.V.S.Ravi Kumar, learned counsel for the defendants.

8. A perusal of the case papers including the judgment and preliminary decree would show that there is no real dispute as to the fact that the 1st defendant and her late husband had borrowed Rs.90,000/- and had executed a deed of mortgage giving the suit schedule property as security for repayment of the debt along with interest @ 30% compounding annually.

9. The only issue that remains before this Court is whether the plaintiff is entitled to recovery of the unpaid principal amount along with interest @ 30% p.a compounded annually. There is no dispute that the said rate of interest had been stipulated in the contract of mortgage.

10. Sri N.Vijay learned counsel, appearing for the appellant would submit that the aforesaid rate of interest @ 30% p.a. compounded annually is clearly usurious and an unfair rate of interest which cannot be permitted.

11. The power of the Court to alter the contractual rate of interest in a mortgage suit had come up for consideration before the Privy Council in Jagannath Prasad Singh Vs Surajmal Jalal (AIR 1927 Privy Council page-1). The Privy Council took the view that the rate of interest fixed in a contract cannot be altered as long as it remains within the domain of contract law. However, once a decree is passed, the matter moves out of the domain of contract law to that of judgment and the rights of the mortgagee will depend, not on the contents of his bond, but the directions in the decree. On that basis, it was understood that even though the Court would not alter the rate of interest prior to the filing of the suit or passing of judgment, the rate of interest could be altered from the date fixed for redemption onwards.

12. After this judgment had been delivered, a new Rule 11 was introduced in order XXXIV of C.P.C, by way of an amendment in 1929. The relevant part of Rule 11, reads as follows:

> “Rule 11. Payment of interest—in any decree passed in a suit for foreclosure, sale or redemption, where interest is legally recoverable, the court may order payment of interest to the mortgagee as follows, namely:-”

The Federal Court in the case of Jaigobind Singh and Others Vs Lakshmi Narain Ram & Others (AIR 1940 Federal Court Page 20), taking into consideration Order XXXIV Rule 11 of C.P.C, had held as follows:

By Act XXI of 1929, Or. 34 was amended, and a new Rule 11, was inserted, which deals specially with interest, and provides that the Court "may" order payment of interest to the mortgagee up to the date fixed for payment at the rate payable on the principal. It follows that this special provision, which removes any conflict that there might have been between sec. 34 and Or, 34, rr. 2 and 4, gives a certain amount of discretion to the Court, so far as interest pendente lite and subsequent interest are concerned. It is no longer absolutely obligatory on the Courts to decree interest at the contractual rate up to the date of redemption in all circumstances, if there be no question of the rate being penal, excessive or substantially unfair within the meaning of the Usurious loans Act, 1918. See Sripat Singh v. Naresh Chandra Bose [A.I.R. [1932] Pat. 332 at p. 334: s.c. 140 I.C. 104.], although in this case when considering Or. 34, r. 2, the Privy Council case of Jagannath Prosad Singh Chowdhury v. Surajmul Jalal [L.R. 54 I.A. 1 : s.c. 31 C.W.N. 390 (1926).] was overlooked. In Jagadish Jha v. Aman Khan [[1939] F.L.J. 7 at p. 9: C.W.N. 1910 F.B. 12.] interest after the institution of the suit was ordered by this Court to be paid at the rate of 6 per cent. per annum on the principal amount till the date fixed for payment. In my opinion the view then taken as to the power of a Court to reduce interest pendente lite was not contrary to law.

This Judgment was followed and affirmed by the Hon'ble Supreme Court in Soli Pestonji Majoo and Others Vs Gangadhar Khomka (AIR 1969 SC 600).

13. The erstwhile High Court of A.P in Sri Panduranga Traders Vs. State Bank of India (2003) 3 ALD 294 (DB) and Andhra Bank Vikarabad Vs Manneguda Polishing Stones Industries, 5while considering a similar issue relating to a loan given by a bank had held that the Court has discretion to modulate interest pendente lite and post decree.

14. In view of the foregoing decisions, it is clear that even in cases where the rate of interest is fixed in the contract, it would be open to the Court to vary the rate of contract from the date of the suit till the date of recovery of the amount.

15. In the present case, the contractual rate of interest is 30% p.a compounded annually. The contract was drawn up in the year 1992 and the suit has been filed in the year 1997. Permitting the said rate of interest would result in the debt being multiplied. Further, the rate of 30% p.a is not being charged as a simple interest, but is being compounded on an annual basis. In the circumstances, keeping in view the passage of time since the suit has been filed, it would be appropriate to reduce the interest rate substantially.

16. To the mind of this Court, a rate of 14% p.a., compounded annually, would be equitable and fair to both sides. The

judgment and preliminary decree under appeal is modified to the extent of calculating and collecting interest at the rate of 14% per annum, compounded annually, from the date of the filing of the suit till payment. The contractual rate of interest of 30%, compounded annually, shall be applied only till the date of the filing of the suit.

17. Accordingly, the appeal is partly allowed. There shall be no order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

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2022(1) L.S. 262 (A.P.) (D.B.)

IN THE HIGH COURT OF ANDHRA PRADESH

Present
The Hon'ble Mr.Justice
C. Praveen Kumar &
The Hon'ble Dr.Justice
K. Manmadha Rao

Shaik Khasim & Ors., ..Petitioners
Vs.
The State of A.P. ..Respondent

(INDIAN) PENAL CODE, Secs. 302 r/w Sections 34, 379 and 201 r/w. Sec.34 - A.1 to A.3 in Sessions Case preferred instant appeal against the Judgment of the Sessions Court, whereby, A1 to A3 were guilty of all the charges – It was alleged that A.1 beat deceased with a stick on the head while A.2 and A.3 tried a rope around the neck of the deceased.

HELD: Investigating Officer, in his evidence admits that though he claims to have taken the signatures of the accused and mediators on the property seized by him, he did not mention the same in the mediators report and affixing slips on the properties - As the mandatory requirement as contemplated in Criminal Rules of Practice is not followed and as there is a doubt with regard to the seizure of gold ornaments, the same cannot be accepted as proved

When the two circumstances namely extra-judicial confession leading to discovery of body and the recovery of articles from A.1 are not proved beyond doubt, the only circumstance namely the accused being last seen with the company of the deceased may not be sufficient to convict the accused - Circumstance of last seen by itself cannot inculpate the accused, unless the case is seen in its entirety - Not safe to convict the accused basing on the theory of last seen, when the accused and the deceased are friends who used to consume alcohol everyday evening - Criminal stands allowed - Conviction and sentence recorded against the Appellants/A.1 to A.3 in the Judgment of Sessions Case stand set aside.

Mr.T. Pradyumnakumar Reddy, Learned Senior Counsel for G. Vijaya Saradhi, Learned Counsel, Advocate for the Appellants.
Mr.S. Dushyanth Reddy Addl. Public Prosecutor, Advocate for the Respondent.

Crl.A.Nos.310326/2015 Date: 4-3-2022

COMMON ORDER

(per the Hon'ble Mr.Justice C. Praveen Kumar)

A.1 to A.3 in Sessions Case No.352 of 2010 on the file of learned IV Additional District and Sessions Judge, Nellore, are the appellants herein. They were tried for offences punishable under Section 302 r/w. Section 34, 379 and 201 r/w. Section 34 Indian Penal Code, 1860 [for short, "I.P.C."].

2. Vide its judgment dated 24.02.2015, the learned Sessions Judge found A.1 to A.3 guilty of all the charges and sentenced them to undergo Life Imprisonment for the offence punishable under Section 302 r/w. Section 34 I.P.C and also to pay a fine of Rs.1000/- each, in default, to suffer Simple Imprisonment for one year each. Further, A.1 to A.3 also sentenced to undergo Simple Imprisonment for three years and also to pay a fine of Rs.1000/- each, in default, to suffer Simple Imprisonment for one year each for the offence punishable under Section 201 r/w. Section 34 I.P.C. Further, A.1 to A.3 also sentenced to undergo Rigorous Imprisonment for three years and also to pay a fine of Rs.1000/- each, in default, to suffer Simple Imprisonment for six months each for the offence punishable under Section 379 r/w. Section 34 I.P.C. The substantive sentences were directed to run concurrently.

3. The gravamen of the charge against the accused is that on 04.09.2009 at 9.00 P.M., at Janath Hussain Nagar, Nellore, the accused caused the death of the deceased. A.1 is said to have beat Nellore Lakshmaiah [hereinafter referred as "deceased"] with a stick on the head while A.2 and A.3 tried a rope around the neck of the deceased.

4. The facts in issue, as culled out from the evidence of prosecution witnesses, are as under:-

(i) P.W.1 is the brother of the deceased. A.1 to A.3 are friends of the deceased, who are known to P.W.1 as well. The deceased, who was physically handicapped, used to reside along with P.W.1. He was not doing any work, but he used to take alcohol along with the accused during evening time. On 04.05.2009 at about 9.00 P.M., P.W.1 was standing near the bunk of P.W.7 along with the deceased. Meanwhile, A.1 to A.3 came there and called the deceased. P.W.1 questioned his brother stating as he wants to go with the accused at late night and asked him to bring some noodles. After bringing noodles, the deceased along with the accused boarded an auto and proceeded towards Paderu this was after 9.00 P.M. P.W.1 went home and waited till night for his brother. As he did not come, he called his brother on phone at 11.00 or 11.30 P.M, but it was switched off. P.W.1 went to bed and at 4.30 A.M., again called his brother, but it was switched off. P.W.1 contacted P.W.2 and others about his brother not returning home, pursuant to which, they came to the house of P.W.1 and thereafter all of them went to the houses of A.1 to A.3 and enquired about the accused and the deceased. The inmates of the house informed that even the accused did not

return home. P.W.1 took the phone numbers of the accused and attempted to contact them, but they did not lift their phones. Efforts to trace the deceased proved futile.

(ii) On 04.05.2009 at about 1.30 P.M., P.W.1 found A.2 and A.3 at the bunk of P.W.7, when he enquired about the deceased they replied that they don't know to whereabouts of his brother. When questioned again, A.2 and A.3 disclosed about the commission of the offence namely killing him near Koduru Canal after consumption of alcohol when the deceased refused to give the gold ornaments owned by him. According to them, A.1 beat the deceased on the head while A.2 and A.3 tied a rope around the neck of the deceased and pulled him. Thereafter, the body was shifted to Manusamudram and threw it in water sluice. It is said that thereafter all three returned in the auto. A.1 is said to have got down at Buja Buja, Nellore while A.2 and A.3 came to Narukuru centre where P.W.1 met them. Pursuant to the said statement, P.W.1 along with P.W.2 and A.2 and A.3 went to Koduru where they found chappals of the deceased, scrambling of sand and also noticed the dead body in a sluice tied in a gunny bag. On seeing the same, P.W.1 went to the Police Station on 06.05.2009 at 5.30 A.M. and lodged a report with P.W.8 which led to registration of a case in Crime No.179 of 2009 under Section 302, 379 and 201 r/w. Sec.34 I.P.C. Ex.P11 is the F.I.R. P.W.1 also produced A.2 and A.3 along with Ex.P1 report.

(iii) Immediately thereafter, P.W.8 intimated the same to P.W.12-Sub Inspector of Police, who on receipt of the information, took up investigation. He kept A.2 and A.3 in the Police Station under surveillance and then proceeded to the scene. At the scene, he recorded the statement of P.W.1 and also prepared a panchanama of the scene in the presence of P.W.6. Ex.P3 is the observation report. At the scene he seized a pair of chappals. He then proceeded to Manasamudram Village tank and found a dead body in a gunny bag. He took photograph of the same, which are marked as Ex.P15 to Ex.P28. He then conducted inquest over the dead body in the presence of P.W.6. Ex.P4 is the Inquest Report. Thereafter, the body was sent for Post Mortem Examination. P.W.10-Civil Assistant Surgeon, Area Hospital, Srikalahasti, conducted autopsy over the dead body of the deceased and issued Ex.P12-Post Mortem Certificate. According to him, the cause of death was due to Cardio Respiratory arrest in asphyxia [suffocation with sub-dural haemotoma. Possibly homicidal.

