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Law Summary

(Founder : Late Sri G.S. GUPTA)

FORTNIGHTLY

(Estd: 1975)

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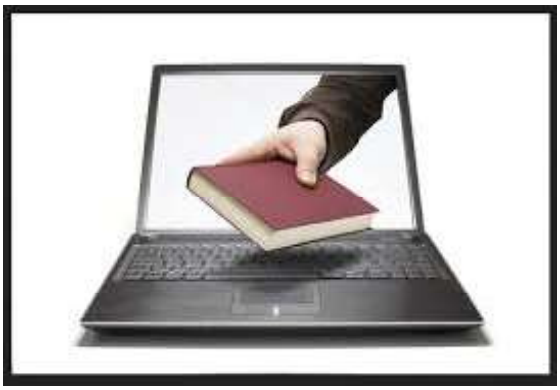

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PART - 10 (31ST MAY 2022)

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HELD: Defendant was mis-conducting the management of the business to the detriment of the firm as a part of the property was let out to the third party without knowledge and consent of the respondent/plaintiff; and therefore, the suit for rendition of the accounts and for dissolution of the partnership was within limitation.

If an application is filed under Section 8 of the Arbitration Act, the Court on being satisfied with the pre-conditions shall refer the parties to the arbitration and shall reject the plaint under Order 7 Rule 11 (d) CPC as barred by law - But, If no application is filed as per Section 8, and there is no prayer to refer the parties to arbitration, existence of the arbitration clause would not be a ground to reject the plaint under Order 7 Rule 11 CPC - Court below did not commit any illegality in not rejecting the plaint on the plea of the petitioner/defendant that there was an arbitration clause - In view of the specific prayer for dissolution of the partnership firm and also for rendition of the accounts made by the respondent in the plaint, merely because the plaintiff also prayed for partition of the properties of partnership firm and to pay the sum to the plaintiff as per his share, the plaint cannot be rejected on this ground at the stage of under Order 7 Rule 11 CPC - Civil Revision Petition stands dismissed. **(A.P.) 53**

CIVIL RULES OF PRACTICE AND CIRCULAR ORDERS, Rules 188 & 199 - Petitioner herein, third party to the suit, had filed an application under Rule 188 (2) of the Civil Rules of Practice, seeking certified copies of original documents which were

returned to the party on her application filed on the condition of substituting the original documents with certified copies- Petitioner herein, had filed Copy Application to furnish copies of the said certified copies - Trial Court rejected on the ground that the certified copies are not the exhibited documents, hence, application was refused.

HELD: If at all the Court wants to furnish the documents, it should furnish to the party in accordance with the provisions of Sec.76 of Evidence Act read with Rule 199 of the Civil Rules of Practice - Ordinarily copies of copies are not to be treated as 'secondary evidence' unless such copies are again compared with the original, the said principle does not apply to certified copies granted by the Sub-Registrar under the Registration Act.

A copy means a document prepared from the original which is an accurate or "true copy" of the original - In the present case, Originals were returned to the Plaintiff on filing of an Application after substituting by its certified copies on record - Based on the above mentioned Copy Application filed by the Petitioner if the Court below has delivered the copy, it will not come under the definition of certified copy - Court below is justified in refusing the Application filed by the Petitioner seeking copies of certified copies – Civil Revision stands dismissed. **(T.S.)** ***9***

LIMITATION ACT, Sec.5 – Seeking to condone the delay of 1246 days - Suit for specific performance of agreement of sale - Summons were not served upon the Defendant but Trial Court decreed the suit ex-parte - Defendant moved an application under Section 5 of Limitation Act to condone the delay for setting aside the ex-parte decree, but the Court dismissed the application - Hence instant Revision.

HELD: Address mentioned at different points by the respondent/ plaintiff itself demonstrates the fraud played for getting an ex-parte decree - After all the purpose of Courts of law is to render substantial justice by giving due opportunity to both parties to exhibit their respective stands - Making the revision petitioner to suffer under an ex-parte decree passed would be unjustifiable - Revision petition stands allowed - Order rendered by the Trail Court in I.A. stands set aside. **(T.S.) 17**

(INDIAN) PENAL CODE, Secs. 143, 147, 148, 427, 452 & 302 R/w.49 - Convictions confirmed and acquittals reversed at the hands of Division Bench of the High Court are under challenge.

HELD: Appellate forum cannot change the conclusion arrived by the Trial Court

by substituting its views - High Court has adopted the principle of preponderance of probability as could be applicable to the civil cases to the case on hand when more scrutiny is warranted for reversing an Order of acquittal - Conviction rendered by the High Court against the Appellants in Criminal Appeal stands set aside - Consequently, appeals filed by accused are allowed by setting aside the Judgment rendered by the High Court and restoring the acquittal rendered by the Trial Court. **(S.C.)** ***33***

(INDIAN) STAMP ACT, Sec.33 & 35 and Article 31 – **TELANGANA BUILDINGS(LEASE, RENT AND EVICTION) CONTROL ACT, 1960,** Sec.22 - Revision petitioner filed R.C. on the file of Rent Controller, for eviction, which was allowed - Aggrieved thereby, respondents preferred an Appeal - During the course of hearing before the rent controller, the original lease deed/Ex.P-3 was marked subject to objection of the respondents - Whereas, the objection neither recorded nor considered while adjudicating the petition - However, the document was insufficiently stamped - Excluding the document, appellate court allowed the appeal – Hence, instant Revision.

HELD: Respondent had objected for marking the Suit document and this aspect was answered in the appeal, by discarding the document as it is inadmissible - Impugned Order in R.C.A. on the file of the Chief Judge, Small Causes Court, stands set aside and the matter is remanded with a direction to examine the insufficiency of stamp duty on the document/Ex.P-3 to take up the recourse as contemplated in the Indian Stamp Act - On validation of the document, the parties shall be given opportunity to contest and pass an appropriate Order on merits, as per law. **(T.S.) 19**

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A CRITICAL STUDY ON EARNING WIFE'S RIGHT TO MAINTENANCE UNDER SECTION 125 Cr.P.C

By:-
J.SUJIN KUMAR. LL.M (NALSAR), UGC-NET.
Special Judicial Magistrate of I Class,
Special Mobile Court, Anantapuramu

Introduction

The terms "Maintenance" or "providing maintenance" have not been deciphered and defined perspicuously in the substantive or procedural laws. These terms derive categorical connotation from the catena of precedents and gain perceptive explication and trenchant exegesis from the judicial dicta. While, the literal and dictionary meaning of the term conveys that - "Maintenance means subsistence, supply of necessaries and conveniences; aid, support, assistance; the support which one person who is bound by law to do so, gives to another for his living1". However it has been observed that "Maintenance varies according to the position and status of a person. It does not only mean food and raiment2". It is pellucid fact that it varies from person to person, according to his or her own living style. The Duty or obligation to provide maintenance to the deserted wife and children was legislated in almost all the developed countries of the world. In India, the concept of providing maintenance to the deserted wife traces its origin to the ancient customary and religious scripts. To dilate, sacred texts of every religion had imposed moral obligation up on every husband to maintain his own wife. It is apposite to the quote the statement of Manu in this regard. He says;

"A husband, who had to go abroad for business, may depart after securing a *maintenance for his wife" (***Manusmriti , 9.74)**

Legal Perspective

Sections 125 of Code of Criminal Procedure Code, 1973 inter alia orders for the providing of maintenance to the legally wedded wife3. It says that a husband having sufficient means of income has a legal duty to maintain his wife, who is not in a position to maintain herself. Explanation attached to this section further says that the term "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried. This provision is applicable to all citizens irrespective of their religion and these have no relationship with the personal law of the parties4.It may be noted that the said provision is aimed at preventing starvation and vagrancy leading to the commission of crime5. In **Ramesh Chander Kaushal vs Venna Kaushal**6, **Justice Krishna Iyer** observed that " Section-125 Cr.P.C is a measure of social justice and specially enacted to protect the interest of deserted women and it falls within the constitutional sweep of Article 15(3) reinforced by Article 39 of Indian

Constitution". This provision was enacted to safeguard the interest of innocent women, who were deserted and neglected by their respective husbands. From the date of its enactment, this provision has shown a great impact in ameliorating the social status of the married women in this male chauvinist society.

It is not out of place to mention that, the position of women has drastically changed during the last decade. The women empowerment and employment have gone through rapid changes and more women are working in the different sphere of society than ever. It has become quite common to see both the husband and wife working for various reasons. Whether in this situation, the earning wife can claim maintenance U/S. 125 Cr.P.C from her husband? Needless to say, this vital question was also subjected to considerable debate in the recent times. The ensuing work will give a plausible and coherent answer to the above said question.

Earning wife vis-à-vis claim for maintenance

As stated supra, the 'home maker' status of women in India has undergone considerable changes. A woman is no more tagged as just a housewife. Infact, she has successfully established herself as a working woman. It was only until recent past, that they were not completely aware of their rights like right to work, equal treatment, property, maintenance and many others. Initially, a misconception existed that a working woman is not entitled to claim maintenance as she is earning and is thus able to maintain herself. However, by perusing the following judgments, it can be implied that the supreme court and various high courts are leaning towards the liberal interpretation of said provision for the purpose of protecting and safeguarding the interest of aggrieved woman.

Case Laws:-

Minakshi Gaur Vs. Chitranjan Gaur7

In this case, Supreme court observed that it is not possible for the wife to maintain herself in the town like Agra with the income of less than Rupees nine thousand per month. As the husband is earning Rs.20,000/- p.m. The court ordered the husband to pay Rs. 5000/- to the wife by way of maintenance from the date of filing of the petition under Section 125 Cr.P.C.

Chaturbhuj Vs. Sita Bai8,

In this case the appellant has placed material to show that his wife was earning some income. The court held that the material is not sufficient to rule out application of Section 125 Cr.P.C. Through this case, the Supreme court has formulated a new test for the purpose of determining wife's right to maintenance. The test is **"whether the wife is in a position to maintain herself in the way she was used to in the place of her husband?"**

Bhagwan v. Kamla Devi9

The Supreme court observed that the wife should be in a position to maintain standard of living which is neither luxurious nor penurious but what is consistent with status of a family. The expression "unable to maintain herself" does not mean that the wife must be absolutely destitute before she can apply for maintenance under Section 125 Cr.P.C."

Shamima Farooqui Vs. Shahid Khan10

By this judgment the Supreme Court clarified that the term sustenance does not mean and can never be allowed to mean a mere survival. The S.C further held that "As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. As long as the wife is held entitled to grant of maintenance within the parameters of Section 125 CrPC, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar. If the husband is healthy, able bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance under Section 125 CrPC, unless disqualified, is an absolute right."

Bhuwan Mohan Singh Vs. Meena11

The Supreme Court observed as under:

" Be it ingeminated that Section 125 of the Code of Criminal Procedure was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the Court and she can sustain herself and also her children if they are with her. It was further held the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar.

Vimla v. Veeraswamy12

A three Judge Bench of supreme court while discussing about the basic purpose under Section 125 of the Code, opined that Section 125 of the Code is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife.

Kirtikant D. Vadodaria v. State of Gujarat and another13

A two Judge Bench of supreme court while adverting to the dominant purpose behind Section 125 of the Code, ruled that:- "While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support.

Savitaben Somabhai Bhatiya v. State of Gujarat14

The Supreme observed that Section 125 of Cr.P.C gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves.

Conclusion:-

It is evident from the recent judicial decisions that the Indian courts have been progressively liberal in deciding cases pertaining to grant of maintenance. It is a laudable attempt. The test

articulated by the supreme court in Chaturbhuj Vs. Sita Bai **whether the wife is in a**

position to maintain herself in the way she was used to in the place of her husband ? , perhaps seems to be one of the greatest pronouncements in the recent times. It can be safely concluded that despite of getting income, even an earning wife can also claim maintenance under section-125 of Criminal Procedure Code, 1973 if she fulfills conditions enumerated in the rulings of the Apex Court.

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1.Bouvier Law Dictionary
2.Moturu Hanumanth Rao V Government of A.P (AIR 1966 AP 229)
3.Savitaben Somabhai Bhatiya V State of Gujarat, (2005) 3 SCC 636
4.Nanak Chandra V Chandra Kishore Aggarwal, (1969) 3 SCC 802.
5.Bhagawan Dutt V Kamla Devi (1975) 2 SCC 386.
6.(1978) 4 SCC 70
7AIR 2009 SC 1377
8.2008 CriLJ 727
9.AIR 2009 SC 1377
10.2015 Law Suit (SC) 314
11.2014 Criminal Law Journal 3979
12.(1991) 2 SCC 375
13.1996) 4 SCC 479
14.(2005) 3 SCC 636

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2022(2) L.S. 53 (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

Chunduru Visalakshi ..Petitioner
Vs.
Chunduru Rajendra Prasad ..Respondent

CIVIL PROCEDURE CODE, Order 7 Rule 11 - Civil Revision Petition by the Petitioner/Defendant challenging the Order passed in I.A., whereby application for rejection of the plaint was dismissed - Respondents/plaintiffs filed Commercial Suit against the petitioner for dissolution of the partnership firm and consequently to partition the properties belonging to the partnership firm – Petitioner filed an application under Order 7 Rule 11 CPC praying for rejection of the plaint, contending that suit is not maintainable under law as there is no cause of action to file the suit since partnership deed clearly spells out that if any dispute arises out of the partnership, same shall be resolved on applying the provisions under Arbitration Act.

HELD: Defendant was mis-conducting the management of the business to the detriment of the firm as a part of the property was let out to the third party without knowledge and consent of the respondent/plaintiff; and therefore, the suit for rendition of the accounts and for dissolution of the partnership was within limitation.

If an application is filed under Section 8 of the Arbitration Act, the Court on being satisfied with the pre-conditions shall refer the parties to the arbitration and shall reject the plaint under Order 7 Rule 11 (d) CPC as barred by law - But, If no application is filed as per Section 8, and there is no prayer to refer the parties to arbitration, existence of the arbitration clause would not be a ground to reject the plaint under Order 7 Rule 11 CPC - Court below did not commit any illegality in not rejecting the plaint on the plea of the petitioner/defendant that there was an arbitration clause - In view of the specific prayer for dissolution of the partnership firm and also for rendition of the accounts made by the respondent in the plaint, merely because the plaintiff also prayed for partition of the properties of partnership firm and to pay the sum to the plaintiff as per his share, the plaint cannot be rejected on this ground at the stage of under Order 7 Rule 11 CPC - Civil Revision Petition stands dismissed.

Mr.P. Rajasekhar, Advocate for the petitioner,
Mr.ASC Bose, Advocate for the Respondent.

J U D G M E N T
(per te Hon'ble Mr.Justice
Ravi Nath Tilhari)

Heard Sri P. Rajasekhar, learned

counsel for the petitioner, Sri Ravi Cheemalapati, learned counsel for the respondents and perused the material on record.

2. This civil revision petition under Article 227 of the Constitution of India has been filed by the petitioner/defendant in COS No. 6 of 2019 challenging the order dated 17.03.2020 passed in I.A.No. 223 of 2019, whereby the application for rejection of the plaint was dismissed by the Special Judge for trial and disposal of Commercial Disputes, Visakhapatnam.

3. The respondents/plaintiffs filed COS No.06 of 2019 against the defendant/ petitioner for dissolution of the partnership firm and consequently to partition the properties belonging to the partnership firm described in the plaint schedule into two equal shares and put the plaintiffs in possession of their respective shares; also directing the defendant/petitioner to render the accounts for the period commencing from 01.04.2010 to 31.03.2018 and to pay a sum of Rs.40,00,000/- being the half share of the plaintiffs in the profits of the firm during the said period.

4. The case of the respondents/ plaintiffs in the suit is that the 1st plaintiff and the defendant entered into a partnership and agreed to do business in the name and style of Hindustan Construction Chemicals and Allied Products for manufacturing and marketing construction Chemicals and Allied products. The 1st plaintiff and the defendant entered into a partnership deed on 26.02.2004, providing that the partnership shall be at will. The management of the firm shall be by both the partners. The 1st plaintiff and the defendant invested funds towards the share capital equally. The 1st plaintiff has contributed equally towards the working capital. The partnership was reconstituted by induction of the 2nd plaintiff as the third partner in the firm. Accordingly a reconstituted partnership deed was executed by the plaintiffs and the defendant on 08.09.2006. As per the terms of the reconstituted partnership deed the profit and loss in the firm shall be apportioned in the ratio of 50% to the defendant 45% to the 1st plaintiff and 5% to the 2nd plaintiff. All the three partners are the working partners empowered to represent the firm with equal rights. The business was running in profits. While so, certain disputes arose between the partners. The plaintiffs permitted the defendant to continue the business with an understanding to apportion the profit and loss in the proportion agreed. Mediation was held in the year 2010. It was resolved to dissolve the partnership. A dissolution deed dated 24.04.2010 was executed by the partners. The dissolution deed between the partners was however not acted upon. Since the year 2010 the defendant alone is running the business without intervention of the plaintiffs. The defendant did not furnish the accounts to the plaintiffs and seek their approval. The defendant is misconducting the management of the business to the detriment of the firm. The plaintiffs got issued a Lawyers notice demanding the defendant to dissolve the partnership and for furnishing the accounts of the firm for the period commencing from 1.4.2010 to 31.3.2017. However, the defendant neither delivered possession of “B schedule property nor registered dissolution deed with Registrar

Firms. As such, the dissolution deed dated 24.4.2010 was not acted upon and is non-est in the eye of law. Since a partnership was not legally dissolved, the plaintiffs continued to be the partners in the partnership firm. The plaintiffs are not interested in continuing the firm. The defendant has not been submitting the accounts ever since 2010 in spite of the demands made by the plaintiffs but is liable to furnish the accounts to the remaining partners. The defendant failed in obligation to furnish the accounts. The plaintiffs seek the interference of the Court to direct the defendants for rendition of the accounts for the period 2010-11 to 2017-18 i.e., for a period of 8 years.

5. The petitioner/defendant filed an application under Order 7 Rule 11 CPC praying the Court to reject the plaint, on 30.09.2019. In support of said I.A.No. 223 of 2019 the petitioner/defendant filed affidavit submitting that the suit is not maintainable under law and there is no cause of action to file the suit in the forum they have chosen. The partnership deed dated 26.02.2004 and the reconstitution of the firm dated 08.09.2006 clearly spell out that if any dispute arises out of the partnership, shall be resolved on applying the provisions under Arbitration Act as per clause-18 of the partnership deed dt.26.2.2004 and clause-18 of the reconstituted partnership deed dt.8.9.2006. Giving a go-bye to the terms of contract, the plaintiffs opted to file the suit without exhausting the remedies provided under the Arbitration Act. Apart from the said fact, the suit is liable to be dismissed in limini even without conducting any trial and enquiry. Reading of the totality of the plaint, the plaintiffs have not averred and pleaded that the disputes referred in the proceedings constitute a commercial dispute. In the absence of pleadings, the Court has no territorial jurisdiction to entertain the proceedings. The plaintiffs have to aver and plead through his pleadings, as defined in Section -2 (1) (c) of the Commercial Courts Act, that the dispute as narrated by the plaintiffs constitutes a commercial dispute. Since the partnership is dissolved by mutual consent in accordance with the provisions of Section 40 of Partnership Act by all the parties on 24.4.2010, the plaintiffs being the retired partners of the firm, are not entitled to file any suit seeking for rendition of accounts and for dissolution. The proceedings are barred by limitation under Article 113 of the Limitation Act. The plaintiffs have no cause of action to file the suit and the cause of action as narrated by the plaintiffs that the plaintiffs leased out a part of the property to Smart Wash Care is a created cause of action for the purposes of the suit. The leasing out of a part of the property cannot be a cause of action for filing of the proceedings before the Court. If leasing out the property to anybody, creates a cause of action, the cause of action arose only in 2011 and the suit is filed beyond the period of limitation which is liable to be dismissed. The defendant prayed the Court to reject the plaint with costs, applying the provisions of Order 7 Rule 11 CPC.

6. The plaintiff/respondent herein, filed counter to the application under Order VII Rule 11 CPC, inter alia, submitting that dissolution deed was not acted upon which became ineffective. The issue regarding the

dissolution deed is factual in nature and is to be decided based upon the evidence adduced by the parties. The objection with respect to arbitration agreement between the parties is not maintainable under Order VII Rule 11 CPC. In any case, the plaint cannot be rejected on the ground of existence of arbitration clause in the partnership deed. The partnership continued in all aspects and as such, the plea that the suit was barred by limitation cannot be a ground for rejection of a plaint which can be appreciated only during trial. The partnership deed dated 26.02.2004 was registered with the Registrar of Firms in the name of "Hindustan Construction Chemicals and Allied Products, Visakhapatnam". The reconstituted firm was also entered in the Office of the Registrar of Firms, but the said dissolution of firm was not registered, as such, the dissolution deed did not take place at any point of time and the plaintiffs continued to be partners of the firm and they cannot be termed as retired partners. The defence of the defendant cannot be relied upon for the purposes of rejecting a plaint. The contentions and issues arising out of factual aspects and application of law there to cannot be decided at the stage of rejection of plaint but can only be decided after the trial is concluded.

7. The petitioner/defendant filed written statement on 25.11.2019.

8. However, any application under Section 8 of the Arbitration and Conciliation Act, 1996 was not filed by the defendant/ petitioner.

9. The learned Court of Special Judge for trial and disposal of Commercial Disputes, Visakhapatnam by order under challenge dated 17.03.2020 dismissed the application under Order 7 Rule 11 CPC.

10. Learned Court below held that the question of limitation involved, is a mixed question of fact and law in the present case and therefore, to decide the said aspect, the Court was required to go into the merits and demerits of the suit and that was not the stage to decide whether the dissolution deed was or was not acted upon. Whether the respondents/plaintiffs have retired from the partnership firm as per the dissolution deed dated 24.04.2010 as alleged by the petitioner/defendant should be decided in the main suit after both parties adducing their respective evidence. It further held that in any application filed under Order 7 Rule 11 CPC the Court has to see whether the petitioner/defendant has established the grounds as contemplated under Order 7 Rule 11 CPC for rejection of the plaint or not, on the averments of the plaint alone. The learned Court below recorded that the averments in the plaint prima facie disclosed the partnership between the plaintiffs/ respondents and the defendant/petitioner and that the dissolution deed dated 24.04.2010 was not acted upon by the petitioner/defendant, the partnership continued to exist and as such as per the plaint averments the suit for dissolution of partnership and rendition of accounts and partition of accounts was not barred by limitation on the face of the plaint. The learned Court below also held that as seen from para-4 of the plaint at page-7, cause of action was categorically disclosed.

11. With respect to the plea of the petitioner/defendant, under Section 8 of the Arbitration and Conciliation Act, the learned Court below held that the said plea was not tenable as the petitioner/defendant did not avail the remedy by filing a petition/ application under Section 8 of the Arbitration and Conciliation Act, 1996.

12. Learned counsel for the petitioner/ defendant submitted that the application filed by the petitioner/defendant was a composite application under Order 7 Rule 11 CPC and under Section 8 of the Arbitration and Conciliation Act, 1996. He submitted that the partnership deed as also the reconstituted partnership deed contained arbitration clause in clause-18 thereof which provides that "any dispute between the partners hereto shall be referred to arbitration mutually accepted as governed by the Indian Arbitration Act any such decision shall be binding and conclusive among the partners". He submitted that in view thereof the dispute between the partners arising out of the maintenance and management of the firm can be referred to an arbitration mutually accepted as governed by Indian Arbitration Act, and the suit is barred. He further submitted that merely because of non-filing of the arbitration agreement or certified copy thereof along with the application under Order VII Rule 11 CPC, it cannot be treated as not a composite application.

13. Learned counsel for the petitioner further submitted that the Court below erred in holding that the issue of limitation is a mixed question of fact and law, ignoring the fact that when the firm stood dissolved, the suit for rendition of accounts shall be filed in three years from the date of dissolution under Article 5 of the Limitation Act and hence the suit was ex facie barred by law, and there was no pleading in terms of Order VII Rule 6 CPC i.e., pleading the grounds of exemption from limitation law.

14. Learned counsel for the petitioner further submitted that the plaint was not as per Form-49 in Appendix II of CPC and it did not contain the essential averments, as in Form – 49, so as to disclose cause of action.

15. Sri P. Rajsekhar, learned counsel for the petitioner, relied upon Vidya Drolia v. Durga Trading Corporation (2021) 2 SCC 1), Ananthesh Bhakta v. Nayana S. Bhakta (AIR 2016 SC 5359 : (2017) 5 SCC 185), Syed Irfan Sulaiman v. M/s. New Amma Hospital, Saroornagar (AIR 2017 Hyderabad 18), Church of Christ Charitable Trust and Educational Charitable Society, rep. by its Chairman v. M/s. Ponniamman Educational Trust rep. by its Chairperson/Managing Trustee (AIR 2012 SC 3912 : (2012) 8 SCC 706), Raghwendra Sharan Singh v. Ram Prasanna Singh (died) By Lrs. (AIR Online 2019 SC 136) and Ketineni Chandrasekhar Rao v. Boppana Seshagiri Rao (2017 (1) ALT 715 (D.B) in support of his submissions.

16. Learned counsel for the respondents/plaintiffs submitted that while considering the application under Order 7 Rule 11 CPC, only the plaint averments are to be read and the defence case is not to be considered. As per the plaint, the dissolution deed dated 24.04.2010 was not acted upon. The defendant failed to act in terms of the dissolution deed and continued

the business in the name of the firm. On 03.10.2018, the plaintiffs issued lawyer's notice to the defendant which was replied on 28.11.2018. There was cause of action which was disclosed in the plaint. The plaint contained necessary averments as per Form 49-A. The suit was not barred by any law of limitation and consequently the provisions of Order 7 Rule 6 CPC are not attracted.

17. Learned counsel for the respondents/plaintiffs submitted that plea of arbitration cannot be taken to reject the plaint under Order 7 Rule 11 CPC. The arbitration clause does not come in the way of filing of suit.