(iv) P.W.12 after sending the body for Post Mortem Examination, returned to Police Station and recorded the statements of A.2 and A.3 in the presence of P.W.5. Ex.P5 is the admissible portion in the statement of A.2 and A.3. They lead them to the house of A.3 from where they recovered the auto used in the commission of the offence. A.3 also picked up a rope from the above auto, used in the commission of the offence, which was seized under Ex.P8. He recorded the statement of P.W.7 and got A.2 and A.3 remanded to custody. On 24.05.2009, P.W.11 the Inspector of Police, Nellore, arrested A.1 and recorded his statement in the presence of mediators.

M.Os.1 and 2, two gold rings were seized under Ex.P7. Pursuant to the confessional statement of A.1, he led the Police party to Z.P.High School, from where M.Os.3 to 6 were recovered from a polythene cover on the Eastern side wall of the school, the same were seized under Ex.P8. A.1 further led them to Koduru Canal Bunk and brought a stick M.O.9 from a shrub which was seized under Ex.P9. Later, A.1 was sent to Judicial Custody. After collecting all the necessary documents, a Charge Sheet came to be filed.

5. After collecting all the necessary documents, a Charge Sheet came to be filed, which was taken on file as P.R.C.No.33 of 2009 on the file of learned IV Additional Judicial Magistrate of First Class, Nellore, for the offences punishable under Section 302, 379, 201 r/w. Section 34 I.P.C.

6. On appearance of the accused, copies of the documents, as required under Section 207 Cr.P.C., were supplied to them. As the offences are triable by Court of Sessions, the case was committed to the Court of the Sessions under Section 209 Cr.P.C. Accordingly, the same was made over to the Court of the learned IV Additional District and Sessions Judge, Nellore, for disposal in accordance with law.

7. Basing on the material available on record, charges, as referred to earlier, came to be framed, read over and explained to the accused in Telugu to which, they pleaded not guilty and claimed to be tried.

8. To substantiate its case, the prosecution examined P.Ws.1 to 14 and got marked Exs.P.1 to P.29 and M.Os.1 to 11. After the closure of Prosecution evidence, the accused were examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against them in the evidence of the prosecution witnesses to which they denied. No oral evidence has been adduced, however got marked Exs.D1 and D2 on behalf of the accused. Since the circumstances relied upon by the prosecution are proved and formed a chain of events connecting the accused with the crime, the learned Sessions Judge convicted the accused. Challenging the same, the present appeals came to be filed.

9. Sri T. Pradyumnakumar Reddy, learned Senior Counsel for the appellants/ A.2 and A.3 mainly submits that there are no eye witnesses to the incident and the case rests on circumstantial evidence. Since the circumstances relied upon by the prosecution namely motive, last seen, recovery of the dead body at the instance of A.2 and A.3 and the discovery of articles belonging to deceased from A.1 are not proved beyond reasonable doubt, the chain is incomplete and the accused are entitled for benefit of doubt. He took us through the evidence of witnesses and also authorities in support of his plea.

10. Sri G. Vijaya Saradhi, learned counsel appearing for the appellant/A.1 submits that except last seen and the recovery of articles belonging to deceased, there is no material to connect the accused with the crime. In so far as recoveries are concerned, he would submit that the evidence of I.O. would show that the slips of the mediators containing signatures were

not affixed on the seized objects and as such, the same cannot be believed. He further submits that Rule 35 of Criminal Rules of Practice, which is held to be mandatory, was not followed as it was not done in the Court premises.

11. On the other hand, Sri S. Dushyanth Reddy, learned Addl. Public Prosecutor would submit that the circumstance of accused being last seen in the company of the deceased coupled with A.2 and A.3 showing the dead body voluntarily without any threat or coercion, is sufficient to connect the accused with the crime.

12. The point that arises for consideration is, whether the prosecution was able to bring home the guilt of the accused beyond reasonable doubt?

13. As seen from the record, there are no eye witnesses to the incident and the case rests on circumstantial evidence. In a case arising circumstantial evidence, the prosecution has to prove each of the circumstance relied upon by them and circumstances so proved should form a chain of event connecting the accused with the crime. In other words, all links in the chain of events must be established beyond reasonable doubt and the established circumstances should be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In Sharad Birdhichand Sarda Vs. State of Maharashtra (1984) 4 SCC 116), the Hon'ble Supreme Court laid down certain conditions to be fulfilled before a case against the accused can be said to be fully established on circumstantial evidence.

> "The following conditions must be fulfilled before a case against an accused can be said to be fully established on circumstantial evidence:
>
> (1) the circumstances from which the conclusion of guilt is to be drawn must or should be and not merely "may be fully established,
>
> (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,
>
> (3) the circumstances should be of a conclusive nature and tendency,
>
> (4) they should exclude every possible hypothesis except the one to be proved, and
>
> (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

14. In S.D. Soni vs. State of Gujarat (1992 SCC (Cri) 331) and Venkatesan vs. State of Tamil Nadu (2008) 3 SCC (Cri) 546), the Court held as under:-

> "6. It is well settled that when a case rests on circumstantial evidence, such

evidence must satisfy three tests:

(i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established:

(ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; and

(iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else."

The same principles were reiterated in Uppala Bixam @ Bixmaiah vs. State of A.P. (2019) 13 SCC 802)

15. Keeping in view the principles laid down by the Hon'ble apex Court in the judgments referred to above, we shall now deal with the case on hand. As seen from the record, three circumstances are relied upon by the prosecution to connect the accused with the crime. (1) The accused being last seen in the company of the deceased, which was at 9.00 P.M on 04.05.2009. (2) The confession made before P.W.1 and 2 by A.2 and A.3 disclosing commission of offence and then taking them to the place of offence where the dead body was seized in water sluice. (3) Recovery of ornaments belonging to the deceased at the instance of A.1 and (4) Motive to commit the offence namely for gain.

16. It is to be noted here that the deceased was a physically handicapped person affected due to polio. He was not doing any work except going around with his friends and having alcohol with them, more particularly, with A.1 to A.3. It has also come on record that the deceased was wearing gold rings, gold bracelet, gold chain and also a gold watch with black dial every day.

Last seen:

17. In the F.I.R. given by P.W.1, he categorically stated that on 04.05.2009 while he was standing infront of the bunk of P.W.7, his brother (deceased) along with A.1 to A.3 came to him. His brother went to a nearby shop, brought noodles and gave them to P.W.1. Later on, his brother along with A.1 to A.3 boarded an auto bearing no. A.P.26 Y 8542 and went towards Paderu side. P.W.1 went to his house and as the deceased did not return back, he called him on phone, which was switched off. Again, on 05.05.2009 at about 5.00 A.M., he called him on phone, but it was switched off.

18. But, while giving evidence in the Court, a different version to what that he has been mentioned in Ex.P.1 is given. While giving evidence, P.W.1 in his evidence deposed that on 04.05.2009 at 9 PM, he along with the deceased were standing infront of the shop of P.W.7, at which point of time, A.1 to A.3 came there and asked the deceased come along with them. Then, P.W.1 questioned his brother as to why he is going with the accused late in the night. But, however, asked him to get noodles.

After getting noodles, the deceased left along with the accused in the auto. Though, the version in Ex.P1 and in Court indicate that deceased went along with accused in the auto but the variation is to the sequence of events, which happened prior to accused meeting the deceased or deceased meeting P.W.1.

19. However, the evidence of Investigating Officer would show that P.W.1 did not state any of the crucial fact in his earlier statement. It would be appropriate to extract the same, which is as under:

> "P.W.1 did not state before me on 04.09.2009 that while he was standing with his brother at the shop of Vana Kumar, Narukuru centre, meanwhile, all the accused came there and called his brother and then he questioned his brother as to why he was following with the accused and that he asked his brother to bring noodles. P.W.1 did not state before me that he waited for his brother till 11.30 P.M. and then he contracted his brother over phone and received message as switched of and again at 4.00 A.M., he woke up and contacted his brother's phone and received message as switched off.

P.W.1 further did not depose before me and not mentioned in Ex.P1 report that he contacted the mobile phones of present accused and the accused did not respond to his call. I did not make any attempt to collect the call details of the Mobile phones of accused and deceased."

Similarly, the omissions in the F.I.R., which we have referred to earlier, were elicited through the I.O. who recorded the F.I.R. Even assuming for the sake of argument that the accused and the deceased were seen together on the previous day night, whether the same is sufficient to convict the accused, if other circumstances are not proved.

20. The second circumstance relied upon by the prosecution is the extra-judicial confession made before P.Ws.1 to 4 and the recoveries pursuant thereto. While the evidence of P.Ws.1 and 2 is to the effect that on 05.05.2009 at about 1.30 P.M., they found A.2 and A.3 at the bunk of P.W.7 and when enquired, they confessed about the commission of the offence and then P.Ws.1 and 2 were taken near the place where the body was thrown i.e., in a water sluice. The said version of P.W.1 is also spoken to by P.W.2. Infact, the evidence of these two witnesses show that when the deceased refused to give the gold ornaments, which were worn by him, they killed him. Coming to the evidence of P.W.3, he gives a totally different picture. According to him, on 05.05.2009 at 8 A.M., he reached Narukuru centre searched for deceased at about 11 A.M., A.1 and A.3 were present at Narukuru centre, he being the brother of the deceased, caught hold of A.1 and A.3 and enquired about the deceased along with P.Ws.1 and 2. Thereafter A.1 and A.3 are alleged to have taken them to Manusamudram near Kalahasthi where they noticed the body in a water sluice. Similar is the version of P.W.4, who is a resident of Brahmadevam and who is a relative of P.W.1. Though, P.W.3 in his earlier

statement do not refer to these facts namely A.1 and A.2 leaving them to Manusamudram from Naruku Centre etc., but his version in Court along with that of P.W.4 runs totally contra to the evidence of P.W.1 and P.W.2. In other words, while P.W.1 and P.W.2 speaks about A.2 and A.3 making an extra-judicial confession leading to discovery of dead body, (of course not a discovery under Section 27). The evidence of P.Ws.3 and 4 is to the effect that it was A.1 and A.3, who made the extra-judicial confession leading to tracing of the dead body near Srikalahasti. Therefore, this extra-judicial confession leading to recovery of dead body of the deceased being inconsistent, which was made the sheet anchor of prosecution case, falls to ground.

21. The third circumstance relied upon by the prosecution is the recovery of gold ornaments at the instance of A.1. Firstly, the Test Identification Parade of these properties was not conducted in terms of Rule 35 of Criminal Rules of Practice, which was held to be mandatory. Apart from that the evidence of the Investigating Officers, who effected recovery of these ornaments throw some doubt for the reason that the Panchanama prepared at the time of seizure does not refer to affixation of slips on M.Os.1 to 6 containing the signatures of the mediators. It would be appropriate to extract the same which is as under:-

> "I did not affix any slips on M.Os.1 and 2 containing the signatures of mediators. There is no such reference in Ex.P7 Mahazar.
>
> ....There is no mention in Ex.P9 that I fixed slips on M.O.9 containing the signatures of mediators and the A.1."

22. Even, the Investigating Officer, in his evidence admits that though he claims to have taken the signatures of the accused and mediators on the property seized by him, he did not mention the same in the mediators report and affixing slips on the properties. As the mandatory requirement as contemplated in Criminal Rules of Practice is not followed and as there is a doubt with regard to the seizure of gold ornaments, the same cannot be accepted as proved.

23. When the two circumstances namely extra-judicial confession leading to discovery of body and the recovery of articles from A.1 are not proved beyond doubt, the only circumstance namely the accused being last seen with the company of the deceased may not be sufficient to convict the accused.

24. In Sahadevan and another vs. State of Tamil Nadu (2012) 6 SCC 403), the Hon'ble Supreme Court in Paragraphs 27 to 32 of the said judgment, observed as under:-

> 27. The courts below, the trial court in particular, have laid some emphasis on the theory of last seen, while finding the accused guilty of the offence. As far as PW 5 is concerned, he says that he only saw three persons going on the moped and he could not identify these persons. PW 4 stated that he had seen the deceased going on a moped with Chandran at about 2 o'clock in the afternoon. The time-lag between

the time at which this witness saw the accused and the deceased together and when the body of the deceased was found on the next day is considerably long. According to PW 4, he could identify Loganathan while, according to PW 5, the face of the deceased was burnt and, therefore, he could not identify him. Moreover, according to the doctor, PW 7, the deceased had died about 27 to 28 hours before the autopsy. The autopsy was admittedly performed upon the deceased on 10th of July at about 2 o'clock. That implies that the deceased would have died sometime during the morning of 9th July, while according to PW 4, he had seen the deceased along with Chandran after 2 p.m. on 9-7-2002.