18. The learned counsel for the plaintiffs/respondents further submitted that the petitioner/defendant filed written statement on 25.11.2019 i.e., on the last date of statutory period of 120 days, but did not seek the remedy by filing a petition as contemplated under Section 8 of the Arbitration and Conciliation Act, 1996 prior to filing of the written statement. The application under Order 7 rule 11 CPC is not under Section 8 of the Arbitration and Conciliation Act, and it can not be considered as a composite application, under Section 8 of the Arbitration Act, 1996, as well.

19. Sri Ravi Cheemalapati, learned counsel for the respondents/plaintiffs has placed reliance on M. Shankara Reddy and another v. Amara Ramakoteswara Rao and 3 others (2017 LR (Hyd) 521 : 2017 SCC Online Hyd. 426).

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

21. In view of the submissions advanced, following points arise for our consideration:

i. "Whether the plaint deserved rejection under Order 7 Rule 11 CPC?"

ii. "Whether the impugned order refusing to reject the plaint deserves interference?"

22. We proceed to first consider the legal provisions and the legal position on Order 7 Rule 11 CPC and if the suit was barred by any law in particular by law of limitation.

23. Order VII Rule 11 CPC reads as under:

"11. Rejection of plaint.- The plaint shall be rejected in the following cases:—

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court

to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails comply with the provision of Rule 9.

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff."

24. In Church of Christ Charitable Trust and Educational Charitable Society (supra) the Hon'ble Apex Court held that where the plaint does not disclose a cause of action, the relief claimed is undervalued and not corrected within the time allowed by the Court, insufficiently stamped and not rectified within the time fixed by the Court, barred by any law, failed to enclose the required copies and the plaintiff failed to comply with the provisions of Rule 9, the Court has no other option except to reject the same. The power of rejection of plaint under Order VII Rule 11 CPC can be exercised at any stage of the suit either before registering the plaint or after the issuance of summons to the defendants or at any time before the conclusion of the trial, however, for purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order VII CPC, the averments only in the plaint are germane. The pleas taken by the defendant in the written statement would be wholly irrelevant at that stage. It is the duty of the Court to scrutinize the averments/pleas in the plaint as a whole.

25. Paragraphs – 9, 10 and 11 of the judgment in Church of Christ Charitable Trust (supra) are reproduced as under:

"Points for consideration 9. The points for consideration in this appeal are:

(a) Whether the learned Single Judge of the High Court was justified in ordering rejection of the plaint insofar as the first defendant (the appellant herein) is concerned? and

(b) Whether the Division Bench of the High Court was right in reversing the said decision?

10. Since the appellant herein, as the first defendant before the trial Judge, filed application under Order 7 Rule 11 of the Code for rejection of the plaint on the ground that it does not show any cause of action against him, at the foremost, it is useful to refer the relevant provision:

Order 7 Rule 11 CPC

"11. Rejection of plaint.— The plaint shall be rejected in the following cases—

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of Rule 9:

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp paper shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp paper, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff."

It is clear from the above that where the plaint does not disclose a cause of action, the relief claimed is undervalued and not corrected within the time allowed by the court, insufficiently stamped and not rectified within the time fixed by the court, barred by any law, failed to enclose the required copies and the plaintiff fails to comply with the provisions of Rule 9, the court has no other option except to reject the same. A reading of the above provision also makes it clear that power under Order 7 Rule 11 of the Code can be exercised at any stage of the suit either before registering the plaint or after the issuance of summons to the defendants or at any time before the conclusion of the trial.

11. This position was explained by this Court in Saleem Bhai v. State of Maharashtra [(2003) 1 SCC 557], in which, while considering Order 7 Rule 11 of the Code, it was held as under: (SCC p. 560, para 9)

"9. A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit—before registering the plaint or after issuing summons

to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court."

It is clear that in order to consider Order 7 Rule 11, the court has to look into the averments in the plaint and the same can be exercised by the trial court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinise the averments/ pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in Raptakos Brett & Co. Ltd. v. Ganesh Property [(1998) 7 SCC 184] and Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express [(2006) 3 SCC 100].

26. In the case of Madanuri Sri Rama Chandra Murthy v. Syed Jalal (2017) 13 SCC 174) the Hon'ble Apex Court held that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order VII Rule 11 CPC can be exercised.

27. In Urvashiben v. Krishnakant Manuprasad Trivedi (2019) 13 SCC 372) the Hon'ble Apex Court held that the merits and demerits of the matter cannot be gone into while deciding an application filed under Order VII Rule 11 CPC. It is fairly well settled that at this stage only averments in the plaint are to be looked into.

28. In Urvashiben (supra) plea was taken that the suit was barred by limitation. The Hon'ble Apex Court held that under Article 54 of the Limitation Act, when the time is not fixed in the agreement, the limitation of three years to file a suit for specific performance would begin when the plaintiff has noticed that the defendant has refused the performance of the agreement. This date of notice is the matter of trial on the basis of evidence and consequently where the time for performance of the contract is not fixed, the question of limitation is not a pure question of law but it is a mixed question of fact and law, which cannot

be gone into at the stage under Order VII Rule 11 CPC.

29. It is apt to refer paragraphs – 15, 16, 18 and 19 of Urvashiben (supra) as under:

> "15. It is fairly well settled that, so far as the issue of limitation is concerned, it is a mixed question of fact and law. It is true that limitation can be the ground for rejection of plaint in exercise of powers under Order 7 Rule 11(d) CPC. Equally, it is well settled that for the purpose of deciding application filed under Order 7 Rule 11 only averments stated in the plaint alone can be looked into, merits and demerits of the matter and the allegations by the parties cannot be gone into. Article 54 of the Limitation Act, 1963 prescribes the limitation of three years, for suits for specific performance. The said Article reads as under:

Description of suit	Period of limitation	Time from which period begins to run
*	*	*
54. For specific performance of a contract	3 years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

From a reading of the aforesaid Article, it is clear that when the date is fixed for performance, limitation is three years from such date. If no such date is fixed, the period of three years is to be computed from the date when the plaintiff, has notice of refusal. When rejection of plaint is sought in an application filed under Order 7 Rule 11, same is to be considered from the facts of each case, looking at the averments made in the plaint, for the purpose of adjudicating such application.

16. As averred in the plaint, it is the case of the plaintiff that even after payment of the entire consideration amount registration of the document was not made and prolonged on some grounds and ultimately when he had visited the site on 25-5-2017 he had come to know that the same land was sold to third parties and the appellants have refused performance of contract. In such event, it is a matter for trial to record correctness or otherwise of such allegation made in the plaint. In the suits for specific performance

falling in the second limb of the Article, period of three years is to be counted from the date when it had come to the notice of the plaintiff that performance is refused by the defendants. For the purpose of cause of action and limitation when it is pleaded that when he had visited the site on 25-5-2017 he had come to know that the sale was made in favour of third parties and the appellants have refused to execute the sale deed in which event same is a case for adjudication after trial but not a case for rejection of plaint under Order 7 Rule 11(d) CPC.

18. On the other hand, in the judgment in Gunwantbhai [Gunwantbhai Mulchand Shah v. Anton Elis Farel, (2006) 3 SCC 634] this Court has held as under: (SCC p. 639, para 8)

"8. We may straightaway say that the manner in which the question of limitation has been dealt with by the courts below is highly unsatisfactory. It was rightly noticed that the suit was governed by Article 54 of the Limitation Act, 1963. Then, the enquiry should have been, first, whether any time was fixed for performance in the agreement for sale, and if it was so fixed, to hold that a suit filed beyond three years of the date was barred by limitation unless any case of extension was pleaded and established. But in a case where no time for performance was fixed, the court had to find the date on which the plaintiff had notice that the performance was refused and on finding that date, to see whether the suit was filed within three years thereof. We have explained the position in the recent decision in R.K. Parvatharaj Gupta v. K.C. Jayadeva Reddy [R.K. Parvatharaj Gupta v. K.C. Jayadeva Reddy, (2006) 2 SCC 428]. In the case on hand, there is no dispute that no date for performance is fixed in the agreement and if so, the suit could be held to be barred by limitation only on a finding that the plaintiffs had notice that the defendants were refusing performance of the agreement. In a case of that nature normally, the question of limitation could be decided only after taking evidence and recording a finding as to the date on which the plaintiff had such notice. We are not unmindful of the fact that a statement appears to have been filed on behalf of the plaintiffs that they did not want to lead any evidence. The defendants, of course, took the stand that they also did not want to lead any evidence. As we see it, the trial court should have insisted on the parties leading evidence on this question or the court ought to have postponed the consideration of the issue of limitation along with the other issues arising in the suit, after a trial."

In the aforesaid case, it is clearly held that in cases falling in second limb of Article 54 finding can be recorded only after recording

evidence. The said view expressed by this Court supports the case of the respondent-plaintiff.

19. In the judgment in Rathnavathi [Rathnavathi v. Kavita Ganashamdas, (2015) 5 SCC 223 : (2015) 2 SCC (Civ) 736] in paras 42 and 43 it was clearly held that when the time is not fixed in the agreement, the limitation of three years to file a suit for specific performance would begin when the plaintiff has noticed that the defendant has refused the performance of the agreement. In the judgment in Ahmadsahab Abdul Mulla (2) v. Bibijan [Ahmadsahab Abdul Mulla (2) v. Bibijan, (2009) 5 SCC 462 : (2009) 2 SCC (Civ) 555] while interpreting Article 54 of the Limitation Act, it is held that the words "date fixed for the performance" is a crystallised notion. The second part "time from which period begins to run" refers to a case where no such date is fixed. In BalasariaConstruction (P) Ltd. v. Hanuman Seva Trust [Balasaria Construction (P) Ltd. v. Hanuman Seva Trust, (2006) 5 SCC 658] and Chhotanben [Chhotanben v. Kiritbhai Jalkrushnabhai Thakkar, (2018) 6 SCC 422 : (2018) 3 SCC (Civ) 524] this Court clearly held that issue of limitation, being a mixed question of fact and law, is to be decided only after evidence is adduced."

30. Recently, in the case of Biswanath Banik and another v. Sulanga Bose and others (2022 SCC Online SC 314) the Hon'ble Apex Court held that so far as the issue whether the suit can be said to be barred by limitation or not, at the stage of consideration of application filed under Order VII Rule 11 CPC, what is required to be considered is the averments in the plaint. Only in a case where on the face of the plaint, it is seen that the suit is barred by limitation, then only a plaint can be rejected under Order VII Rule 11 (d) CPC on the ground of limitation.

31. Paragraph – 16 of Biswanath Banik (supra) is reproduced as under:

"16. Now, so far as the issue whether the suit can be said to be barred by limitation or not, at this stage, what is required to be considered is the averments in the plaint. Only in a case where on the face of it, it is seen that the suit is barred by limitation, then and then only a plaint can be rejected under Order VII Rule 11(d) CPC on the ground of limitation. At this stage what is required to be considered is the averments in the plaint. For the aforesaid purpose, the Court has to consider and read the averments in the plaint as a whole. As observed and held by this Court in the case of Ram Prakash Gupta v. Rajiv Kumar Gupta, (2007) 10 SCC 59, rejection of a plaint under Order VII Rule 11(d) CPC by reading only few lines and passages and ignoring the other relevant parts of the plaint is impermissible. In the said decision, in paragraph 21, it is observed and held as under:-

"21. As observed earlier, before passing an order in an application filed for rejection of the plaint under Order 7 Rule 11(d), it is but proper to verify the entire plaint averments. The abovementioned materials clearly show that the decree passed in Suit No. 183 of 1974 came to the knowledge of the plaintiff in the year 1986, when Suit No. 424 of 1989 titled Assema Architect v. Ram Prakash was filed in which a copy of the earlier decree was placed on record and thereafter he took steps at the earliest and filed the suit for declaration and in the alternative for possession. It is not in dispute that as per Article 59 of the Limitation Act, 1963, a suit ought to have been filed within a period of three years from the date of the knowledge. The knowledge mentioned in the plaint cannot be termed as inadequate and incomplete as observed by the High Court. While deciding the application under Order 7 Rule 11, few lines or passage should not be read in isolation and the pleadings have to be read as a whole to ascertain its true import. We are of the view that both the trial court as well as the High Court failed to advert to the relevant averments as stated in the plaint."

32. Learned counsel for the petitioner has placed reliance in Raghwendra Sharan Singh (supra), to contend that the plaint can be rejected in exercise of powers under Order 7 Rule 11 (d) CPC on the ground of limitation, if the suit is barred by law of limitation. In that case, the application under Order 7 Rule 11 CPC was rejected by the Court after holding that the question with respect to the limitation is a mixed question of law and facts, which can be decided only after the parties lead the evidence. The Hon'ble Apex Court, reiterated that in cases of Sham Lal alia Kuldip v Sanjeev Kumar {(2009) 12 SCC 454}, N. V. Srinivas Murthy v. Mariyamma (dead) by proposed Lrs. {AIR 2005 SC 2897} and Ram Prakash Gupta v. Rajiv Kumar Gupta {(2007) 10 SCC 59} it was held that considering the averments in the plaint if it is found that the suit is clearly barred by law of limitation, the same can be rejected in exercise of powers under Order 7 Rule 11 (d) CPC. There is no dispute on such proposition of law that a suit can be dismissed under Order 7 Rule 11 CPC on the ground of law of limitation, but the suit must appear on the face of the averments in the plaint as barred by limitation.

33. After going into the plaint averments, it cannot be said that the suit is barred by limitation on the face of it. In the plaint, it has been specifically stated that the Deed of Dissolution of partnership was not acted upon, the partnership continued and the firm carried out its business; the defendant did not register the partition deed and did not deliver the possession of the land to the plaintiffs. Since the year 2010 the partnership business was running in profits, but the defendant did not furnish the accounts to the plaintiff and seek their approval. The dissolution deed was non est. The defendant was mis-conducting the management of the business to the detriment of the firm

as a part of the property was let out to the third party without knowledge and consent of the plaintiff; and therefore, the suit for rendition of the accounts and for dissolution of the partnership was within limitation. On the averments in the plaint it cannot be said that the suit is barred by limitation on the face of the plaint. The plea of the defendant that the suit is barred by limitation, requires consideration during trial after leading of evidence and is dependent upon the finding recorded on the point whether the partnership is dissolved in the year 2010 or not. Consequently, it cannot be said that on the averments made in the plaint, the suit is barred by limitation. The plea which is to be considered on the basis of evidence during trial, may be a plea of limitation, on such a plea, the plaint cannot be rejected under Order VII Rule 11 CPC.

34. We are of the considered view that in the present case the answer to the question whether the suit is barred by limitation or not depends upon the answer to the question whether the partnership is dissolved pursuant to the Deed of Dissolution or notwithstanding the Deed of Dissolution the same was not given effect to and the firm continued its business. The question of limitation in the present case is not a pure question of law but a mixed question of law and facts which cannot be considered at this stage of rejection of the plaint under Order VII Rule 11 CPC.

35. We do not find any illegality in the order passed by the learned Court below in not rejecting the plaint under Order VII Rule 11 CPC on the defendant's plea that the suit was barred by limitation.

36. The next submission of the learned counsel for the petitioner is based on Section 8 of the Arbitration and Conciliation Act, 1996. We now proceed to consider the same.

37. Section 8 of the Arbitration and Conciliation Act, 1996 reads as under:

> "8. Power to refer parties to arbitration where there is an arbitration agreement.—
>
> (1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.
>
> (2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof; {Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the

other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court}

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made."

38. In Rashtriya Ispat Nigam Ltd. V. Verma Transport Co. (2006) 7 SCC 275). The Hon'ble Apex Court held that Section 8 of the Arbitration and Conciliation Act confers a power on the judicial authority. He must refer the dispute which is the subject matter of an arbitration agreement if an action is pending before him, subject to the fulfillment of the conditions precedent. The said power, however, shall be exercised if a party so applies not later than when submitting his first statement on the substance of the dispute.

39. Paragraph – 19 of Rashtriya Ispat Nigam Ltd. (supra) is reproduced as under:

"19. Section 8 confers a power on the judicial authority. He must refer the dispute which is the subject-matter of an arbitration agreement if an action is pending before him, subject to the fulfilment of the conditions precedent. The said power, however, shall be exercised if a party so applies not later than when submitting his first statement on the substance of the dispute."

40. In M. Shankara Reddy (supra) the Division Bench of this Court held that when a statue prescribes or requires a thing to be done in a particular manner, it should be done in that manner or not at all. The popular principle of law is settled in the very old case of Taylor v. Taylor (1876) Ch.D 426 which is cited with approval by the Hon'ble Supreme Court of India in Shiv Kumar Chandha v. Municipal Corporation of Delhi 1993 SCC (3) 161 and also in Ram Chandra Keshav Adke v. Govind Joyti (1975) 1 SCC 559. An application under Section 8 of the Act is an application that should be made in a particular manner and at particular time. The application should be accompanied by the original arbitration agreement or a certified copy thereof under Section 8 (2) of the Act. Even the Andhra Pradesh Arbitration Rules, 2000 as framed by this Court require that every application under Section 8 of the Act shall be duly signed and verified. It shall state the provision of law under which it is filed and contain a statement as described in Rule 4 of the Rules. Rule 4 (2) also states a certified copy of the arbitration agreement and certified copies of the relevant document shall be annexed to every such application. Otherwise, it was held that, the application which was filed was not under Section 8 of the Act. It was only an application under Order VII Rule 11 CPC seeking rejection of the plaint on the ground that the arbitration clause bars the suit. This Court further held that Section 8 of the Act only empowers the Court to refer the parties to arbitration

but does not give the Court an option to reject a plaint. Order VII Rule 11 CPC empowers the Court to reject the plaint, when there is bar to the suit because of any law. Section 8 of the Act was not a bar to a Civil Court. It provides an alternative to a defendant against whom a civil suit is initiated to submit to the jurisdiction of the civil Court or to make an appropriate application at appropriate time under Section 8 of the Act seeking an order to refer the parties to arbitration. The powers under Section 8 of the Act cannot be considered as a bar to the civil suit to entertain under Order VII Rule 11 CPC.

41. In the present case, any application under Section 8 of the Arbitration and Conciliation Act, 1996 was not filed at the appropriate stage i.e., till the time of submission of the first statement i.e., the written statement. The submission of the learned counsel for the petitioner that the application which was filed is a composite application under Order VII Rule 11 CPC and Section 8 of the Arbitration and Conciliation Act, cannot be accepted, as this is simply an application for rejection of the plaint under Order VII Rule 11 CPC in which one of the grounds taken by the defendant to reject the plaint is that there was an arbitration clause in the partnership deed i.e., clause – 18, and in view thereof, the plaint should be rejected, without making any prayer in terms of Section 8 of the Arbitration and Conciliation Act to refer the parties to arbitration. In Rashtriya Ispat Nigam Ltd. (supra), the Hon'ble Apex Court held that power under Section 8 of the Arbitration and Conciliation Act shall be exercised, if a party so applies.

42. The aforesaid application also did not comply with the mandatory requirements under Section 8 (2) of the Arbitration and Conciliation Act. In Ananthesh Bhakta (supra), upon which reliance is placed by the learned counsel for the petitioner to contend that an application under Section 8 of the Arbitration and Conciliation Act could not be rejected if it is not accompanied by the original arbitration agreement or a duly certified copy thereof, it has been held that Section 8 (2) of the Act has to be interpreted to mean that the Court shall not consider any application filed by the party under Section 8 (1) of the Act unless it is accompanied by original arbitration agreement or duly certified copy thereof. The filing of the application without such original or certified copy of the arbitration agreement, but bringing original arbitration agreement or the certified copy thereof on record at the time when the Court is considering the application shall not entail rejection of the application under Section 8 (2) of the Act.

43. The submission of the learned counsel for the petitioner based on the law laid down in Ananthesh Bhakta (supra), as aforesaid, may be correct, but the same is not applicable as in the present case. Any application under Section 8 of the Arbitration and Conciliation Act, 1996 was not filed and the application which was filed was under Order VII Rule 11 CPC, which We have already held is not a composite application, also under Section 8 of the Arbitration and Conciliation Act, 1996. The Law as laid down in Ananthesh Bhakta (supra) shall apply where an application has been filed under Section 8 of the

Arbitration and Conciliation Act, 1996, which did not accompany with the original arbitration agreement or certified copy thereof, which was filed later on, before the application was being entertained, which is not the case here.

44. In Syed Irfan Sulaiman (supra), upon which reliance has been placed by the learned counsel for the petitioner, it was held by the composite High Court of Andhra Pradesh that the application/petition under Section 8 of the Act, 1996, notwithstanding the failure on the part of the defendant to produce the original/certified copy of the reconstitution deed containing the arbitration clause, was maintainable and ought not to have been dismissed on that ground. The said application merited consideration as Section 8 of the Act, 1996 mandates in no uncertain terms that the judicial officer concerned shall refer the parties to the arbitration. It was held that in view of the arbitration clause, the suit was barred in terms of the Section 8 of the Act, 1996.

45. A perusal of the judgment in Syed Irfan Sulaiman (supra) shows that in that case the defendant had filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 seeking reference of the dispute to arbitration in terms of the arbitration clause contained in the partnership deed. He had also filed an application in the suit under Order 7 Rule 11 CPC seeking rejection of the plaint. In the present case, any application under Section 8 of the Arbitration and Conciliation Act, 1996 seeking reference of the dispute to the arbitration in terms of the arbitration clause in the partnership deed was not filed. We have already held that the application under Order 7 Rule 11 CPC in the present case cannot be termed as composite application. The judgment in the case of Syed Irfan Sulaiman (supra) is as such distinguishable.

46. We find that in M. Shankara Reddy (supra), the Coordinate Bench of this Court held that Section 8 of the Act, 1996 cannot be considered as bar to the civil suit to entertain application under Order 7 Rule 11 CPC. On the other hand, in Syed Irfan Sulaiman (supra), a Coordinate Bench of this Court held that once the suit was barred in terms of Section 8 of the Act, 1996, Order 7 Rule 11 (d) CPC applied. In M. Shankara Reddy (supra), there was no application under Section 8 of the Arbitration and Conciliation Act, 1996 and the only application was under Order 7 Rule 11 CPC, whereas in Syed Irfan Sulaiman (supra), besides an application under Order 7 Rule 11 CPC an application under Section 8 of the Act, 1996 was also filed. Considering the Hon'ble Apex Court judgment in Rashtriya Ispat Nigam Ltd. (supra) that power under Section 8 of the Arbitration and Conciliation Act shall be exercised if a party so applies, in Our view, the exercise of power under Section 8 of the Arbitration and Conciliation Act is dependent upon a party applying under Section 8 of the Act, 1996 to refer the parties to the arbitration.

47. In view of the aforesaid, We are of the considered view that;

i. If an application is filed under Section 8 of the Act, 1996, the Court on being satisfied with the pre-

conditions shall refer the parties to the arbitration and shall reject the plaint under Order 7 Rule 11 (d) CPC as barred by law; But,

ii. If no application is filed as per Section 8 of the Act, 1996, and there is no prayer to refer the parties to arbitration, the existence of the arbitration clause would not be a ground to reject the plaint under Order 7 Rule 11 CPC;

48. Following the judgment of this Court in M. Shankara Reddy (supra) by a Coordinate Bench, which applies to the facts of the present case, We are of the considered view that Section 8 of the Arbitration and Conciliation Act, 1996 does not furnish a ground for rejection of the plaint, under Order VII Rule 11 CPC. The Court below did not commit any illegality in not rejecting the plaint on the plea of the defendant that there was an arbitration clause.

49. In Vidya Drolia v. Durga Trading Corporation (2021) 2 SCC 1), upon which the learned counsel for the petitioner has placed reliance, referring to paragraph-154, it has been held as under:

"154. Discussion under the heading "Who Decides Arbitrability?" can be crystallised as under:

154.1. Ratio of the decision in Patel Engg. Ltd. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618] on the scope of judicial review by the court while deciding an application under Sections 8 or 11 of the Arbitration Act, post the amendments by Act 3 of 2016 (with retrospective effect from 23-10-2015) and even post the amendments vide Act 33 of 2019 (with effect from 9-8-2019), is no longer applicable.

154.2. Scope of judicial review and jurisdiction of the court under Sections 8 and 11 of the Arbitration Act is identical but extremely limited and restricted.

154.3. The general rule and principle, in view of the legislative mandate clear from Act 3 of 2016 and Act 33 of 2019, and the principle of severability and competence-competence, is that the Arbitral Tribunal is the preferred first authority to determine and decide all questions of non-arbitrability. The court has been conferred power of "second look" on aspects of non-arbitrability post the award in terms of sub-clauses (i), (ii) or (iv) of Section 34(2)(a) or sub-clause (i) of Section 34(2)(b) of the Arbitration Act.

154.4. Rarely as a demurrer the court may interfere at Section 8 or 11 stage when it is manifestly and ex facie certain that the arbitration agreement is non-existent, invalid or the disputes are non-arbitrable, though the nature and facet of non-arbitrability would, to some extent, determine the level and nature of judicial scrutiny. The restricted and limited review is to check and protect parties from being

forced to arbitrate when the matter is demonstrably "non-arbitrable" and to cut off the deadwood. The court by default would refer the matter when contentions relating to non-arbitrability are plainly arguable; when consideration in summary proceedings would be insufficient and inconclusive; when facts are contested; when the party opposing arbitration adopts delaying tactics or impairs conduct of arbitration proceedings. This is not the stage for the court to enter into a mini trial or elaborate review so as to usurp the jurisdiction of the Arbitral Tribunal but to affirm and uphold integrity and efficacy of arbitration as an alternative dispute resolution mechanism."

50. In Vidya Drolia (supra), it was held that the expression "existence of an arbitration agreement" in Section 11 of the Arbitration Act, would include aspect of validity of an arbitration agreement, albeit the Court at the referral stage would apply the prima facie test on the basis of the principles set out, in that judgment. In the present case, the question of deciding the arbitrability does not arise as any application under Section 8 of the Arbitration and Conciliation Act was not filed by the defendant before the Court below.

51. The next submission of the learned counsel for the petitioner is that the plaint is not as per Form No.49 and therefore, it did not disclose the cause of action with the necessary averments in a suit with respect to partnership firm for its dissolution and accounts. According to his submission, the pleadings of the plaint are not in inconformity with Order VI Rule 3 CPC read with Form No.49 in Appendix-A.