28. With the development of law, the theory of last seen has become a definite tool in the hands of the prosecution to establish the guilt of the accused. This concept is also accepted in various judgments of this Court. The Court has taken the consistent view that where the only circumstantial evidence taken resort to by the prosecution is that the accused and the deceased were last seen together, it may raise suspicion but it is not independently sufficient to lead to a finding of guilt.

29. In Arjun Marik v. State of Bihar [1994 Supp (2) SCC 372 : 1994 SCC (Cri) 1551] this Court took the view that where the appellant was alleged to have gone to the house of one Sitaram in the evening of 19-7-1985 and had stayed in the night at the house of deceased Sitaram, the evidence was very shaky and inconclusive. Even if it was accepted that they were there, it would, at best, amount to be the evidence of the appellants having been last seen together with the deceased. The Court further observed that: (SCC p. 385, para 31)

"31. … it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record [a] finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction, on that basis alone, can be founded."

30. Even in State of Karnataka v. M.V. Mahesh [(2003) 3 SCC 353 : 2003 SCC (Cri) 795] this Court held that: (SCC p. 354, para 3)

"3. … Merely being seen last together is not enough. What has to be established in a case of this nature is definite evidence to indicate that [the deceased] had been done to death of which the respondent is or must be aware as also proximate to the time of being last seen together. No such clinching evidence is put forth. It is no doubt true that even in the absence of the corpus delicti it is possible to establish in an appropriate case commission of murder on appropriate material being made available to the court."

2022 (1) L.S. 171 (T.S)

IN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble Mr.Justice
A. Venkateswara Reddy

Inam Ahmed ..Petitioner
Vs.
M. Prasunamba ..Respondent

CIVIL PROCEDURE CODE, Or. XV-A, r/w Sec.151 - Civil Revision Petition, assailing the Order in IA in OS - Application in IA was filed by the plaintiff to direct the defendant to pay arrears of rent and mesne profits from the date of suit till the date of delivery of vacant possession.

HELD: Jural relationship is admitted in the written statement, there is no specific denial of the plaint averments - When the suit is filed for recovery of possession and recovery of arrears of rent, mesne profits, considering the scheme of Order XV-A of CPC, and request of the plaintiff, in view of admitted jural relationship of landlord and tenant, such direction to pay the admitted arrears and to continue to deposit the amount which becomes payable during pendency of proceedings is necessary - If the defendant commits default in making such payments/deposits, the Court shall strike of the defence and the plaintiff is also entitled to withdraw the said amount after deposit - Court below failed to appreciate the facts of the case, in conformity with the Legislative intention under Order-XV-A, Rules-1 & 2 CPC - Matter is remanded back to the trial Court for fresh disposal - Trial Court shall ascertain the arrears of rent, monthly rents and fix the time schedule for payment of arrears of rent and monthly rents regularly in terms of Order XV-A of CPC - Civil Revision stands allowed - Order impugned in IA stands set aside.

CRP.No.790/2021 Date: 2-3-2022

Mr.M. Raldhakrishna, Advocate for the Petitioner.
Mr. G. Shankar, Advocate for the Respondent.

O R D E R

1.This Civil Revision Petition is filed under Article 227 of the Constitution of India, assailing the order dated 18.01.2021 in IA No.228 of 2020 in OS No.1753 of 2020 on the file of the learned VII Junior Civil Judge, City Civil Court, Hyderabad.

2.This application in IA No.228 of 2020 was filed by the plaintiff under Order XV-A read with Section 151 of the Civil Procedure Code (for short 'CPC') to direct the defendant to pay an amount of Rs.5,64,740/- towards arrears of rent and an amount of Rs.40,000/- per month towards mesne profits from the date of suit till the date of delivery of vacant possession.

3.Heard learned counsel on both sides. Perused the material placed available on record. For the sake of convenience,

the parties are hereinafter referred to as plaintiff and defendant as arrayed in the original suit.

4.The plaintiff has filed the original suit for eviction of defendant and for recovery of possession, arrears of rent, and mesne profits. The sole defendant has filed written statement, whereunder the jural relationship between the plaintiff and defendant as landlord and tenant is admitted. Several other averments in the plaint are also admitted. However, it is stated that the tenancy is for seven years from 01.06.2018 to 31.05.2025. Though the cheque issued towards payment of rent of September 2018 was bounced, later the defendant paid cash worth of cheque amount and the plaintiff failed to return the cheque. The written statement is silent and there is no specific denial as to arrears of rent of Rs.5,64,740/- and cause of action.

5.The plaintiff has filed this application alleging that the defendant has become chronic defaulter in payment of rents and started misbehaving the plaintiff. Tenancy was terminated from the month of July, 2019. In fact, rents were only paid till August 2018. Thereafter, rents were not paid. When such is the plaintiff's specific case, the defendant has filed written statement without any specific denial. Order-VIII, Rule-3 CPC contemplates that it shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of plaint of which he does not admit the truth except damages. Further, Rules 4 & 5 of CPC deals with evasive denial and the effect of specific denial. Thus, every allegation made in the plaint if not specifically denied or by necessary implications or stated to be not admitted in the pleadings of the defendant, shall be taken to the admitted except as against the person under disability.

6.The trial Court in the present case while dealing with such application held that there is no dispute with regard to the jural relationship or quantum of rent, but it is the contention of the defendant that he is paying rents regularly by way of cash and cheques, however, not filed a single piece of document to substantiate her version. Having observed so, the trial Court has again held that if a direction is issued to the defendant to pay the arrears of rent as alleged by the plaintiff, it is nothing but a pre-trial decree as such it cannot be decided in the present application and it is a triable issue and accordingly, the petition was dismissed. Hence, the civil revision petition is filed.

7.Order XV-A of CPC was inserted by A.P. Amendment only with an object to see that in a suit for recovery of possession on termination of lease or licence, the defendant, who is continuing in possession, while filing his written statement shall deposit the amount for admitted rents, representing the disputed arrears, calculating up to the date into the Court and to continue to deposit the said amount, till the judgment is rendered in the suit. Whether the defendant pleads in the written statement that no arrears of rent or licence fee exceeds, it shall competent for the Court to pass an order after affording an

opportunity to both sides.

8.However, in the case on hand, there is no such appreciation of facts by the trial Court. Though the petitioner/plaintiff has filed Exs.P.1 to P.11 documents, none of these documents were appreciated. The learned counsel for the petitioner has relied on the principles laid by a Division Bench of this Court in ***R. Parijatham and another v. M. Kameshwari and others*** 2017 (5) ALD 348 (DB) wherein while referring to the earlier Division Bench's decision in ***T. Bhoopal Reddy v. K.R.Laxmi Bai*** 1998 (1) ALD 770 (DB) a direction was issued to the Registrar of High Court to issue a circular directing the Sub-ordinate Courts to mark the documents filed by the parties to the interlocutory applications before deciding such applications.
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9.Here in the case on hand, though the documents were exhibited, such documents were not appreciated by the Court below and simply recorded the findings stating that if the prayer of plaintiff is acceded to, it amounts to nothing but pre-trial decree, which is against the spirit of the proviso of Order XV-A of CPC.

10.In the present suit for recovery of possession, as the jural relationship is admitted in the written statement, there is no specific denial of the plaint averments, wherein the plaintiff has specifically stated that from September 2018 onwards, arrears of rent are liable to be paid and that the defendant started misbehaving the plaintiff, failed to pay water and electricity charges and property tax, a criminal case was also filed in this context, it is for the defendant to establish before proceeding further with the defence set up in her written statement that she has been paying rents regularly, but admittedly she has not filed any piece of paper. Whereas, on behalf of the plaintiff, 11 documents are exhibited and the trial Court has recorded finding to the effect that as seen from the counter filed by the defendant, there is no dispute with regard to the jural relationship or quantum of rent, but the contention of the defendant is that she is regular in payment of rents, failed to file even a single piece of document to substantiate her version.

11.Be it stated that when the suit is filed for recovery of possession and recovery of arrears of rent, mesne profits, considering the scheme of Order XV-A of CPC, and request of the plaintiff, in view of admitted jural relationship of landlord and tenant, such direction to pay the admitted arrears and to continue to deposit the amount which becomes payable during pendency of proceedings is necessary. If the defendant commits default in making such payments/deposits, the Court shall strike of the defence and the plaintiff is also entitled to withdraw the said amount after deposit. That being the legal position, the Court below failed to appreciate the facts of the case, in conformity with the Legislative intention under Order-XV-A, Rules-1 & 2 CPC.

12.Accordingly, in such facts and circumstances of the case the Court below has committed a jurisdictional error in dismissing the application filed under Order XV-A of CPC holding that it amounts to a pre-trial decree. When the defendant has

admitted jural relationship, admitted the quantum of rent, failed to deny the plaint averments specifically, failed to produce the receipts in respect of alleged payment of rents including the bank statement, if any, if the rent is paid through deposit of cheques in the bank account, the necessary inference that could be drawn is that the defendant has failed to pay the rents as agreed to, and a direction need to be issued in terms of Order-XV-A of CPC. In that view of the matter, the order impugned is liable to be set aside.

13.In the result, the Civil Revision Petition is allowed. The order impugned dated 18.01.2021 in IA No.228 of 2020 in OS No.1753 of 2020 on the file of the learned VII Junior Civil Judge, City Civil Court, Hyderabad, is hereby set aside. The matter is remanded back to the trial Court for fresh disposal in accordance with law considering the principles laid by a Division Bench of this Court in ***R. Parijatham***'s case (first supra). The trial Court shall ascertain the arrears of rent, monthly rents and fix the time schedule for payment of arrears of rent and monthly rents regularly in terms of Order XV-A of CPC. The trial Court shall make every endeavour to dispose of this application afresh after giving an opportunity to both sides, within three months from the date of receipt of a copy of this order. Both the parties shall cooperate with the trial Court for expeditious disposal of the application, as directed. However, in the circumstances of the case, there shall be no order as to costs.

14.As a sequel, interlocutory applications, if any pending, shall stand closed.

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2022 (1) L.S. 174 (T.S)

IN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble Ms.Justice
G. Sri Devi

M/s. National Insurance Co Ltd. ..Petitioner

Vs.

Narsuri Sudarshan Rao, Adilabad ..Respondent

MOTOR VEHICLES ACT, Sec.166 - Appeal is preferred National Insurance Company Limited, questioning the Order and decree of the Motor Vehicle Accidents Claims Tribunal-cum-Principal District Judge - After considering the oral and documentary evidence, Tribunal came to the conclusion that the accident occurred due to negligent parking of the lorry by its driver and awarded total compensation of Rs.24,71,500/- together with interest @ 6% per annum from the date of petition till the date of realization payable by the respondents 1 and 2 jointly and severally.

HELD: No reason to interfere with the finding of the Tribunal that the accident occurred due to the negligent parking of the driver of the Lorry in the

M.A.C.M.A. No.4221/2014 Date:10-3-2022

middle of the road without indicator lights - At the time of his death, the deceased was running a Wine Shop and he was 27 years - When the deceased was a bachelor, the age of the deceased has to be considered while determining the multiplier and not the age of the mother, therefore the Tribunal has rightly adopted the multiplier as '17'

For the year 2012-2013, the income of the deceased was shown only Rs.1,89,700/- per annum from other sources and Rs.1,00,000/- towards agriculture income - Though the income tax returns shows the entire amount of Rs.2,89,700/-, Rs.1.00 lakh which was shown as agriculture income is not a loss to the dependents - Tribunal ought to have considered the said fact and ought to have shown the loss of income at Rs.1,90,000/- instead of Rs.2,89,000 M.A.C.M.A. is disposed of and the compensation amount awarded by the Tribunal is reduced from Rs.24,71,500 to Rs.24,55,500.