52. We are not convinced.

53. Order VI Rule 3 CPC reads as under:

"3. Forms of pleading:

The forms in Appendix A when applicable, and where they are not applicable forms of the like character, as nearly as may be, shall be used for all pleadings."

54. Order VI Rule 3 CPC therefore provides that the forms in Appendix-A when applicable, and where they are not applicable forms of the like character, as nearly as may be, shall be used for all pleadings.

55. Form 49 in Appendix-A upon which reliance is placed by the learned counsel for the petitioner provides as under:

No. 49

PARTNERSHIP

(Title)

A.B., the above-named plaintiff, states as follows:—

1. He and C.D., the defendent, have been for.....years [or months] past carrying on business together under articles of partnership in writing [or under a deed, or under a verbal agreement].

2. Several disputes and differences have arisen between the plaintiff and defendant as such partners whereby it has become impossible to carry on the business in partnership with advantage to the partners. [or the defendent has committed the following breaches of the partnership articles:—

(1)

(2)

(3)

[As in paras. 4 and 5 of Form No. 1.]

5. The plaintiff claims—

(1) dissolution of the partnership;

(2) that accounts be taken;

(3) that a receiver be appointed (N.B.—In suits for the winding-up of any partnership, omit the claim for dissolution; and instead insert a paragraph stating the facts of the partnership having been dissolved.)

56. Upon a careful reading of the plaint, We find that the plaint contains the material pleadings and particulars in as much as the details of the business under Partnership Deed, in writing, from the date of its commencement and for the period it was carried on, the nature of the dispute and differences between the plaintiff and defendants as partners, whereby it becoming not possible to carry on the business in partnership, the commission of the breaches of partnership articles, are very much mentioned therein. The plaintiff's claim has also been specifically pleaded for dissolution of partnership and rendition of accounts. Learned counsel for the petitioner could not specify as to what, if any, particulars necessary to be disclosed in terms of Form-49, for disclosing the cause of action, or complete cause of action, the plaint failed to disclose.

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57. We find that the plaint is in conformity with Order VI Rule 3 CPC read with Form No.49 in Appendix-A.

58. In Sukhbir Singh v Brij Pal Singh (1997) 2 SCC 200) the Hon'ble Apex Court in paragraph-4 held as under:

> "In paras 5, 9 and 10 of the plaint the respondents have in substance pleaded that they had been and were still willing to perform their part of the agreement and the defendants did have notice in that behalf. It is seen that averments made in the above paras are in substance as per Forms 47 and 48 prescribed in Appendix AA of the Code as amended by the High Court. What requires to be considered is whether the essential facts constituting the ingredients in Section 16(1)(c) of the Act were pleaded and that found mentioned in the said forms do in substance point to those facts. The procedure is the handmaid to the substantive rights of the parties. It would, therefore, be clear from a perusal of the pleadings and the forms that the averments are consistent with the forms….."

59. In Anwarul Haq vs. Nizam Uddin (AIR 1984 All. 136), the Allahabad High Court held that Rule 3 of Order VI CPC evidently permits a departure from the language used in the Forms in Appendix-A, provided that the substance remains fulfilled. Paragraph-13 is reproduced as under:

> "13. Rule 3 of Order VI Civil P.C. itself specifies that the Forms in appendix A of the First Schedule when applicable, as nearly may be, shall be used for all pleadings. This evidently permits a departure from the language used provided the substance remains fulfilled. The substantive provision contained in S. 16(c) does not insist upon a particular set of words to be used: the averment must in substance indicate the continuous readiness and willingness on the part of the person suing. The Form prescribed under O. 6. R. 3 is procedural, it is a rule of pleading, this has for its object the advance of cause of justice and it is not intended to short circuit decision on merits. It is procedural, something designed to facilitate justice and further its end not a penal enactment see Smt. Dipo v. Wassam Singh ((1983) 3 SCC 376 : AIR 1983 SC 846): Kalipada Day v. B.K. Sen Gupta ((1983) 1 SCC 14 : AIR 1983 SC 876): Sangram Singh v. Election Tribunal, Katak (AIR 1955 SC 425) I am inclined for these reasons to agree with respect with the view expressed in Virendra Kumar v. Daya Nand (1982 All WC 176): Prag Datt v. Smt. Saraswati Devi (AIR 1982 All 37). Shakoor v. Palakdhari (1983 All WC 737) that the court in suitable cases should look into the totality of circumstances and the allegations made in the plaint and from them come to a conclusion whether necessary allegations have been made by the plaintiff in that regard.

No particular language or phraseology need be employed by the plaintiff. A literal compliance to the language appearing in Forms 47 and 48 of the Appendix A is not imperative nor is this the requirement of law."

60. In Bijai Bahadur v. Shiv Kumar (AIR 1985 All 223) also the Allahabad High Court held as under in paragraphs – 7 & 8:

"7. O. VI R. 3, C.P.C. provides that the forms in Appendix A (of the Code) when applicable, and where they are not applicable, forms of the like character, as nearly as may be, shall be used for all pleadings. Although these forms are not of a mandatory or statutory nature yet they are in substance meant for the guidance and naturally the essential requirements of the pleadings as indicated therein must find place in the pleadings of the parties. From the very nature of facts, it is not necessary that various allegations in a particular lis may be confined to the very language utilised in these forms but substantially the requirements of law must be complied with. I am not prepared to lay down that the only way in which a pleading in a suit for specific performance can be made is the one drafted in Appendix A but I must emphasise that whatever be the language employed in the pleadings, the essential ingredients and statutory requirements must find a place in the pleadings failing which the parties may incur dismissal of their suit.

8. The model forms of pleadings in a suit based on specific performance of an agreement are given in Appendix A of the Civil P.C. They are Forms Nos. 47 and 48. In Form No. 47 paras 2 and 3 mention the necessary ingredients of such pleadings and these show that in one para the thrust of the pleading is on the demand being made by the plaintiff on the defendant to perform the agreement and in the other the true emphasis is on the plaintiff's own readiness and willingness to perform his part of the agreement. In Form No. 48, these very requirements have been diversified into four paragraphs. Paras 2 and 3 deal with the tender of money and the demand being made from the defendant to execute the deed and the repetition of such demand by the plaintiff, while paras 4 and 5 of the form show the reluctance of the defendant to comply with the plaintiff's demand and the plaintiff's own continuous readiness and willingness to pay the purchase money. The language employed in both these forms, though different, is essentially and in substance the same. In both after making an averment about the fact that an agreement to sell exists between the

parties, the allegations are supposed to be made about the demand for performing the agreement and also specific assertion about the plaintiff's own readiness and willingness to perform his part of the agreement."

61. In Church of Christ Charitable Trust and Educational Charitable Society (supra), upon which reliance has been placed by the learned counsel for the petitioner to contend that plaint not being in conformity with the provisions of Order VI Rule 3 CPC read with Form No.49 in Appendix-A, requires rejection under Clause (d) of Order VII Rule 11 CPC, the Hon'ble Apex Court held that while scrutinizing the plaint averments, it is the bounden duty of the trial Court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is relevant to re-produce paragraph Nos.8 to 10 of Church of Christ Charitable Trust and Educational Charitable Society (supra) as under:

"Cause of action

8. While scrutinising the plaint averments, it is the bounden duty of the trial court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words "cause of action". A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue.

9. In A.B.C. Laminart (P) Ltd. v. A.P. Agencies [(1989) 2 SCC 163], this Court explained the meaning of "cause of action" as follows: (SCC p. 170, para 12)

"12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for

the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff."

10. It is useful to refer the judgment in Bloom Dekor Ltd. v. Subhash Himatlal Desai [(1994) 6 SCC 322], wherein a three-Judge Bench of this Court held as under: (SCC p. 328, para 28)

"28. By "cause of action it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court, (Cooke v. Gill [(1873) LR 8 CP 107]); in other words, a bundle of facts which it is necessary for the plaintiff to prove in order to succeed in the suit."

It is mandatory that in order to get relief, the plaintiff has to aver all material facts. In other words, it is necessary for the plaintiff to aver and prove in order to succeed in the suit."

62. In Church of Christ Charitable Trust and Educational Charitable Society (supra), which was a suit for specific performance of a contract, in the plaint paragraph-4 thereof, it was alleged that the 2nd defendant as the agreement holder of the 1st defendant and also as registered power of attorney holder of the 1st defendant executed the agreement of sale, but any particulars showing as to the documents referred as "agreement holder could not be found in the plaint, nor any such document was filed. The Hon'ble Apex Court held that neither the documents were filed along with the plaint nor terms thereof have been set out in the plaint, whereas those documents were to be treated as part of the plaint as being the part of the cause of action. It was held that it is settled in law that where a document is sued upon and its terms are not set out in the plaint but referred to in the plaint, the said document does not get incorporated by reference in the plaint. In that case, though the plaint averred that the 2nd defendant is the agreement holder of the 1st defendant, but the said agreement was not produced and the date of the agreement was also not given in the plaint, as per Form Nos.47 and 48 of the Appendix-A of the Code, as involved therein. Mentioning of the date was material to attract the bar of limitation and such material date not having been pleaded, the failure to mention the date violated the requirements under Order VII Rule 6 read with Order VI Rule 3 CPC and Form Nos.47 and 48 of Appendix-A, which was done in order to get over the bar of limitation. It is relevant to re-produce paragraph Nos.13 and 15 of the judgment in Church of Christ Charitable Trust and Educational Charitable Society (supra) as under:

"13. In the light of the controversy, we have gone through all the averments in the plaint. In Para 4 of the plaint, it is alleged that the second defendant as agreement-holder of the first defendant and also as the registered power-of-attorney holder of the first defendant executed the agreement of sale. In spite of our best efforts, we could not find any particulars showing as to the documents which are referred to as "agreement-holder". We are satisfied that neither the documents were filed along with the plaint nor the terms thereof have been set out in the plaint. The abovementioned two documents were to be treated as part of the plaint as being the part of the cause of action. It is settled law that where a document is sued upon and its terms are not set out in the plaint but referred to in the plaint, the said document gets incorporated by reference in the plaint. This position has been reiterated in U.S. Sasidharan v. K. Karunakaran [(1989) 4 SCC 482] and Manohar Joshi v. Nitin Bhaurao Patil [(1996) 1 SCC 169].

15. It is clear that from the date the power of attorney is executed by the principal in favour of the agent and by virtue of the terms, the agent derives a right to use his name and all acts, deeds and things done by him are subject to the limitations contained in the said deed. It is further clear that the power-of-attorney holder executes a deed of conveyance in exercise of the power granted under it and conveys title on behalf of the grantor. In the case on hand, though the plaint avers that the second defendant is the agreement-holder of the first defendant, the said agreement is not produced. It was also pointed out that the date of agreement is also not given in the plaint. We have already mentioned Forms 47 and 48 of Appendix A and failure to mention the date violates the statutory requirement and if the date is one which attracts the bar of limitation, the plaint has to conform to Order 7 Rule 6 and specifically plead the ground upon which exemption from limitation is claimed. It was rightly pointed out on the side of the appellant that in order to get over the bar of limitation all the required details have been omitted."

63. We are of the considered view that the judgment in the case of Church of Christ Charitable Trust and Educational Charitable Society (supra) on the point reliance has been placed upon by the learned counsel for the petitioner in support of his contention does not advance his submission any further.

64. Learned counsel for the petitioner next submitted, placing reliance on the judgment in Ketineni Chandrasekhar Rao (supra), that there cannot be any partition of the partnership property. Firstly, the said

judgment is not on the point of rejection of plaint and secondly, in that case, in spite of dismissal of earlier suit, O.S.No.596 of 2001 for partition and for separate possession of the subject property, the defendant No.4 of that suit filed another suit, as plaintiff for injunction, but did not disclose the fact of dismissal of the first suit. The material fact was not revealed. It was held that even in the absence of application of doctrine of res judicata, decree for partition in respect of the property of a partnership firm cannot be granted. It was further held that once plaintiff is not entitled to passing of a preliminary decree for partition, all that he can see, in the suit filed for passing of decree for dissolution of the partnership and rendition of accounts as per the existing partnership deed. In the present case, the suit is for dissolution of the partnership firm and consequently, to partition the properties belonging to the partnership firm described in the schedule into two equal shares and put the plaintiff in possession of the respective shares with further prayer to direct the defendant to render the accounts for a specified period and to pay the requisite sum, i.e., half of the plaintiff's share in the profits of the firm. It is not a suit only for the prayer of partition. If according to the submission of the learned counsel for the petitioner, based on the judgment cited, that the partnership property cannot be partitioned, the said objection can be raised during trial, in which case, the Court will certainly consider, the true nature of the prayer, for partition as made along with the prayer for dissolution of the partnership firm and for rendition of accounts and shall accordingly pass the decree.

65. We are of the considered view that in view of the specific prayer for dissolution of the partnership firm and also for rendition of the accounts made by the plaintiff/ respondent in the plaint, merely because the plaintiff also prayed for partition of the properties of partnership firm and to pay the sum to the plaintiff as per his share, the plaint cannot be rejected on this ground at the stage of under Order 7 Rule 11 CPC.

66. For overall view of the aforesaid, We do not find any illegality in the impugned judgment of the Court below. The Civil Revision Petition is devoid of any merit and is accordingly dismissed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence

–X–

2022 (2) L.S. 9 (T.S)

IN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble Mr. Justice
K. Lakshman

Seepathi Keshavalu ..Petitioner
Vs.
Pogaku Sharadha
& Ors., ..Respondents

CIVIL RULES OF PRACTICE AND CIRCULAR ORDERS, Rules 188 & 199 - Petitioner herein, third party to the suit, had filed an application under Rule 188 (2) of the Civil Rules of Practice, seeking certified copies of original documents which were returned to the party on her application filed on the condition of substituting the original documents with certified copies- Petitioner herein, had filed Copy Application to furnish copies of the said certified copies - Trial Court rejected on the ground that the certified copies are not the exhibited documents, hence, application was refused.

HELD: If at all the Court wants to furnish the documents, it should furnish to the party in accordance with the provisions of Sec.76 of Evidence Act read with Rule 199 of the Civil Rules of Practice - Ordinarily copies of copies are not to be treated as 'secondary evidence' unless such copies are again compared with the original, the said principle does not apply to certified copies granted by the Sub-Registrar under the Registration Act.

A copy means a document prepared from the original which is an accurate or "true copy" of the original - In the present case, Originals were returned to the Plaintiff on filing of an Application after substituting by its certified copies on record - Based on the above mentioned Copy Application filed by the Petitioner if the Court below has delivered the copy, it will not come under the definition of certified copy - Court below is justified in refusing the Application filed by the Petitioner seeking copies of certified copies – Civil Revision stands dismissed.

Mr.Kondadi Ajay Kumar,Advocate for the Petitioner.

O R D E R

1. This Revision is filed to set aside the docket order dated 17.03.2022 in C.A. No.95 of 2022 in O.S. No.735 of 2008 passed by the learned Principal Junior Civil Judge, Mancherial.

2. Heard Mr. Kondadi Ajay Kumar, learned counsel for the petitioner. Respondents are not necessary parties to the present revision and the said fact was also mentioned by learned counsel for the petitioner in the cause title itself.

3. The petitioner herein, third party to the suit, had filed an application vide Copy Application No.95 of 2022 in O.S. No.735 of 2008 under Rule - 188 (2) of the Civil Rules of Practice, 1990 (for short 'CRP'), seeking copies of certified copies of Exs.A11 to A14 for the following purposes:

i) For verification;

ii) To keep in record; and

iii) To file in Court.

4. The Court below while refusing the said application, passed the following order dated 17.03.2022:

"Heard.

This is a petition filed under Rule 188 (2) of CRP along with third party affidavit and vakalat on behalf of defendants seeking certified copies of Ex.A11 to A14 marked in O.S. No.735/2008.

Heard the counsel for petitioner. Perused the record.

Upon perusal it can be seen that the documents Ex.A11 to A14 are the certified copies of the original exhibits marked in O.S.no.735/2008 which were substituted in place of the original documents while returning the same vide orders in I.A. No.627/ 2021 in OS No.735/2008, dated 14.07.2021.

As per rule 188 (2) of CRP any person who is not a party to a suit may apply to the court for grant of copies of judgments, decrees or orders made or of any documents exhibited in such suit or proceeding. In this suit the exhibits are original documents which were returned to the plaintiff and the case record consists of certified copies of the documents. Since the certified copies are not the exhibited documents, this application is refused."

5. The above stated facts would reveal that the petitioner herein is a third party to O.S. No.735 of 2008. The said suit was disposed of on 02.08.2014. In the said suit, Exs.A1 to A15 were exhibited. The plaintiff in the said suit had filed an application vide I.A. No.627 of 2021 to return the said Exs.A1 to A15. The Court below vide order dated 14.07.2021 allowed the said I.A. and returned the said documents i.e., Exs.A1 to A15, with a direction to substitute certified copies of the said documents. The plaintiff therein had complied with the said order by substituting the certified copies of the said documents.

6. Now, the petitioner herein, who is a third party to the said suit, filed the above Copy Application supported by an affidavit under Rule - 188 (2) of the CRP seeking certified copies of Exs.A11 to A14 on the above stated purpose.

7. The Court below, vide order dated 17.03.2022 refused the said Copy Application on the following grounds:

i) Originals of the said documents

were returned to the plaintiff;

ii) The case record consists of certified copies of the documents; and

iii) Certified copies are not the exhibited documents.

8. Challenging the same, the petitioner herein filed the present revision.

9. Learned counsel for the petitioner would submit that on an application made by the petitioner, on payment of required fee, the petitioner herein is entitled to obtain the certified copies of the documents which are available in the Court. Rule - 188 of the CRP and Circular Orders, 1980, the Court is bound to issue the certified copies. He has placed reliance on the principle laid down in **Sri Kathi Narsinga Rao v. Kodi Supriya (**Laws (APH) 2016 9 50).

10. In view of the above said discussion, the seminal question that arises for consideration in the present revision is:

Whether the Court below is justified in rejecting the Copy Application filed by the petitioner herein, who is a third party to the suit, for grant of copy of the certified copies of the documents?

FINDING OF THE COURT:

11. As the question involved in the present revision is concerned with all the Civil Courts in the State and having regard to the importance to the matter, this Court made an effort to deal with the matter in detail.

12. To decide the said *lis* involved in the present revision, it is relevant to refer Rules - 188 and 199 of the CRP and Circular Orders, 1980 and also some of the provisions of the Indian Evidence Act, 1872.

13. **CIVIL RULES OF PRACTICE & CIRCULAR ORDERS, 1980.**

i) In exercise of power under Article - 227 of the Constitution of India and Section - 126 of the Code of Civil Procedure, 1908, the High Court framed the Rules for the guidance of subordinate Civil Courts in the State except the Court of Small Causes.

ii) Chapter - XV of Circular Orders, 1980 deals with certified copies.

"**Rule 188 (128-B (2)) Persons entitled to apply for copies. –**

(1) Any party to a suit or proceeding shall be entitled to obtain copies of judgments, decrees, or orders made or of any documents exhibited in such suit or proceeding on payment of charges in the manner prescribed under these rules.

(2) Any person who is not a party to a suit or proceeding requiring, copies of judgments, decrees or orders made or of any documents exhibited in such suit or proceedings

may apply to the court for grant of such copies by duly stamped petition supported by an affidavit stating the purpose for which the copy is required:

Provided that, in cases of doubt whether, the copy applied for should be furnished, the application shall be placed before the judge for his decision. If the application is refused by the Judge it shall be returned to the applicant with the order of Judge endorsed on it."

"Rule - 199(132) Sealing and certificate:- All copies furnished by the court shall be certified to be true copies, and shall be sealed with the seal of the court. The Superintendent of copyists or other officer appointed by the Judge, shall initial every alteration and interlineations in the copy, and shall sign a certificate at the foot thereof that the same is a true copy, and shall also state the number of alterations and interlineations made therein."

14. Rule - 188 of the CRP and Circular Orders, 1980 consists of two limbs. The first limb authorizes the party to the suit to obtain the certified copies as a matter of right. The second limb authorizes the third party to the suit to apply for certified copy, with a rider that Court is having discretion to refuse the same.

15. For more clarity, a close reading of sub-rule (1) of Rule - 188 would reveal that a party to the suit or proceedings are entitled to obtain a certified copy of the pleadings, documents and orders as a matter of right in terms of Rule - 188 (1) of the CRP.

16. Sub-rule (2) of Rule - 188 of the CRP would reveal that the Court on the application of a person, who is not a party to the proceedings, allow such person to receive such copies, with a rider that the third party is required to show the **purpose for which the certified copies required**.

17. The very fact that a proviso was inserted in Rule - 188 of the CRP can only mean that the discretion conferred on the Judge/Court, under this Rule to refuse the same.

18. A third party to the suit, seeking copies of documents, in any matter pending or disposed before the Court of law, has to file an application along with an affidavit stating the purpose for which those documents are required. The purpose for insisting to file an affidavit (duly mentioning the reasons) is to satisfy the Court that the information is sought is *bona fide*, and for *public interest*.

19. At this stage, it is also apt to refer to Section - 76 of the Indian Evidence Act, which is as under:

"**76. Certified copies of public documents.—** Every 1public officer having the custody of a public document, which any person has a

right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies."

20. As discussed supra, in the present case, the petitioner herein, third party to the suit, filed an application under Rule – 188 (2) of the CRP seeking copies of the certified copies which are lying in the Court. If at all the Court wants to furnish the documents, it should furnish to the party in accordance with the provisions of Section - 76 of the Evidence Act read with Rule - 199 of the CRP. The certification in accordance with Rule - 199 is also mandatory.

21. In both the above said Rules, i.e., Rules - 188 and 199 of the CRP, the word used is "true copy". Now, the question is what is meaning of "true copy".

22. In this regard, it is useful to refer to the judgment of the Hon'ble Supreme Court in **Hindustan Construction Company Limited v. Union of India (**AIR 1967 SC 526). In the said case, the Apex Court has considered the entire gamete of the controversy on the present issue including the word 'signed copy' and held in paragraph Nos.5 and 6 as follows:

"5. Now the word "copy" as such is not defined in the Indian Evidence Act, of 1872. But we get an idea of what a copy is from the provisions of Section - 63 of the Evidence Act. That section inter alia defines what secondary evidence means and includes namely— (i) certified copies as provided, in Section - 76 of the Evidence Act, (ii) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies, and (iii) copies made from or compared with the original. Obviously, therefore a copy means a document prepared from the original which is an accurate or true copy of the original. In Webster's New World Dictionary, the word "copy" means "a thing made just like another; full reproduction or transcription". What the word "copy" in Section 14 (2) therefore requires is that it must be a full reproduction of the original and that it should be accurate or true. When a document is an accurate or true and full reproduction of the original it would be a copy. In the present case it is not in dispute that what was produced by Sri Dildar Hussain was a true or accurate and full reproduction of the original. It was therefore a copy of the original, and the only question that remains is whether it was signed,

for if it was signed, it would be a signed copy.

6. This brings us to the meaning of the word "sign" as used in the expression "signed copy". In Webster's New World Dictionary, the word "sign" means "to write one's name on, as in acknowledging authorship, authorising action etc." To write one's name is signature. Section 3 (56) of the General Clauses Act, No.10 of 1897, has not defined the word "sign" but has extended its meaning with reference to a person who is unable to write his name to include "mark" with its grammatical variations and cognate expressions. This provision indicates that signing means writing one's name on some document or paper. In Mohesh Lal v. Busunt Kumaree (1881) ILR 6 Cal 340, a question arose as to what "signature" meant in connection with Section 20 of the Limitation Act, No.IX of 1871. It was observed that "where a party to a contract signs his name in any part of it in such a way as to acknowledge that he is the party contracting, that is a sufficient signature". It was further observed that the document must be signed in such a way as to make it appear that the person signing it is the author of it, and if that appears it does not matter what the form of the instrument is, or in what part of it the signature occurs."

23. In view of the above authoritative pronouncement by the Apex Court, a 'copy' means a document prepared from the original which is an accurate or "true copy" of the original. As already observed, in the present case, the originals were returned to the plaintiff on filing of an application after substituting by its certified copies on record. Based on the above mentioned Copy Application filed by the petitioner herein, if the Court below has delivered the copy, it will not come under the definition of 'certified copy'. Hence, the Court below is justified in refusing the application filed by the petitioner herein seeking copies of certified copies.

24. The judgment cited by the learned counsel for the petitioner in **Sri Kathi Narsinga Rao (supra)** has no application to the facts of the present case. In the said judgment, a paragraph No.14, the learned Judge has held as follows:

> "14. Now coming to the contention that these are the certified copies to the certified copies and not certified copies to the original, and thereby not admissible as secondary evidence even concerned; the Apex Court in Bibi Aisha Vs. Bihar SS MA Vaquf [AIR 1969 SC 253] held with reference to Section 63 Illustration C of the Evidence Act that even certified copy to a certified copy also comes within the meaning of secondary evidence to admit. Here once it is the certified copy to the certified copy obtained from Court

and these are the public documents there is nothing to doubt on genuineness of the documents in question apart from any such objections for exhibiting public documents even is left open, that too for most of the documents the defendants were parties in earlier proceedings either before the revenue authorities or before the Civil Court."

25. In the above referred judgment, learned Judge relying upon the Apex Court judgment in **Bibi Aisha (Supra)**, held that certified copy to certified copy is admissible in evidence in view of Section 63, Illustration C of the Indian Evidence Act. In fact, in the above referred judgment of the Apex Court, the question fell for consideration was under Section - 65 (a) of the Evidence Act, but not under Section - 63 Illustration C of the Evidence Act. Therefore, the facts of **Sri Kathi Narsinga Rao (supra)** have no application to the facts of the present case.