J U D G M E N T

This appeal is preferred by the appellant-National Insurance Company Limited, questioning the order and decree, dated 16.08.2014 passed in M.V.O.P.No.243 of 2013 on the file of the Motor Vehicle Accidents Claims Tribunal-cum-Principal District Judge, Medak At Sangareddy (for short, the Tribunal).

2. For the sake of convenience, the parties have been referred to as arrayed before the Tribunal.

3. The claimants filed a petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.30,00,000/- for the death of the deceased-Narsuri Kiran Kumar, who died in a motor vehicle accident that occurred on 28.02.2013. It is stated that on that day while the deceased and his friends were going towards Basar in a Car bearing No.AP 10 AZ 3863 and reached near Railway Station on Basar-Bhainsa road, hit a lorry bearing No.AP 25 T 7887 which was parked on the middle of the road without any indicators and signals, from its behind, due to which, one person byname Srikanth, who was driving the Car died on the spot and other inmates of the Car sustained injuries and they were shifted to Government Hospital, Basar and from there, the deceased was shifted to Yashoda Hospital, Hyderabad and while undergoing treatment he succumbed to the injuries. Basing on a complaint, a case in Crime No.13 of 2013 has been registered against the driver of the Lorry. It is also stated that the deceased was M.C.A. graduate and was doing job, besides running Wine shop and doing agriculture personally and was earning Rs.50,000/- per month. It is further stated that the deceased was an income tax assessee having PAN card. Due to the sudden death of the deceased, the claimants lost their source of income and love and affection. Therefore, the claimants filed the above O.P. against the respondents 1 to 4, who are the owner and insurer of the Lorry and owner and insurer of the Car respectively.

4. Before the Tribunal, respondents 1 and 3 remained exparte.

5. The 2nd respondent, insurer of the Lorry, filed counter denying the averments in the petition. It is also stated that the accident occurred due to the negligence of the driver of the Car, who had no control over the Car and the Car was turned turtle and that there was no involvement of the Lorry. It is further contended that there was contributory negligence on the part of the deceased.

6. The 4th respondent, insurer of the Car, filed counter contending that the deceased was holding a valid and effective driving licence and that the police registered a case against the driver of the Lorry and the owner and insurer of the Car were impleaded as proforma parties. It is also stated that if for any reason, the deceased was found to be responsible for causing the accident due to his self negligence the claimants were not entitled for any compensation.

7. Basing on the above pleadings, the Tribunal framed the following issues:-

1. Whether the death of the deceased occurred due to the rash and negligent driving of the driver of the crime vehicle?

2. Whether the petitioners are entitled for compensation, if so, at what amount and from whom?

3. To what relief?

8. During trial, on behalf of the claimants, P.Ws.1 and 2 were examined and Exs.A1 to A16 and Exs.X1 and X2 were marked. On behalf of the respondents, R.Ws.1 and 2 were examined and Exs.B1 and B2 were marked.

9. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident occurred due to negligent parking of the lorry by its driver and awarded total compensation of Rs.24,71,500/- together with interest @ 6% per annum from the date of petition till the date of realization payable by the respondents 1 and 2 jointly and severally. Aggrieved by the said order, the appellant, who is the insurer of the Lorry, filed the present appeal.

10. Heard and perused the record.

11. Learned Standing Counsel appearing for the appellant would submit that this is a clear case of contributory negligence of the deceased and the 4th respondent is equally liable in equal ratio by virtue of the contributory negligence on the part of the deceased. It is also submitted that at the time of accident, the Car was overloaded and as per the charge sheet five persons were traveling in the said Car. It is further submitted that the sketch report of the police, clearly shows that the Lorry was parked on the corner of the road and the deceased dashed his Car from behind/ rear and the impact was so great that his Car was thrown to the opposite end of the road, which shows that the deceased was driving the Car at high speed in the mid-night and dashed to a parked lorry. Therefore, the deceased himself was responsible for the accident. It is also submitted that though there was no evidence with regard to the annual income derived from agriculture at Rs.1,00,000/-, the Tribunal erroneously took

the income of the deceased at Rs.2,89,000/- per annum and wrongly applied multiplier '17' by taking into the age of the deceased and since the deceased was unmarried, the age of his mother is to be taken for applying multiplier. Therefore, prayed to allow the appeal.

12. Learned Counsel appearing for the claimants would submit that after considering the material available on record the Tribunal has categorically observed that the accident occurred due to the negligent parking of the Lorry by its driver, therefore, there was no contributory negligence on the part of the deceased. It is also submitted that as per the principles laid down by the Apex Court in **National Insurance Company Limited Vs. Pranay Sethi and others (**2017 ACJ 2700)**,** the claimants are entitled to future prospects. It is also submitted that though the claimants have not filed any cross objections/appeal, the claimants are entitled to seek enhancement. In support of his contention he relied upon the judgment of the Apex Court in **Surekha and others v. Santosh and others (**Manu/SC/0803/2020)**.** Therefore, it is argued that the income of the deceased may be taken into consideration reasonably after adding the future prospects.

13. A perusal of the impugned order would show that the Tribunal has framed the Issue No.1 as to whether the accident had occurred due to rash and negligent driving of the driver of the crime vehicle, to which the Tribunal has categorically observed that as per Ex.A6-Crime Details Form, the place of accident was not wide enough and it was on the road leading from Basar to Bhainsa and the lorry was parked in the middle of the road, without any indicator lights. Therefore, considering the evidence of P.W.2 (eye witness to the accident) coupled with Exs.A1 to A6, the Tribunal held that the deceased died due to the injuries sustained in the road traffic accident that occurred due to negligent parking of the lorry by its driver and answered issue No.1 in favour of the claimants as against the 2nd respondent, who is the appellant herein. Therefore, I see no reason to interfere with the finding of the Tribunal that the accident occurred due to the negligent parking of the driver of the Lorry in the middle of the road without indicator lights.

14. Insofar as the quantum of compensation is concerned, admittedly, the claimants have not filed any cross objections/cross appeal. However, in **Surekha and others case (2 supra)** the Apex Court while dealing with the said issue held as under:-

> "2. This appeal takes exception to the judgment and order, dated 04.01.2019 passed by the High Court of Judicature at Bombay, Bench at Aurangabad in First Appeal No.2564 of 2016, whereby the High Court, even though agreed with the stand of the appellants that just compensation amount ought to be Rs.49,85,376.00, however, declined to grant enhancement merely on the ground that the appellants had failed to file cross-appeal.
>
> 3. By now, it is well settled that in the matter of insurance claim compensation in reference to the

motor accidents, the Court should not take hyper- technical approach and ensure that just compensation is awarded to the affected person or the claimants.

4. As a result, we modify the order passed by the High Court to the effect that compensation amount payable to the appellants is determined at Rs.49,85,376/- with interest thereon as awarded by the High Court."

15. In the light of the said judgment, the claimants are entitled to just compensation.

16. A perusal of the impugned order would show that the income tax returns of the deceased for the year 2012-2013 the income of the deceased was shown only Rs.1,89,700/- per annum from other sources and Rs.1,00,000/- towards agriculture income. Though the income tax returns shows the entire amount of Rs.2,89,700/-, Rs.1.00 lakh which was shown as agriculture income is not a loss to the dependents. Thus, as rightly pointed out by the learned Standing Counsel for the appellant that the Tribunal ought to have considered the said fact and ought to have shown the loss of income at Rs.1,90,000/- instead of Rs.2,89,000/-. As stated supra, in view of the judgment of the Apex Court **Surekha and others case (2 supra)**, the claimants are entitled to just compensation. Admittedly, at the time of his death, the deceased was running a Wine Shop by name Laxmi Sai Wines at Basar and he was 27 years old at the time of accident. The deceased is also M.C.A. graduate at the time of his death. Therefore, in the light of the judgment of the Apex Court in **Pranay Sethi** (1 supra), the claimants are entitled to 50% of the future prospects. Therefore, the income of the deceased comes to Rs.2,85,000/-(Rs.1,90,000/- + Rs.95,000/-). Since the deceased was a bachelor, his personal and living expenses shall be 50% of the said amount, i.e., Rs.1,42,500/- per annum. In view of the decision of the Apex Court in **Munna Lal Jain v. Vipin Kumar Sharma and others (**2015 (6) SCC 347) when the deceased was a bachelor, the age of the deceased has to be considered while determining the multiplier and not the age of the mother, therefore the Tribunal has rightly adopted the multiplier as '17' since the deceased was 27 years old at the time of the accident. Adopting multiplier '17', the loss of dependency would be Rs.1,42,500/- x 17 = Rs.24,22,500/-. The claimants are also entitled to Rs.33,000/- towards loss of estate and funeral expenses, as per **Pranay Sethi**'s case (1 supra). Thus, in all the claimants are entitled to only Rs.24,55,500/-.

17. Accordingly, the M.A.C.M.A. is disposed of and the compensation amount awarded by the Tribunal is reduced from Rs.24,71,500/- to Rs.24,55,500/-. There shall be no order as to costs.

18. Miscellaneous petitions, if any, pending shall stand closed.

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2022 (1) L.S. 179 (T.S) (D.B.)

IN THE HIGH COURT OF
TELANGANA

Present:
The Hon'ble Mr.Justice
A. Rajasheker Reddy &
The Hon'ble Mr.Justice
M. Laxman

Spl.Dy.Collector & L.AO.,
SRSP L.A.Unit, Warangal ..Petitioner
Vs.
Myakala Veera Reddy& Ors., ..Respondents

LAND ACQUISITION ACT - Appeal challenging the Order and decree in O.P whereby, the market value fixed by the Land Acquisition Officer for the acquired lands belonging to the respondents was enhanced - Lands were acquired for excavation of canal.

HELD: Findings of the reference Court with regard to enhancement of market value is confirmed - Amount granted by the reference Court in the form of 12% additional interest from the date of taking possession (prior to the notification) is modified to that of granting 12% additional market value under Section 23(1-A) of the Act from the date of notification till the date of Award on the market value fixed under Section 23(1) of the Act - Grant of benefits under Section 34 of the Act by the Appellant/Land Acquisition Officer or under Section 28 by the reference Court from the date of taking possession which is prior to the notification is modified by directing to pay such interest from the date on which the Government gets right to take notional possession either under Section 17 or under Section 16 of the Act - Respondents/Claimants are entitled for such interest from the date of Award till the date of deposit - Respondents are also entitled to additional interest @ 15% per annum on compensation i.e., market value, additional market value and solatium towards rent/damages for use and occupation of the land from the date of possession (prior to the valid notification) still the date of passing of Award – Appeal stands partly allowed.

G.P. for Appeals, Advocate for the Appellant: Mr.B. Narayana Reddy, Advocate for the Respondents

J U D G M E N T

1. The challenge in the present appeal is to the order and decree dated 30.06.2000 in O.P.No.140 of 1995 on the file of the Court of the II Additional Senior Civil Judge, Warangal (for short, reference Court), wherein and whereby the market value fixed by the Land Acquisition Officer in respect of three different categories was enhanced from Rs.12,000/- per acre to Rs.24,000/- per acre, Rs.7,000/- per acre to Rs.14,000/- per acre and Rs.9,000/- per acre to Rs.18,000/- per acre in respect of Hasanparthy, Pembarthy and Keshavapoor villages respectively for the acquired lands belonging to the respondents herein and granted other statutory benefits.

A.S.No.3864/2004 Date: 21/03/2022

2. The appellant herein is the respondent and the respondents herein are the claimants in O.P.No.140 of 1995.

3. The brief facts leading to the present appeal are that the respondents herein are the owners of land to an extent of Ac.14-20 guntas, situated at Hasanparthy, Pembarthy and Keshavapoor villages. The lands were acquired for excavation of 1R/ DBM-23 canal. Initially, preliminary notifications under Section 4(1) of the Land Acquisition Act, 1894 (for short, the Act) were issued on 12.03.1982 and 13.03.1982 by invoking urgency clause and possession of the lands was taken over on 08.08.1984. Later, the said proceedings were lapsed for various reasons, which are unnecessary for the disposal of present appeal.