26. It is also relevant to refer to a judgment of a Division Bench of the combined High Court of Andhra Pradesh at Hyderabad in **Badrunnisa Begum v. Mohamooda Begum (**AIR 2001 AP 394). In the said case, the Division Bench had an occasion to deal with the evidentiary value and admissibility of the evidence under the provisions of the Indian Evidence Act, 1872, more particularly, Illustration C of Section - 63 and Section 65 of the Act. In the said judgment, the Division Bench has also relied upon the principle laid down by the Full Bench of the said High Court in **Land Acquisition Officer v. N. Venkata Rao [1990 (3) ALT 305 (FB)]**. In the said judgment, the Full Bench has summarized the position on the question of admissibility of copy of a copy as secondary evidence in paragraph No.30, and the same is extracted as under:

"30. Summarising the position, we hold firstly that if 'secondary evidence' is allowed to be marked for one party without objection at the trial, no objection can be permitted to be raised by the opposite party at any later stage in the same Court or in appeal that conditions from adducing secondary evidence have not been made out initially. Secondly, we hold that though ordinarily **copies of copies** are not to be treated as 'secondary evidence' unless such copies are again compared with the original, the said principle does not apply to certified copies granted by the Sub-Registrar under the Registration Act. These certified copies are, under law, to be treated as secondary evidence and once they have acquired such a status, the marking of such documents at the trial without objection result in such documents and their contents being evidence in the case. No objection can be raised in the same suit or proceeding or in appeal later by the opposite party that before marking the certified copies, the necessary conditions for adducing

secondary evidence have not initially been established. We hold accordingly on point No.2."

27. Referring to Sections - 63 and 65 of the Evidence Act, the principle laid down by the Full Bench in the above said judgment and other judgments including the judgment of the Hon'ble Supreme Court in **Bibi Aisha (supra)**, the Division Bench held that copy of the copy is not admissible as per the provisions of the Evidence Act. The said principle was up held by the Apex Court.

28. In **V. Hanumantha Rao v. Inder Singh (**C.R.P. No.1132 of 1968, decided on 10.04.1969), the High Court of Andhra Pradesh at Hyderabad, held that "so long as the documents are in the custody of the Court, whether they are marked as exhibits or not, the Court is bound to grant certified copies thereof, provided those are not documents, certified copies of which cannot be granted."

29. It is also relevant to note that Section - 2 (14) of the Indian Stamp Act deals with the definition of "Instrument". The Hon'ble Apex Court in **Jupudi Kesava Rao v. Pulavarthi Venkata Subbarao (**AIR 1971 SC 1070), considered the scope of the said definition and held that instrument includes every document by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded. There is no scope for inclusion of copy of a document as an instrument for the purpose of the Stamp Act.

30. It is also relevant to note that referring to the principle laid down by it in **Jupudi Kesava Rao (supra)**, a Three-Judge Bench of the Hon'ble Apex Court in **Hariom Agrawal v. Prakash Chand Malviya (**2007 AIR SCW 6368) held that by various authorities of the Apex Court, an instrument is held to be an original instrument and does not include a copy thereof. Thus, the Hon'ble Apex Court has considered the Legislative intent of the definition of 'instrument' under Section - 2 (14) of the Indian Stamp Act.

31. In view of the law laid down in the judgments cited supra, coming to the facts of the case on hand, as discussed supra, in the above said suit, the original documents exhibited and marked as Exs.A11 to A14 were returned to the plaintiff therein on her application filed on the condition of substituting the original documents with certified copies. Only certified copies of the above said Exs.A11 to A14 are available in the suit, O.S. No.735 of 2008. The petitioner herein, third party to the said suit, had filed Copy Application to furnish copies of the said certified copies, which is impermissible. Therefore, the Court below rightly refused the application filed by the petitioner herein. There is no error in it.

32. In view of the above said facts and circumstances and also the discussion, this Court does not see any merit in the present revision and the same is liable to be dismissed.

33. The Civil Revision Petition is

accordingly dismissed. However, there shall be no order as to costs. As a sequel thereto, Miscellaneous Petitions, if any, pending in the revision shall stand closed.

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2022 (2) L.S. 17 (T.S)

IN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble Dr.Justice
Chillakur Sumalatha

Mir Mohsin Mohiuddin Ali Khan ..Petitioner

Vs.

Mohd. Jani ..Respondent

LIMITATION ACT, Sec.5 – Seeking to condone the delay of 1246 days - Suit for specific performance of agreement of sale - Summons were not served upon the Defendant but Trial Court decreed the suit ex-parte - Defendant moved an application under Section 5 of Limitation Act to condone the delay for setting aside the ex-parte decree, but the Court dismissed the application - Hence instant Revision.

HELD: Address mentioned at different points by the respondent/ plaintiff itself demonstrates the fraud played for getting an ex-parte decree - After all the purpose of Courts of law is to render substantial justice by giving due opportunity to both parties to exhibit their respective stands - Making the revision petitioner to suffer under an ex-parte decree passed would be unjustifiable - Revision petition stands allowed - Order rendered by the Trail Court in I.A. stands set aside.

Mr.M. Radhakrishna, for the Petitioner.
Mr.Mohd Nasrulla Khan, Advocate for the Respondent.

O R D E R

Challenging the order of the Court of III Additional Chief Judge, City Civil Court, Hyderabad in I.A.No.2359 of 2015 in O.S. No.387 of 2011 dated 06.01.2017, the present Civil Revision Petition is filed.

2. I.A.No. 2359 of 2015 is an Interlocutory Application filed by the revision petitioner herein who is the defendant to the suit in O.S.No.387 of 2011 seeking to condone the delay of 1246 days in filing an application to set aside the exparte decree that was passed against him. The said application was filed under Section 5 of Limitation Act. The request to condone the delay was negatived by the Court and aggrieved by the said finding, the revision petitioner is before this Court.

3. Heard the submission of learned counsel for the revision petitioner. Though Sri Mohd. Nasrulla Khan, Advocate is on record representing the respondent, yet, the learned counsel failed to make his

appearance and submit his contention in spite of granting ample opportunities. Having regard to the factual scenario, as narrated above, the point that emerges for consideration is;

Whether there exists any justifiable grounds to exercise the revision jurisdiction of the this Court and to set aside the order of the Court of III Additional Chief Judge, City Civil Court, Hyderabad in I.A.No.2359 of 2015 in O.S.No. 387 of 2011 dated 06.01.2017, that stood pending on the file of the said Court as prayed for.

4. The learned counsel for the petitioner submitted that the respondent filed a suit for specific performance of agreement of sale and in the said suit, summons were not served upon the defendant i.e., the revision petitioner herein, but with a notion that the revision petitioner/ defendant though received summons, failed to pursue the matter, the trial Court decreed the suit exparte. The learned counsel contended that indeed summons were not served upon the revision petitioner/defendant and at a belated stage, he came to know that an exparte decree was passed against him and immediately he filed an application to set aside the said exparte decree and also moved an application under Section 5 of Limitation Act to condone the delay in moving the said application for setting aside the exparte decree, but the Court with an observation that no sufficient cause was shown to condone the inordinate delay, dismissed the application and aggrieved by the same the revision petitioner is before this Court.

5. Learned counsel submitted that the respondent/plaintiff managed the postal and all concern authorities and got exparte decree passed and in case the said decree is not set aside, the revision petitioner/ defendant would be put to irreparable loss and hardship. The learned counsel further submitted that the revision petitioner/ defendant never engaged Sri S.W. Hydri, Advocate to appear on his behalf and the revision petitioner does not know on what basis the said counsel filed vakalat and made his appearance representing the revision petitioner. Thus, the things were managed and exparte decree was got passed.

6. The learned counsel during the course of his submission brought to the notice of this Court certain factual aspects in support of his submission. The learned counsel submitted that the address mentioned at different points by the respondent/plaintiff itself demonstrates the fraud played for getting an exparte decree. A perusal of the material available on record reveals the justification in the said submission. The basis in the suit is the Agreement of Sale dated 06.02.2009. A perusal of the said Agreement of Sale reveals that the said agreement is between the revision petitioner herein and the respondent who are defendant and plaintiff to the suit respectively. The address of the revision petitioner/defendant as mentioned

in the said agreement of sale is "R/o. Flat No.403, Al Hamra Residency, Asifnagar, Hyderabad". In the receipt dated 06.02.2009, the same address is mentioned. However, in the plaint in O.S.No.387 of 2011, the respondent/plaintiff mentioned the address of the revision petitioner/defendant as "H.No.11-4-625, Pent House, Mustafa Moghal Apartments, A.C, Guards, Hyderabad". In the legal notice dated 31-05-2011 also the same address i.e., R/o.H.No.11- 4-625, Pent House, Mustafa Moghal Apartments, A.C, Guards, Hyderabad is mentioned. However, surprisingly in the postal acknowledgement card, the address is mentioned as "12-1-881/C, KBN Residency, Asifnagar, Hyderabad". Apart from these discrepancies, a specific mention is made in the affidavit filed by the revision petitioner herein in IA No.2359 of 2015 which was moved under Section 5 of Limitation Act that the revision petitioner is taking legal steps against the learned Advocate by name S.W. Hydri. There is also a specific mention that when he had not received summons, the question of filing vakalat does not arise.

7. Having regard to the stand taken, this Court is of the view that making the revision petitioner to suffer under an exparte decree passed would be unjustifiable. After all the purpose of Courts of law is to render substantial justice by giving due opportunity to both parties to exhibit their respective stands. This principle is a cardial principle which at all times is required to be followed. Therefore, this Court considers that the view taken by the Court below unjustifiable and the Court ought to have condoned the delay paving way for the petitioner to agitate. Therefore, this Court considered desirable to allow the revision petition as prayed for.

8. Resultantly, the revision petition is allowed.

9. The Order rendered by the Court of III Additional Chief Judge, City Civil Court, Hyderabad in I.A.No.2359 of 2015 in O.S.No. 387 of 2011 dated 06.01.2017 is set aside. Consequently the delay is condoned.

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2022 (2) L.S. 19 (T.S)

IN THE HIGH COURT OF TELANGANA

Present:
The Hon'ble Mr. Justice
N. Tukaramji

Madgal Srihari ..Petitioner

Vs.

Bandari Krishna Died ..Respondent

(INDIAN) STAMP ACT, Sec.33 & 35 and Article 31 – TELANGANA BUILDINGS(LEASE, RENT AND EVICTION) CONTROL ACT, 1960, Sec.22 - Revision petitioner filed R.C. on the

CRP.No.1053 /2020 Date:15/03/2022

file of Rent Controller, for eviction, which was allowed - Aggrieved thereby, respondents preferred an Appeal - During the course of hearing before the rent controller, the original lease deed/ Ex.P-3 was marked subject to objection of the respondents - Whereas, the objection neither recorded nor considered while adjudicating the petition - However, the document was insufficiently stamped - Excluding the document, appellate court allowed the appeal – Hence, instant Revision.

HELD: Respondent had objected for marking the Suit document and this aspect was answered in the appeal, by discarding the document as it is inadmissible - Impugned Order in R.C.A. on the file of the Chief Judge, Small Causes Court, stands set aside and the matter is remanded with a direction to examine the insufficiency of stamp duty on the document/Ex.P-3 to take up the recourse as contemplated in the Indian Stamp Act - On validation of the document, the parties shall be given opportunity to contest and pass an appropriate Order on merits, as per law.

Mr.M. Radhakrishna, for the Petitioner
Advocate

O R D E R

Heard Sri M. Radha Krishna, learned counsel for the revision petitioner and Sri Aadesh Varma, learned counsel for the respondents.

2. Challenging the propriety of the order dated 10.02.2020 in R.C.A.No.23 of 2019 on the file of the Chief Judge, Small Causes Court, Hyderabad, this revision is preferred.

3. Brief facts of the case are that the revision petitioner filed R.C.No.358 of 2013 on the file of the I Additional Rent Controller, Hyderabad with a prayer to evict the respondents from the schedule property bearing No. 17-4-160 comprising of one mulgi, tin shed, courtyard situated at Yakutpura, Hyderabad.

4. During the enquiry, the petitioner got examined Pws.1 and 2 and marked Exs:P-1 to P-5; whereas the respondent examined RWs.1 to 4 and marked Exs:R-1 to R-8. The learned Rent Controller on considering the material on record, ordered eviction and to hand over the vacant possession of the premises.

5. Aggrieved thereby, the respondents preferred appeal vide R.C.A.No.23 of 2019 on the file of the Chief Judge, City Small Causes Court, Hyderabad wherein the learned Judge on appraisal of the evidence on record held that the original lease deed dated 01.07.1985/Ex.P-3 was marked subject to objection of the respondents. Whereas, the objection neither recorded nor considered while adjudicating the petition. However, the document is insufficiently stamped as per Schedule IA, Article 31 of the Stamp Act, 1889. As such, it is inadmissible in the evidence. Excluding

the document, as there is no other evidence to establish jural relationship between the petitioner and the respondent, allowed the appeal. Thus, this revision under Section 22 of the Telangana Buildings (Lease, Rent & Eviction) Control Act, 1960.

6. While hearing the appeal on the other aspects, the learned counsel for the revision petitioner preliminarily pointed out that when the learned appellate Court opined that the document Ex.P-3 is insufficiently stamped, liable to be impounded should have taken recourse to the procedure contemplated under the Indian Stamp Act, so that the revision petitioner would have got an opportunity to pay the deficit stamp duty and to validate the document. As such proceeding was circumvented, the foundational document remained unconsidered and it resulted in serious prejudice to his case.