4. Subsequently, fresh preliminary notifications were issued on 14.06.1989 and 15.06.1989, and after considering the claims of the respondents/claimants, the appellant/ Land Acquisition Officer passed an Award dated 31.03.1993 fixing market value of Rs.12,000/- per acre in respect of Hasanaparthy village, Rs.7,000/- per acre in respect of Pembarthy village and Rs.9,000/- in respect of Keshavapoor village, as against the claims of the respondents for Rs.70,000/- per acre. Dissatisfied with the same, the respondents herein sought reference for enhancement of compensation.

5. Before the reference Court, the respondents/claimants to support their case, examined P.Ws.1 to 5 and relied upon Exs.A-1 to A-4. The appellant/Land Acquisition Officer, to support his case, examined R.W.1 and relied upon Ex.B-1.

6. The reference Court, by relying upon Exs.A-3 and A-4 and also the oral evidence of P.Ws.4 and 5, doubled the market value fixed by the Land Acquisition Officer for the lands acquired in the said three villages. The reference Court also granted other statutory benefits i.e., additional amount of compensation @ 12% per annum from the date of taking possession of the lands till the date of the Award, and also interest for the first year @ 9% per annum from the date of taking possession and subsequently @ 15% per annum till the amounts are deposited with the reference Court and also granted solatium of 30%. Challenging the same, the Land Acquisition Officer filed the present appeal.

7. Though the present appeal has been filed challenging the enhancement of market value as well as grant of statutory benefits either under Section 23(1-A) or 34 of the Act from the date of possession under the invalid notification, the learned Government Pleader for Appeals is confined his arguments only to the extent of grant of statutory benefits from the date of possession of the lands under invalid notifications. We have also on merits found no reason to interfere with the findings of reference Court on fixation of market value.

8. The only point that arises in the present appeal, in the light of the arguments advanced by the learned Government Pleader and the learned counsel for the respondents, is whether the Land Acquisition Officer/reference Court is justified in granting statutory benefits from the date of taking possession of the lands under invalid notifications?

9. The learned Government Pleader Mr. Sripathi Rajeswar Rao has contended that the reference Court has granted additional amount of compensation @ 12% per annum, without any statutory support, from the date of taking possession of the lands to the date of Award, which according to him, is contrary to the decision of the Apex Court in case of **State of H.P. v. Dharam Das** (1995) 5 SCC 683), whereunder the Apex Court has set aside the order granting 12% additional amount on equitable ground from the date of taking possession till the date of deposit in addition to the statutory rate of interest. It is also his contention that the possession of acquired lands was taken anterior to the notification which is not under the Act. Thus, all the statutory benefits ought not to have granted from the date of possession which was taken under the invalid notifications and the same is not consonance with various decisions of Apex Court. He has also contended that in the present case, the reference Court also granted interest under Section 28 of the Act from the date of possession which is not valid possession under the Act, and hence, such grant of additional amount and interest is contrary to the well established principles.

10. The learned counsel for the respondents/claimants has contended that granting of additional amount @ 12% per annum is not based on equity grounds, but it was granted as additional market value under Section 23(1-A) of the Act. Therefore, according to him, the aforesaid judgment of the Apex Court has no relevance. It is also his contention that possession was taken under invalid notifications, but not anterior to the notifications. Though subsequent notifications have been issued after lapse of previous notifications, the statutory benefits have to be paid from the date of taking possession of the lands by treating that the possession under the invalid notifications as valid possession.

11. It is needless to observe that the contentions raised by parties are no more res integra. A three-Judges Bench of the Apex Court in case of **Siddappa Vasappa Kuri v. Special Land Acquisition Officer** (2002) 1 SCC 142), having considered the conflicting decisions in **Special Tahsildar (LA), P.W.D. Schemes v. M.A. Jabbar** (1995) 2 SCC 142) and **Asst. Commr., Gadag Sub-Division v. Mathapathi Basavannewwa** (1995) 6 SCC 355), held that when the possession is anterior to the notification or under valid notification, the benefit under Section 23(1-A) of the Act shall be from the date of notification to the date of Award. In the said judgment, the Apex Court has interpreted Section 23(1-A) of the Act by holding that the commencement of benefits under Section 23(1-A) is from the date of issuance of preliminary notification and the terminal point is either date of Award or the taking possession of the land, whichever is earlier. Since the possession is not under the Act, the terminal point is not available to grant the benefits. Therefore, the terminal point is taken as the date of Award. This settled legal position is not serious in dispute. Therefore, the respondents are entitled for the benefits under Section 23(1-A) of the Act from the date of notifications to the date of Award towards additional market value on the market value fixed under Section

23(1) of the Act.

12. The next question is what is the date to be taken into consideration for grant of benefits under Section 34 or 28 of the Act when the possession is anterior to the notification or under valid notification. This question is also resolved by a three-Judge Bench of the Apex Court in case of **R.L.Jain v. DDA** (2004) 4 SCC 79). In paragraphs 11 and 12 of the said judgment, the Apex Court has extensively dealt with the procedure under the Act for taking possession of notified land and vesting of the title with the Government. The relevant portion of the judgment reads as under:

> "11. In order to decide the question whether the provisions of Section 34 of the Act regarding payment of interest would be applicable to a case where possession has been taken over prior to issuance of notification under Section 4(1) of the Act it is necessary to have a look at the Scheme of the Land Acquisition Act. Acquisition means taking not by voluntary agreement but by authority of an Act of Parliament and by virtue of the compulsory powers thereby conferred. In case of acquisition the property is taken by the State permanently and the title to the property vests in the State. The Land Acquisition Act makes complete provision for acquiring title over the land, taking possession thereof and for payment of compensation to the land owner. Part II of the Act deals with acquisition and the heading of Section 4 is "Publication of preliminary notification and powers of officers thereupon". Sub-section (1) of Section 4 provides that whenever it appears to the appropriate government that land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality. Sub-section (2) provides that thereupon it shall be lawful for any officer either generally or specially authorised by such Government in this behalf and for his servants and workmen, to enter upon and survey and take levels of any land in such locality, to dig or bore in the subsoil and to do all other acts necessary to ascertain whether the land is adapted for such purpose etc. etc. This provision shows that the officers and servants and workmen of the government get the lawful authority to enter upon and survey the land and to do other works only after the preliminary notification under Section 4(1) has been published. Section 5- A enables a person interested in any land which has been notified under Section 4 (1) to file objection against the acquisition of the land and also for hearing of the objection by the Collector. If the State Government is satisfied, after considering the report, that any particular land is needed for

public purposes or for a company, it can make a declaration to that effect under Section 6 of the Act and the said declaration has to be published in the Official Gazette and in two daily newspapers and public notice of the substance of such declaration has to be given in the locality. Thereafter the Collector is required to issue notice to persons interested under Section 9 (1) of the Act stating that the Government intends to take possession of the land and that claims to compensation for all interests in such land may be made to him. Section 11 provides for making of an award by the Collector of the compensation which should be allowed for the land. Section 16 provides that when the Collector has made an award under Section 11, he may take possession of the land which shall thereupon vest absolutely in the Government, free from all encumbrances. This provision shows that possession of the land can be taken only after the Collector has made an award under Section 11. Section 17 is in the nature of an exception to Section 16 and it provides that in cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9 (1), take possession of any land needed for a public purpose and such land shall thereupon vest absolutely in the Government, free from all encumbrances. The urgency provision contained in Section 17(1) can be invoked and possession can be taken over only after publication of notification under Section 9(1) which itself can be done after publication of notification under Sections 4(1) and 6 of the Act. Even here in view of subsection (3-A) the Collector has to tender 80 per cent of the estimated amount of compensation to the persons interested entitled thereto before taking over possession. The scheme of the Act does not contemplate taking over of possession prior to the issuance of notification under Section 4(1) of the Act and if possession is taken prior to the said notification it will de hors the Act. It is for this reason that both Sections 11(1) and 23(1) enjoin the determination of the market value of the land on the date of publication of notification under Section 4(1) of the Act for the purpose of determining the amount of compensation to be awarded for the land acquired under the Act. These provisions show in unmistakable terms that publication of notification under Section 4(1) is the sine-qua-non for any proceedings under the Act Section 34 of the Act, on the basis whereof the appellant laid claim for interest, reads as under:

'34. Payment of Interest: When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with

interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited.

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry.'

12. The expression "the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited" should not be read in isolation divorced from its context. The words "such possession" and "so taking possession" are important and have to be given meaning in the light of other provisions of the Act. "Such compensation" would mean the compensation determined in accordance with other provisions of the Act, namely, Sections 11 and 15 of the Act which by virtue of Section 23(1) mean market value of the land on the date of notification under Section 4(1) and other amounts like statutory sum under sub-section (1-A) and solatium under Sub-section (2) of Section 23. The heading of Part II of the Act is Acquisition and there is a sub-heading "Taking Possession" which contains Sections 16 and 17 of the Act. The words "so taking possession" would therefore mean taking possession in accordance with Sections 16 or 17 of the Act. These are the only two Sections in the Act which specifically deal with the subject of taking possession of the acquired land. Clearly the stage for taking possession under the aforesaid provisions would be reached only after publication of the notification under Sections 4(1) and 9(1) of the Act. If possession is taken prior to the issuance of the notification under Section 4(1) it would not be in accordance with Sections 16 or 17 and will be without any authority of law and consequently cannot be recognised for the purposes of the Act. For the parity of reasons the words "from the date on which he took possession of the land" occurring in Section 28 of the Act would also mean lawful taking of possession in accordance with Sections 16 or 17 of the Act. The words "so taking possession" can under no circumstances mean such dispossession of the owner of the land which has been done prior to publication of notification under Section 4(1) of the Act which is de hors the provisions of the Act."

13. A reading of the above judgment, it is clear that under the Act, the valid possession can only be either under Section

17 of the Act by invoking urgency clause or under Section 16 of the Act after passing of the Award. Any possession prior to the preliminary notification issued under Section 4(1) of the Act or under invalid notification is not the valid possession under the Act. Therefore, the benefits contemplated either under Section 34 or 28 of the Act are not from the date of possession which is prior to the notification. Any possession which is not in terms of the Act is not valid possession and the statutory benefits of the Act are not extendable for the said invalid possession held by the Government.

14. Now the question is whether the owners of the land are compensated for the period of invalid possession retained by the Government without support of the Act or under the invalid proceedings issued under the Act?

15. In this regard, it is relevant to refer to the judgment of the Apex Court in **R.L.Jain**'s case (supra), wherein it has been held as follows:

> "18. In a case where the land owner is dispossessed prior to the issuance of preliminary notification under Section 4(1) of the Act the government merely takes possession of the land but the title thereof continues to vest with the land owner. It is fully open for the land owner to recover the possession of his land by taking appropriate legal proceedings. He is therefore only entitled to get rent or damages for use and occupation for the period the government retains possession of the property. Where possession is taken prior to the issuance of the preliminary notification, in our opinion, it will be just and equitable that the Collector may also determine the rent or damages for use of the property to which the land owner is entitled while determining the compensation amount payable to the land owner for the acquisition of the property. The provision of Section 48 of the Act lends support to such a course of action. For delayed payment of such amount appropriate interest at prevailing bank rate may be awarded."

16. A reading of the above judgment would show that where the land owners are dispossessed prior to valid notification or on strength of invalid notifications, the Government only takes possession and title still vests with land owners and they are entitled to recover possession through legal process. Such land owners are entitled to get rent or damages for use and occupation for the period the Government retains such possession. In such a situation, the Collector may also determine just and equitable rent or damages for use and occupation of the property, while determining the compensation amount payable to the land owner for acquisition of the property.

17. The Apex Court, having observed so in the said case, has not granted any relief for retention of such possession by the Government for the reason that the land owner therein was sufficiently compensated even before fresh proceedings were instituted, and that even under the fresh proceedings, sufficient compensation has

been determined and paid to the land owner.

18. In the present case, the lands were acquired in three different villages for excavation of 1R/DBM-23 canal on the basis of invalid notifications. Later, fresh notifications were issued and the award was passed on 31.03.1993. By the date of such Award, the Apex Court has not passed the judgment in **R.L.Jain**'s case (supra). Therefore, the interest under Section 34 of the Act was paid from the date of dispossession on the strength of invalid notifications. As such, there was no occasion either to the claimants or to the Land Acquisition Officer to claim and determine the rent or damages for use and occupation for the period of such possession which the Government retained not under the Act. Hence, at this point of time, driving the respondents/claimants to the appellant/ Land Acquisition Officer to claim rent or damages for such invalid possession, which is not under the Act, by the Government is wholly inappropriate and unjustified.

19. In similar circumstances, the Apex Court in **Madishetti Bala Ramul v. Land Acquisition Officer** (2007) 9 SCC 650), **Tahera Khotoon v. LAO** (2014) 13 SCC 613) and **Land Acquisition Officer & Asstt. Commr. V. Hemanagouda** (2005) 12 SCC 443), by placing reliance of its earlier judgment in **R.L.Jain**'s case (supra), has granted additional interest @ 15% per annum on the amount awarded by the Land Acquisition Officer from the date of dispossession to the date of notification. The said judgments were rendered by the two Benches of the Apex Court consisting of two Judges.

20. In the said judgments, the notification date was taken as the terminal point for payment of additional interest @ 15% per annum. The legal basis for granting such additional interest is the decision of the Apex Court in **R.L.Jain**'s case (supra). In **R.L.Jain**'s case (supra), the Apex Court has not given any terminal point in restricting the payment of such additional interest till notification, but such rent or damages were extended for use and occupation for the period the Government retained the possession not under the Act. The scheme of the Act does not permit the Government to take possession under the Act simultaneous with the notification. The benefits of Section 28 or 34 are payable from the date of valid possession under the Act.

21. As held by the Apex Court in **R.L.Jain**'s case (supra), the valid possession under the Act is either under Section 17 (when urgency clause is invoked) or under Section 16 of the Act. Where urgency clause is invoked, the Government has right to take possession of the land after 15 days from the date of issuance of notices under Section 9(1) of the Act to the land owners. When the urgency clause is not invoked, the Government has right to take possession under Section 16 of the Act after passing of Award. However, in all the said decisions, the Hon'ble Benches of the Apex Court in **Madishetti Bala Ramul**'s case (supra), **Tahera Khotoon**'s case (supra) and **Hemanagouda**'s case (supra), have restricted the terminal point for payment of 15% additional amount upto the notification only, but have not specifically declared that

it should be upto notification under Section 4(1) of the Act only or contrary to **R.L.Jain**'s case (supra).

22. It is to be seen judgments cannot be read as statute as held by the Apex Court in **Commissioner of Central Excise, Bangalore v. Srikumar Agencies (**2008 (232) E.L.T. 577.(2) by holding that observation of Courts are neither to be read as Euclid's theorems nor as provisions of the statute.

23. In this regard, we feel appropriate to refer to the decision of Sir George Jessel in **Osborne v. Rowlett** (1880) 13 Ch D 774 (785) who says:

> "The only thing in a Judge's decision binding as an authority upon a subsequent Judge is the **principle** upon which the case was decided."

24. This brings out the distinction between the binding nature of a decision on a particular issue and the binding nature of a principle "upon which the case was decided". The former is precise, while the latter is not. Normally, such precise decisions are accompanied by a course of reasoning which establishes a general principle of law used by the court to justify its decisions. This principle is called the **ratio decidendi** of the decision and its binding nature is of a different kind.

25. We also feel relevant to refer to observation of **Simpson** (Simpson, op. cit., p. 167) who observes: "The ratio of a case is only binding if it is not inconsistent with statute, or inconsistent with the ratio of another decision."

26. The Constitution Bench of the Apex Court in **Central Board of Dawoodi Bohra Community v. State of Maharashtra** (2005) 2 SCC 673) has held that the law laid down by the Apex Court in a decision of Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength**.**

27. It is also relevant to the decision of the Apex Court in **MCD v. Gurnam Kaur** (1989) 1 SCC 101)**,** wherein it has been held as under:

> "11. ...**Professor P.J. Fitzgerald, editor of Salmond on Jurisprudence**, 12th Edn. explains **the concept of sub silentio** at p. 153 in these words:
>
> A decision passes **sub silentio**, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of Point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided Point B in his favour; but Point B was not argued or considered by the court. In such circumstances, although Point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on Point B. Point B is said to pass sub silentio.

12. In **Gerard v. Worth of Paris Ltd**. (1936) 2 All ER 905 (CA), the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in **Lancaster Motor Co. (London) Ltd. v. Bremith Ltd**. (1941) 1 KB 675 : (1941) 2 All ER 11 (CA), the Court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided '**without argument, without reference to the crucial words of the rule, and without any citation of authority'**, it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This Rule has ever since been followed. One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a Judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority."

28. The Apex Court in **State of U.P. v. Synthetics and Chemicals Ltd**. (1991) 4 SCC 139), speaking through His Lordship R.M. Sahai, J., in his concurring judgment set out the principles of sub silentio and has held thus: (SCC pp. 162-63, paras 40-41)

"41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the Rule of precedents. It has been explained as Rule of sub silentio. 'A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind.' (Salmond on Jurisprudence, 12th Edn., p. 153). In Lancaster Motor Co. (London) Ltd. v. Bremith Ltd. (1941) 1 KB 675 : (1941) 2 All ER 11 (CA) the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the Rule and without any citation of the authority'. It was approved by this Court in MCD v. Gurnam Kaur MANU/SC/0323/1988:

(1989) 1 SCC 101. The Bench held that, 'precedents sub silentio and without argument are of no moment'. The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In B. Shama Rao v. UT of Pondicherry MANU/SC/0299/1967: AIR 1967 SC 1480 it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law."

29. In **Arnit Das (1) v. State of Bihar** (2000) 5 SCC 488)**,** the Apex Court held as follows (SCC p. 498, para 20):

"20. A decision not expressed, not accompanied by reasons and not proceeding on a conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not the ratio decidendi. This is the Rule of sub silentio, in the technical sense when a particular point of law was not consciously determined. (See State of U.P. v. Synthetics and Chemicals Ltd. MANU/SC/0616/1991: (1991) 4 SCC 139, SCC para 41.)"

30. At the cost of repetition, we say that the ratio/principle laid down in **R.L.Jain's** case (supra) which is of three-Judges Bench, is that the land owners are entitle for rent or damages towards use and occupation for the period the Government retains possession not under the Act and any possession prior to Section 4 (1) notification or invalid notification is not the possession under the Act.

31. The valid possession under the Act is either under Section 17 or Section 16 of the Act which can only be after notification but not simultaneous with notification under Section 4(1) of Act. This means, by issuance of notification under the Act, the invalid possession of the Government would not automatically become valid possession but it can only be done when proceedings reach the stage of either under Section 17 or Section 16 of the Act.

32. So, we are of the opinion that the benefit of 15% additional interest for retention of possession by the Government, which is not in terms of the Act, cannot be restricted to the date of notification, but

it terminates when the Government gets right to take notional possession by following the procedure either under Section 17 or under Section 16 of the Act.

33. In the case on hand, the Government has not invoked any urgency clause in the subsequent valid notifications issued under the Act. This means, the Government gets no right to take notional possession under Section 17 of the Act. The only other provision is Section 16 of the Act, and such a notional possession can only be taken after passing of the Award. This means, the Government has right to take notional possession immediately after passing of the Award under Section 11 of the Act.

34. In the present case, the Award was passed on 31.03.1993. Therefore, the additional benefit of 15% interest per annum towards rent or damages for use and occupation of land commences from the date of possession which is under invalid notification i.e., 08.08.1984 and terminates with the passing of Award, but not the notification.

35. Now, the further question is the additional benefit of 15% interest per annum which is granted towards rent or damages for use and occupation of the land has to be paid on which amount?

36. In **Madishetti Bala Ramul**'s case (supra), the Apex Court held as follows:

> "20. In the peculiar facts and circumstances of the case, although the proper course for us would have to remand the matter back to the Collector to determine the amount of compensation to which the Appellants would be entitled for being remained out of possession since 1979, we are of the opinion that the interest of justice would be met if this appeal is disposed of with a direction that additional interest @ 15% per annum **on the amount awarded** in terms of award dated 02.01.1999 for the period 16.03.1979 till 22.12.1991, should be granted, which, in our opinion, would meet the ends of justice."

37. A perusal of the above decision would indicate that the additional interest @ 15% per annum was granted on the amount awarded in terms of the Award.

38. In **Tahera Khotoon**'s case (supra), the Apex Court held as follows:

> "15. It is also not in dispute that the Municipal Committee was in possession of the aforesaid property right from 1-1- 1983 till the Notification was issued by the State Government on 10-1-1996. Keeping in view the observations made by this Court in Madishetti Bala Ramul {(2007) 9 SCC 650}, we direct the State Government to pay rents/damages at the rate of 15% **on the compensation awarded** from the date the land owners were dispossessed, namely, from 1-1-1938 till the date of issuance of the preliminary Notification i.e., 10-1-1996. The calculations shall be made by the State Government as expeditiously as possible and disburse the aforesaid amount to the

appellants as early as possible, at any rate, within three months from the date of receipt of copy of this order."

39. A close scrutiny of the above judgment would show that additional amount @ 15% per annum was ordered to pay on the compensation awarded.

40. In **R.L.Jain**'s case (supra), the Apex Court has given the clarification as to what constitutes compensation. The compensation constitutes market value of the land fixed under Section 23(1) of the Act, additional market value fixed under Section 23(1-A) of the Act and solatium granted under Section 23(2) of the Act. This means, the compensation embraces three components i.e., market value, additional market value and solatium. Therefore, the respondents/claimants are entitled for 15% additional interest in the form of rent or damages for use and occupation of the land from the date of invalid possession till the date of Award on the above said three components.

41. In the result, the appeal is partly allowed as follows:

(i) The findings of the reference Court with regard to enhancement of market value is confirmed;

(ii) The amount granted by the reference Court in the form of 12% additional interest from the date of taking possession (prior to the notification) is modified to that of granting 12% additional market value under Section 23(1-A) of the Act from the date of notification till the date of Award on the market value fixed under Section 23(1) of the Act;

(iii) The grant of benefits under Section 34 of the Act by the appellant/Land Acquisition Officer or under Section 28 by the reference Court from the date of taking possession which is prior to the notification is modified by directing to pay such interest from the date on which the Government gets right to take **notional possession** either under Section 17 or under Section 16 of the Act. In the present case, the respondents/ claimants are entitled for such interest from the date of Award till the date of deposit. Such interest is payable on three components i.e., market value, additional market value and solatium;

(iv) The respondents/claimants are also entitled to additional interest @ 15% per annum on compensation i.e., market value, additional market value and solatium towards rent/ damages for use and occupation of the land from the date of possession (prior to the valid notifications) i.e., 08.08.1984 till the date of passing of Award i.e., 31.03.1993.

Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

–X--

2022 (1) L.S. 192 (T.S) (D.B.)

IIN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble Mr.Justice
P. Naveen Rao &
The Hon'ble Smt.Justice
P. Sree Sudha

M/s. Kshitij Infraventures Pvt Ltd., & Ors., ..Petitioners

Vs.

Mrs.Khorshed Shapoor, Chennai ..Respondent

CIVIL PROCEDURE CODE - A.P. COURT FEES AND SUIT VALUATION ACT, Sec.11 - Application filed to condone the delay of 1691 days in preferring appeal against the Judgment and Decree in O.S.

HELD: Even though adequate time was available and trial Court accommodated, for the reasons best known, the plaintiffs did not choose to pay the court fee - Further, as per Section 11 of the Andhra Pradesh Court Fees and Suit Valuation Act, the plaint is liable to be rejected if the deficit fee is not paid - It is the duty of plaintiffs to pay proper court fee - Plaintiffs were required to persuade the trial Court to determine the value of the property and to fix the court fee and pay the court fee as assessed - Statements are made to mislead the Court to believe as if injustice is inflicted on him - Application is liable to be dismissed.

I.A. No.1/2020 &
CCCA No. 66/2020 Date:7-1-2022

Mr.Dammalapati Srinivas, Senior Counsel for Satyanarayana Rao, Advocate for the Appellant.
Mr.Venkatadri Raju, Advocate for the Respondent R1,
Mr.S. Niranjan Reddy, Senior Counsel for Naresh Reddy Chinnolla, Advocate for the Respondent R.2
Mr.B. Sree Hari, Advocate for the Respondent R3.

J U D G M E N T

(per the Hon'ble Mr.Justice
P. Naveen Rao)

1. Heard Sri Dammalapati Srinivas learned senior counsel representing Sri Satyanarayana Rao Adiraju learned counsel for appellant, Sri Venkatadri Raju learned counsel for first respondent, Sri S.Niranjan Reddy learned senior counsel representing Sri Naresh Reddy learned counsel for second respondent and Sri B.Sree Hari learned counsel for third respondent.

2. This is an application filed to condone the delay of 1691 days in preferring appeal against the judgment and decree dated 28.4.2015 in O.S. No. 69 of 2003 on the file of XIII Additional chief Judge, City Civil Court, Hyderabad. Petitioner/appellant is the plaintiff No.2 in O S No. 69 of 2003. The third respondent is plaintiff No.1 and respondents 1 and 2 are defendants 1 and 2 to the suit.

3. From the pleadings, to the extent relevant, the timeline of the litigant leading

to this application is noted hereunder. Respondent no.3 claims that late Shapoorji Chenoy was the owner of the suit schedule property (Acs.22.05 guntas) and she has succeeded to the said property. The suit schedule property is Municipal House bearing No. 1-2-630, Elchibegguda, Lower Tank Bund Road, Hyderabad. It forms part of Sy.Nos.157/1 to 3, 158/1 & 2, 159 and 159/1 of Bakaram village, co-related to T.S.No.27, Block-B, Ward No.76 of Bakaram village. The suit schedule property was leased out in perpetuity by late Shapoorji Chenoy to Dewan Bahadoor Ramgopal Mills Limited (DBR Mills) for the purpose of running Textile Mills. According to DBR Mills, it has also purchased Acs.4.00 guntas of adjacent land. In the said manner, it has acquired in all Acs.26.05 guntas of land. In the said land, DBR Mills was established.

4. Alleging that several terms of lease agreement were violated by the lease holder resulting in lease becoming inoperative and claiming that plaintiff is entitled to recovery of possession, to recover arrears of rent and damages, legal proceedings were set in motion and plaintiff no.1 instituted O.S.No.1201 of 1995, renumbered as O.S.No.69 of 2003 on the file of XIII Additional chief Judge (FTC), City Civil Courts, Hyderabad, praying to grant decree of eviction of defendant No. 1 from the leased property and to pay damages. On 03.12.1998, the appellant herein entered into agreement of sale with the respondent no.3 herein in respect of the suit schedule property. Thereafter, the appellant impleaded as plaintiff no.2. DBR Mills Employees Union was later impleaded as Defendant No.2 to the suit.

5. While so, plaintiffs 1 and 2 and first defendant sought to resolve the inter se dispute and entered into compromise on 08.03.1999. In terms of this compromise, appellant gets full rights on Acs.6.00 out of suit schedule land and 1st respondent owns remaining land of Acs.16.00. The compromise memo was filed into the Court through I.A.No.359 of 1999. Second defendant filed an affidavit seeking leave of the Court to allow him to join as a party to the compromise memo and agreeing to record the compromise and to pass judgment in terms thereof.

6. Though, initially agreed to resolve the dispute amicably and entered into compromise when matter was considered by the trial Court to record the compromise and to render judgment, the first respondent opposed the compromise by contending that there was huge delay in presenting the compromise memo causing financial drain and sought to record fresh compromise before an Arbitrator. Over-ruling the objection of 1st respondent taking recourse to Order XXIII Rule 3 of CPC, by judgment dated 03.04.2003, the Trial Court allowed I.A.No.359 of 1999 and decreed the suit in terms of the compromise. The Trial Court also directed to pay the Court fee if any required, as per the terms of compromise.

7. The respondent no.1 filed CCCA No. 350 of 2003 before Hon'ble High Court challenging the compromise Decree dated 3.4.2003. The respondent No. 2 herein also preferred CCCA No. 74 of 2004. CCCA No. 329 of 2003 and CCCA No. 131 of 2004 were filed by third parties. All the four appeals were clubbed and by a common judgment

dated 12.4.2004, the Division Bench of this Hon'ble Court dismissed all the appeals, thereby confirming the compromise decree dated 3.4.2003. However, for the limited purpose to assess the value of the property relating to compromise, and the Court fee payable thereon, the matter was remanded to the trial Court.

8. Challenging the decision of this Court, Special Leave Petition Nos. 13630 to 13633 of 2005 were filed and the same were dismissed by the Hon'ble Supreme Court by order dated 21.4.2005. Review Petitions filed against the dismissal of SLPs were also dismissed by order dated 24.8.2005.

9. On remand, the suit underwent several adjournments to secure the market value of the land in issue and thereafter for payment of Court fee. Holding that even though several adjournments were granted plaintiffs have not paid the court fee they forfeited their right and finally dismissed the suit by judgment dated 28.04.2015.

10. The first respondent filed O.S.No.293 of 2019 in the Court of X Additional Chief Judge, City Civil Court praying to grant decree of cancellation of the registered documents bearing document no.1349 of 2009 dated 27.10.2009 and document no.1350 of 2009 dated 28.10.2009.

11. Appellant claims that he came to know about dismissal of O.S.No.69 of 2003 only when he received summons in O.S.No.293 of 2019. Immediately thereafter he has obtained all the documents and instituted the appeal suit. In preferring the appeal, there is a delay of 1691 days. Therefore, appellant filed this I.A.No.1 of 2020 to condone the delay in filing the appeal.

12.1. Learned senior counsel for the appellant Sri Dammalapati Srinivas contended that Order XLI Rule 26A of CPC per force requires trial Court to issue notice to parties by fixing the date of hearing on remand, but this Rule was not complied. After the remand by this Court in CCCA Nos. 329 of 2003 and batch, no notice was served on the appellant. Therefore, the appellant was not aware of the proceedings taken up by the trial Court. Before suit was disposed of, first time, both plaintiffs were represented by different Lawyers. After the remand, appellant was not represented by a lawyer as no notice was given to the appellant on remand and only lawyer for first plaintiff appeared. Appellant came to know only for the first time when he received summons in O.S.No.293 of 2019 pending in the Court of the X Additional Chief Judge, City Civil Court, Hyderabad instituted by the first respondent and immediately he has taken steps to file this appeal.

12.2. He would further submit that as per the judgment and decree passed by this Court in CCCA No. 329 of 2003, payment of Court fee would arise only after assessing the value of the property and after the assessment the plaintiffs had two months time to pay the Court fee. The suit underwent several adjournments only for the purpose of ascertaining valuation of the suit schedule property. The valuation was furnished only on 01.12.2014. No reasonable

opportunity was given to the appellant to pay additional court fee after valuation of the suit schedule property was furnished by the Registration Department.

12.3. He would further submit that the suit was disposed of in terms of the compromise. The decree granted by the trial Court was affirmed by this Court and by the Hon'ble Supreme Court. The remand by this Court was only with reference to determination of Court fee payable in terms of the compromise recorded by the trial Court and therefore the trial Court grossly erred in dismissing the suit and is thus per-se illegal.

12.4. He would further submit that the trial Court went beyond the scope of remand. The suit was remanded only for the purpose of determining the additional court fee payable, therefore the trial Court could not have dismissed the main suit when the decree granted by the trial Court was affirmed by this Court and Hon'ble Supreme Court. The rights accrued by virtue of a compromise which were affirmed by decree of the trial Court cannot be taken away on mere ground of not paying the Court fee.

12.5. He would further submit that payment of appropriate Court fee is between the plaintiffs and the State. Therefore, 'inter-partes' the compromise entered into is binding and said compromise cannot be nullified on mere ground of non payment of the appropriate Court fee. It is a curable defect and even at this stage it can be cured. This Court should permit the appellant to deposit the balance Court fee and to confirm the decree as originally granted by the trial Court and affirmed by this Court and Hon'ble Supreme Court. The said course would be just and equitable. The substantive right created and vested in the appellant by virtue of compromise cannot be nullified on the specious ground of not paying the appropriate court fee.

12.6. In support of his submissions, learned senior counsel placed reliance on the following decisions:

Sri Rathnavarmaraja Vs Vimla (1961) 3 SCR 1015)**; Madanlal Vs MST Chhotaka Bibi (**1970 (1) SCC 769); **N.Balakrishnan Vs M.Krishnamurthy** (1998) 7 SCC 123)**; Perumon Bhagvathy Devaswom Vs Bhargavi Amma** (2008) 8 SCC 321)**; A.Nawab John and others Vs V.N.Subramaniyam** (2012) 7 SCC 738)**; Manoharan Vs Sivarajan and others** (2014) 4 SCC 163); **State/CBI (SPE) Vs Subrate Bhattacharjee and another** (2007) 2 Gauhati Law Reports 479)**.**

13.1. Per contra, learned senior counsel Sri S.Niranjan Reddy, appearing for first respondent submitted that per-se suit is not maintainable unless proper court fee is paid. It is the duty of the plaintiffs to comply with the mandate given by the trial Court and affirmed by this Court regarding payment of Court fee. He would submit that order XLI Rule 26A of the CPC has no application to the facts of this Case. The trial Court is required to issue notices by fixing the date of next hearing only when the appellate Court remands a case on aspects falling under Rule 23, 23A and 25. According to learned senior counsel, none

of the three contingencies provided in Order XLI Rule 26A of CPC are attracted to the case on hand. He would submit that except Order XLI Rule 26A there is no other provision in CPC which requires issuance of notice to the parties to the suit on remand.

13.2. According to learned senior counsel, if Court fee is not paid the suit is liable to be dismissed and in spite of affording due opportunity, as plaintiffs failed to pay the court fee, the trial Court has rightly dismissed the suit.

13.3. He would submit that there are no bona fides in prosecuting the litigation. The appellant is only trying to drag on the litigation and frustrate the fruits of the decree granted in favour of the defendants by dismissing the suit.

13.4. He would submit that the delay of 1691 days in instituting the appeal, per-se, is on the very high side and no case is made out for condoning the delay. The appellant failed to explain each day's delay. When the delay is huge, it is his bounden duty to assign cogent reasons. He would further submit that the delay of 1691 days cannot be seen in isolation. The appellant was silent for 16 years and no explanation is offered on his conduct in prosecuting the case before the trial Court from the year 2004/2005 till 2015. It was the bounden duty of the appellant to prosecute the suit and to comply with the mandate of the trial Court as affirmed by the appellate Court to pay the balance court fee. Knowing fully well that unless the balance court fee is paid, the decree recording the compromise cannot survive, he deliberately avoided payment of additional court fee. He would submit that the appellant is trying to play game of hide and seek by not appearing before the trial Court and not complying with the directions of this Court to pay the additional court fee and coming to this court to set aside the decree granted by the trial Court dismissing the suit after a long delay of 1691 days. He would submit that as per the valuation of the property determined by the registration department, the appellant was required to pay Court fee as per valuation of the suit schedule property as applicable in the year 2004. If what is contended by the appellant is accepted, he is required to pay the same court fee even after 17 years whereas the valuation of the suit property as of now is far higher. Thus, no indulgence can be shown by this Court to permit the appellant to pay the same Court fee as payable in the year 2004 after 17 years.

13.5. He further submitted that it cannot be said that appellant was not aware of the mandate of this Court for payment of Court fee and pendency of suit before the trial Court. By referring to paragraphs 9, 10, 12 and 13 of the affidavit filed in support of I.A.No.1 of 2020, he would submit that what is stated therein is a blatant lie. He would submit that as can be seen from the affidavits filed in CCCAMP No.331 OF 2006 of 2006 in CCCA No.329 of 2003 and CCCAMP No.332 of 2006 in CCCA No.350 of 2003, deponent to the affidavit filed in support of this application was also deposing on behalf of both the plaintiffs in the suit. In CCCAMP No.331 of 2006 in CCCA No.329 of 2006 and CCAMP No.332 of 2006 in CCCA No.350 of 2003 deponent

sought for listing of the appeal suits under the caption "for being mentioned" for seeking clarification with regard to observation made as to calculate the court fee. It was pleaded that the value of the subject matter of the compromise was Rs.4 crores, and plaintiffs offered to pay court fee on amount of Rs.4 crores and accordingly this Court was pleased to remand to the trial Court, for limited purpose of calculation of the Court fee by treating the value of the suit schedule property as Rs.4 crores only. It was pleaded that there was ambiguity on this aspect and it requires clarification. He would further submit that as evident from the record CCCAMP No.11963 of 2004 (I.A.No.2 of 2004) was filed seeking extension of three months time for assessing the value of the property. Said I.A. was disposed of on 2.2.2006. Therefore, appellant cannot plead ignorance of proceedings pending before the trial Court. Further, even according to this appellant, at least the first plaintiff was represented by an advocate before the trial Court.

13.6. He would further submit that during this period he was pursuing with the registration department to register the deed sought to be registered by the first plaintiff, in favour of the second plaintiff when registering authority refused to register, W.P.No.25181 of 2006 was filed. Alleging disobedience of the order of this Court C.C.No.1344 of 2007 was filed. The deponent herein deposed to the affidavit filed in support of W.P.No.23123 of 2012 filed by the first plaintiff challenging the endorsement given by the registering authority on 12.1.2012 insisting to secure 'no objection certificate' for the purpose of registration of the document sought to be registered by plaintiff No.1 in favour of plaintiff No.2. Based on the directions issued by this Court, he got the document registered in his favour. Again he was also deponent to the affidavit filed in WP 11314 of 2014. This writ petition was filed challenging the decision of the Municipal Commissioner rejecting the building plans submitted by the appellant for construction of commercial complex on the very same land. During this period, he filed two applications before this Court in the year 2006. All these aspects clearly point out that appellant was aware of the proceedings before the trial Court, watching from side lines and therefore what is pleaded is a blatant lie and amounts to playing fraud on the Court.

13.7. He would further submit that the Division Bench of this Court in judgment dated 12.4.2004 while remanding the suit for determination of valuation of the property and calculation of additional court fee clearly observed that the judgment rendered by the trial Court in O.S.No.69 of 2003 has binding effect only on payment of Court fee. Thus, the appellant was aware of the consequences of non payment of court fee and therefore assertion that the rights accrued to them by virtue of a compromise arrived between the parties and recorded by the trial Court is erroneous. The limited right accrued to the appellant by virtue of compromise decree is subject to payment of court fee.

13.8. He would further submit that Section 23 of the Indian Registration Act requires registration of the decree within four months of the date of decree. Unless

the compromise decree is registered it has no legal sanctity. No steps were taken to seek registration of the decree as required by section 23 of the Registration Act, 1908. He would further submit that even otherwise deed of compromise also requires registration within four months from the date of compromise but no endeavour was made by the appellant. The appellant can claim to have acquired right as per the compromise deed only if the payment of court fee was made as mandated by this Court in paragraph 72 of judgment in CCCA No.329 of 2003 and batch and registered as required by Section 23 of the Registration Act, 1908.

13.9. In view of the time limit specified by this Court and having regard to the provisions in Section 23 of the Registration Act, 1908, Article 137 of the Limitation Act, 1963 and no application seeking extension of time is filed. Having regard to history of litigation it is not just and equitable to treat such delay as reasonable and justified.

13.10. He would further submit that consequent to the remand with specific observations in paragraph 72 of the judgment of this Court, the suit was brought back to life before the trial Court and affirmation of the earlier judgment and decree is subject to payment of additional Court fee. Since suit was brought to life and plaintiffs did not prosecute their suit, trial Court could dismiss the suit on that ground, therefore, no error was committed by the trial Court.

13.11. In support of his contentions, learned senior counsel placed reliance on the following decisions:

Rama Narang Vs Ramesh Narang and Another (2006) 11 SCC 114)**;** **Basawaraj and another Vs Special Land Acquisition Officer** (2013) 14 SCC 81); **Lanka Venkateswarlu Vs State of Andhra Pradesh** (2011) 4 SCC 363)**;** **Balwant Singh Vs Jagdish Singh and others** (2010) 8 SCC 685)**; Ramlal and others Vs Rewa Coalfields Ltd (**AIR 1962 SC 361)**; Srinagar Kanwar Vs Hari Singh (**RLW 2006 (1) Raj 275 = 2006 (1) WLC 51).

14. Issue for consideration is whether petitioner/appellant is entitled to condone delay of 1691 days in filing the CCCA No. 66 of 2020?

15. It is made clear at the outset that as the issue is at the stage of consideration of application to condone the delay in preferring the appeal, the court is not dwelling into merits of the case.

16. Section 96 of CPC vests right in an aggrieved party to avail remedy of appeal. Against the decision of the District Court, appeal shall lie to the High Court. Remedy of appeal has to be availed within 90 days from the date of decree in the suit. Section 5 (**S.5. Extension of prescribed period in certain cases**.— Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.—The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.) of the Limitation Act vests discretion in the High Court to entertain an appeal filed after 90 days by condoning the period of delay. Such condonation is subject to the appellant showing **sufficient cause** for not availing the remedy of appeal within 90 days.

17. Scope of Section 5 of the Limitation Act and scope of power of Court to condone the delay in filing an appeal was subject of consideration in plethora of precedent decisions of this Court and the Hon'ble Supreme Court. Suffice to note few land mark decisions to understand the concept of **sufficient cause**.

17.1. In **Perumon Bhagvathy Devasom** (supra) and **N.Balakrishnan** (supra), the Supreme Court considered what is meant by '**sufficient cause**' and the scope of exercising of discretion in condoning delay.

17.2. In **Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai** (2012) 5 SCC 157)**,** the Hon'ble Supreme Court held as under:

> "14**.**…The law of limitation is founded on public policy. The Limitation Act, 1963 has not been enacted with the object of destroying the rights of the parties but to ensure that they approach the court for vindication of their rights without unreasonable delay. The idea underlying the concept of limitation is that every remedy should remain alive only till the expiry of the period fixed by the legislature. At the same time, the courts are empowered to condone the delay provided that sufficient cause is shown by the applicant for not availing the remedy within the prescribed period of limitation.
>
> 15. The expression "sufficient cause" used in Section 5 of the Limitation Act, 1963 and other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which serves the ends of justice. No hard-and-fast rule has been or can be laid down for deciding the applications for condonation of delay but over the years this Court has advocated that a liberal approach should be adopted in such matters so that substantive rights of the parties are not defeated merely because of delay.
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> 16**.** In **Ramlal v. Rewa Coalfields Ltd**. [AIR 1962 SC 361] this Court while interpreting Section 5 of the Limitation Act, laid down the following proposition: (AIR pp. 363-64, para 7)
>
> "7. In construing Section 5 (of the Limitation Act) it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words,

when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the court to condone delay and admit the appeal. **This discretion has been deliberately conferred on the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice.**"

17**.** In **Collector (LA) v. Katiji** [(1987) 2 SCC 107] this Court made a significant departure from the earlier judgments and observed: (SCC pp. 108-09, para 3)

"3. The legislature has conferred the power to condone delay by enacting Section 5 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on 'merits'. The expression 'sufficient cause' employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice—that being the lifepurpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realised that:

(1) Ordinarily a litigant does not stand to benefit by lodging an appeal late.

(2) Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

(3) 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

(4) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

(5) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant

does not stand to benefit by resorting to delay. In fact he runs a serious risk.

(6) It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so….."

18. In **N. Balakrishnan v. M. Krishnamurthy** [(1998) 7 SCC 123], the Court went a step further and made the following observations: (SCC pp. 127-28, paras 9, 11 & 13)

"9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. **Length of delay is no matter, acceptability of the explanation is the only criterion.** Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

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11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. **So a lifespan must be fixed for each remedy.** Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. **The law of limitation is thus founded on public policy.** It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. **They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly.** The

idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

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13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss."

(emphasis supplied)

17.3. On review of precedent decisions in **Esha Bhattacharjee v. Raghunathpur Nafar Academy** (2013) 12 SCC 649)the Supreme Court summarized the principles to be applied while deciding a condonation of delay petition as under:

"21. From the aforesaid authorities the principles that can broadly be culled out are

21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) **No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.**

21.5. (v) **Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.**

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) **The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.**

21.8. (viii) **There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.**

21.9. (ix) **The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.**

21.10. (x) **If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.**

21.11. (xi) **It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.**

21.12. (xii) **The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception**.

21.13. (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:-

22.1. (a) **An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.**

22.2. (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3 (c) Though no precise formula can be laid down regard being had

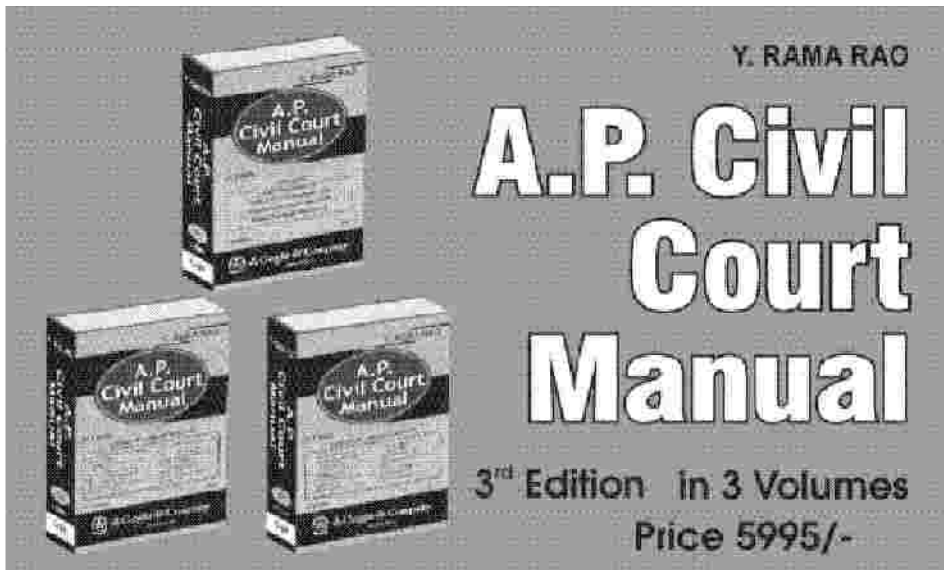
> to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.
>
> 22.4. (d) The increasing tendency to perceive delay as a non- serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters."
>
> (emphasis supplied)

18. From the precedent decisions, it is discernible that the Court is vested with power to condone the delay in filing an appeal if sufficient cause is shown by the litigant. While assessing the reasons for delay and the quantum of delay, Court should adopt liberal approach. It is not necessary that person should explain every day's delay in literal sense. When substantial justice and technical considerations are pitted against each other cause of substantial justice should be preserved. Any course of action adopted by the Court must serve the ends of justice. Once the Court is convinced that delay is properly explained and is non-deliberate, court must lean in favour of condoning the delay.

19. However, while exercising its discretion to condone delay, the Court is required to see whether delay is satisfactorily explained; there was no deliberate, wanton delay in prosecuting the litigation; litigant was not resorting to dilatory tactics; whether explanation lacks bona fides of litigant. The Court should also keep in mind the prejudice that may be caused to decree holder. The right accrued to decree holder by lapse of time due to his own failure to prosecute legal remedy within reasonable time cannot be lightly ignored. When the delay is long, as in this case, the scrutiny is rigid and burden is heavy on the litigant to explain every aspect of his conduct and behaviour, fairly and freely during the interregnum. Such assertions should not be fanciful.

20. In the above backdrop, it is necessary to consider, whether the appellant has furnished sufficient cause for the delay of 1691 days in filing this appeal. Further, conduct of appellant must also stand the test of bona-fides, fair and frank submissions, not resorting to false hood, misrepresentation and suppression. To condone the delay of 1691 days in preferring the appeal, petitionerappellant in his affidavit filed in support of the I.A. deposed that he did not receive notice in the suit after its remand and till he received summons in O.S.No.293 of 2019 instituted in the X Additional Chief Judge, City Civil Court, he was not aware of dismissal of the suit and therefore delay is not deliberate and willful. On the contrary, if delay is not condoned grave prejudice would be caused to him.

21. To appreciate this assertion of petitioner/appellant, it is necessary to note few landmarks in the journey petitioner/ appellant has undertaken in his pursuit to own the suit property, and to develop the same, till this application is filed.



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