7. In this regard, relied on an authority in **Chilakuri Gangulappa v. Revenue Divisional Officer, Madanapalle (**AIR 2001 SC 1321) wherein the Hon'ble Supreme Court while considering the insufficiently stamped agreement of sale which remained unimpounded during the proceedings before the trial Court, the appellate Court and the High Court observed that the trial Court should have examined whether the instrument is insufficiently stamped, if so, whether the petitioner would remit the deficient portion of the stamp duty together with a penalty amounting to ten times the deficiency and if remits the said amount the court has to proceed with the trial after admitting the document in evidence. In case, the petitioner is unwilling to remit the amount, the Court has to forward the original of the document to the Collector for the purpose of adjudicating on the question of deficiency of the stamp duty. As these proceedings were not adopted, the Hon'ble Supreme Court had set aside the impugned order and remanded the matter to the trial Court, with a direction to determine the question of insufficiency of stamp duty and to take up the consequential proceedings.

8. The revision petitioner further submitted that the insufficiency of stamp duty observed by the appellate Court in the above judgment was acceptable and he is ready to take steps for revalidation of the document. Thus, prayed for remanding the matter to the Court concerned for appropriate action and to adjudicate the matter afresh basing on the document.

9. The learned counsel for the respondent fairly accepted that the deficit stamp duty could have been collected by impounding the document and the matter could have been considered on merits.

10. In this regard, a perusal of the judgment of the learned first appellate Court is revealing a clear finding that the document/Ex.P-3 is insufficiently stamped, as such it is inadmissible in evidence and the document was not considered while determining the issues.

11. On this aspect, the relevant provision of law needs attention. Section 33 of the Indian Stamp Act, specifies that

public officers including the Courts to examine every instrument chargeable with duty which is placed before them in their official function and if any insufficiently stamped instrument is found, the same shall be impounded and the instrument not duly stamped is inadmissible in evidence for any purpose until the payment of duty with which the same is chargeable, as provided under Section 35 of the Act.

12. In the case on hand, the respondent had objected for marking the document and this aspect was answered in the appeal. On such conclusion, the Court should have taken the recourse enunciated under Section 35 of the Indian Stamp Act, but chose to proceed with the matter by discarding the document as it is inadmissible. In the circumstances, I am of the considered opinion that the revision petitioner was not given a fair opportunity as contemplated under the statute. In this view, the impugned order dated 10.02.2020 in R.C.A.No.23 of 2019 on the file of the Chief Judge, Small Causes Court, Hyderabad is set aside and the matter is remanded with a direction to examine the insufficiency of stamp duty on the document/ Ex.P-3 to take up the recourse as contemplated in the Indian Stamp Act. On validation of the document, the parties shall be given opportunity to contest and pass an appropriate order on merits, as per law.

13. At this stage, both the counsel brought to the notice of this Court that the matter is of the year 2013, as such a time line may be fixed for early disposal of the matter.

14. Considering the submission and as the matter is of the year 2013, the learned Chief Judge, Small Causes Court, Hyderabad is directed to take all necessary steps for expeditious disposal of the matter.

15. With the above observations, the revision petition is disposed of. No costs.

As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

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31. Simultaneously, Section 28 was also amended by the State of Tamilnadu to incorporate a proviso to the effect that a document mentioned in Section 17(1)(h) may also be presented for registration in the office of the Sub-Registrar within whose jurisdiction the principal ordinarily resides.

32. By the very same Tamilnadu Amendment Act 29 of 2012, two more provisions were also inserted in the Registration Act, 1908. One was Section 34-B and another was Section 64A. Section 34B reads as follows:-

34-B. Procedure for Registration of document of Power of Attorney relating to immovable property.-Subject to the provisions of this Act, no document of Power of Attorney relating to immovable property shall be registered unless passport size photographs and finger prints of the principal, the agent and of the identifying witnesses are affixed to the document and the agent has also signed such document.".

Section 64-A reads as follows:-

"64-A. Procedure where instrument of Power of Attorney presented in office of Sub-Registrar relates to immovable property not situate in sub-district. - Every Sub-Registrar on registering an instrument of Power of Attorney including instrument of revocation or cancellation of such Power of Attorney relating to immovable property not situate in his own sub-district, shall make a copy and send the same together with a copy of the map or plan (if any) mentioned in section 21, to every other Sub-Registrar in whose sub-district the whole or any part of such property is situate and such Sub-Registrar shall file the same in his Book No. 1:

Provided that where such instrument relates to immovable property in several districts, shall forward the same to the Sub-Registrars concerned, under intimation to the Registrar of every district in which any part of such property is situate."

33. At this stage we should record that the dispute on hand relates to a document executed and registered much before the Tamilnadu Amendment Act 29 of 2012. But still we have taken note of it, not for the purpose of applying it to this case, but for the purpose of flagging certain concerns. Now that we have noticed various provisions of the Act, let us see some factual aspects and then deal with the contentions on both sides.

34. In the case on hand, the sale deed dated 05.07.2007 executed by the father S.P. Velayutham, in favour of his son Amar, contained a specific recital to the effect that the owners of the property had appointed S.P. Velayutham, as their Power of Attorney, by a deed dated 23.08.2006 to sell the property. But far from authorising the power agent to sell the property, clause 7 of the registered deed of PoA dated

23.08.2006, on the basis of which the sale deed was executed, actually contained an express prohibition from creating any encumbrance on the property. Clause 7 of the registered PoA dated 23.08.2006 reads as follows :-

"(7) To negotiate with any third party/ s claimant/s including broker/s take the Banks and other financial institutions claimant/s if any in the schedule mentioned properties and to settle such claims and on, this behalf our attorney is empowered to do all acts, deeds and things. To enter upon the schedule mentioned properties for the survey of, the same. The power agent herein appointed shall have no power to encumber the schedule mentioned properties for the survey of the same. The power agent herein appointed shall have no power to encumber the schedule mentioned properties without the written consent of us."

35. Apart from the fact that clause 7 extracted above expressly prohibited the power to encumber, there was also no stipulation authorising S.P. Velayutham to appear before any Registering Officer for the purpose of sale, as an agent. Though clause 5 authorised the agent to appear before the Registrar and to admit execution, the same was specifically in relation to the execution of gift deeds in favour of municipalities, corporations or other authorities, for the purpose of development of the layout, formation of the roads etc. Similarly, clause 6 of the deed of PoA also contained a limited power to appear before the Sub-Registrar, but the same was also restricted to certain things mentioned in clause 6 itself.

36. Interestingly, the contesting respondents relied upon another unregistered deed of PoA dated 07.06.2007, which contained a power to sell. Despite this document being dated 07.06.2007 and despite the date of execution of the sale deed being 05.07.2007, there was no reference to this PoA in the sale deed. This deed of PoA has surfaced much later and the fraudulent nature of this deed of PoA is patently visible, in view of certain recitals contained therein. The relevant recitals contained in the un-registered PoA dated 07.06.2007 reads as follows:-

"...AND WHEREAS, under the said General Power of Attorney Deed though we have intended to confer power including to sell the Schedule mentioned properties under clauses of the said General Power of Attorney Deed, by inadvertence and over sight the said clause relating to power to sell the schedule mentioned properties was omitted to be included therein;

AND WHEREAS, now our Agent Mr. S.P. Velayutham has found the said mistake and requested for execution of additional and supplemental General Power of Attorney Deed 'empowering him to sell the schedule mentioned properties' and to

Asset Reconstruction Company (India) Ltd., Vs. S.P. Velayutham & Ors ., 25

receive the sale consideration therefor. In continuation of the earlier General Power of Attorney Deed dated 23.08.2006 referred to above;:

AND WHEREAS, we as the Principals under the General Power of Attorney Deed dated 23.08.2006 are satisfied with, the mistake pointed out by our Agent and 'accordingly we also agreed' to execute this General Power of Attorney Deed and as such we are appointing Mr. S.P. Velayutham, son of Sabapathy, Hindu; aged about 50 years, residing at No. 5, Sabarj, Street, Madlpakkam, Chennai-600091 as out General Power of Attorney to do the following acts; deeds and things relating to the properties detailed in the Schedule hereunder..."

The above recitals contain a totally false statement to the effect, (i) that a power of sale was intended to be conferred under the original PoA, but it was omitted due to inadvertence and oversight; and (ii) that after the mistake was pointed out, the Principals decided to execute the additional document. These recitals are manifestly false and are contrary to clause 7 of the registered PoA dated 23.08.2006. In any case, this PoA dated 07.06.2007 was not what was produced or relied upon at the time of registration of the sale deed dated 05.07.2007.

37. Therefore, if the Registering Officer had verified the recitals contained in the registered deed of PoA dated 23.08.2006, to see if the power agent had the power to do what he did, he would have refused the registration of the document. Rule 46 of the Tamilnadu Registration Rules ordains what the Registering Officer is obliged to do, (i) when a document is presented for registration under a special PoA; and (ii) when a document is presented for registration under a general PoA. It was the failure on the part of the Registering Officer to do what he is required to do, that convinced the learned Single Judge to invoke the writ jurisdiction. But the Division Bench overturned the decision of the learned Judge on the ground that the writ court ought to have relegated the parties to the civil court.

38. Two main contentions are raised on behalf of the contesting respondents, namely (i) the restraint that is expected of the High Court, in a writ petition arising under Article 226, in respect of matters which require detailed factual investigation; and (ii) the limited scope of the enquiry that could be conducted by the Registering Authority under Sections 32 to 34 of the Registration Act, 1908.

39. In support of the 1st contention, the learned senior counsel appearing for the respondents relied upon the following decisions, (i) Thansingh Nathmal vs. Superintendent of Taxes, (1964) 6 SCR 654, (ii) Sarvepalli Ramaiah vs. District Collector, (2019) 4 SCC 500; (iii) Latif Estate Line

India Ltd. vs. Hadeeja Ammal, 2011 (2) CTC 1.

40. Out of the aforesaid decisions, the decision in Thansingh (supra) arose out of the orders of assessment passed under the Assam Sales Tax Act, 1947. The order passed by the original authority was challenged before the appellate authority and then the revisional authority and thereafter in a writ petition under Article 226. It was in such circumstances that this Court held that the High Court had no power to decide questions of fact which are exclusively within the competence of the taxing authorities. Similarly, the decision in Sarvepalli Ramaiah (supra), arose out of proceedings for the grant of Ryotwari Patta. The dispute travelled to the High Court after an elaborate enquiry by the District Collector. It was in that context that this Court examined the scope of the power of judicial review under Article 226.

41. The Full Bench decision of the Madras High Court in Latif Estate Line India Ltd. (supra), arose out of a controversy as to whether a deed of cancellation of sale can or cannot be accepted for registration. The Full Bench explained the circumstances under which a deed of cancellation, presented by both the vendor and the purchaser, can be accepted. But the Full Bench categorically held that a deed of unilateral cancellation cannot even be accepted for registration. This proposition actually goes in support of the contention of the appellant that the Registering Officer has a duty to see whether the document presented for registration has been presented in accordance with law or not. In fact the decision of the Full Bench itself arose out of a writ petition challenging the act of the Registering Authority in allowing the registration of the deeds of unilateral cancellation of sale deeds.

42. The reliance placed by the respondents on the decision in Satya Pal Anand vs. State of Madhya Pradesh, (2016) 10 SCC 767, is misplaced. The decision in Satya Pal Anand (supra) arose out a case where the allotment of a plot made by a cooperative society was cancelled unilaterally by a deed of extinguishment, by the society. The allottee raised a dispute which ended in a compromise but notwithstanding the compromise the allottee raised a dispute under the relevant provisions of the Madhya Pradesh Cooperative Societies Act, 1960. When the dispute was pending, the allottee moved the Registering Officer for the cancellation of the deed of transfer executed in favour of the subsequent purchasers. When the Registering Authority refused to comply with the demand, a writ petition was moved seeking a declaration that the deed of extinguishment and the subsequent sales were null and void. The High Court dismissed the writ petition on the ground that a dispute was already pending before the competent authority under the Cooperative Societies Act. When the order of dismissal passed by the High Court

Asset Reconstruction Company (India) Ltd., Vs. S.P. Velayutham & Ors ., 27 was challenged before this Court, there was a difference of opinion as to whether the issue was directly covered by the decision of this Court in Thota Ganga Laxmi and Another vs. Government of Andhra Pradesh and Others, (2010) 15 SCC 206 Therefore, the matter was placed before a three Judge Bench. While upholding the decision of the High Court, the three member Bench held in Satya Pal Anand (supra) that there was no rule in the State of Madhya Pradesh similar to Rule 26(k) (i) of the Rules issued by the State of Andhra Pradesh under Section 69 of the Registration Act, 1908 and that therefore the decision in Thota Ganga Laxmi (supra) cannot be invoked.

43. The decision in Satya Pal Anand (supra) cannot go to the rescue of the contesting respondents, for the simple reason that the writ petitioner in that case, first accepted a compromise and then raised a dispute under the Cooperative Societies Act (which is akin to a civil suit) and thereafter approached the High Court under Article 226 for a declaration, which he could have sought only in the already instituted proceedings. The very fact that Thota Ganga Laxmi was sought to be distinguished on the basis of the express provision contained in the Rules of the State of A.P., would indicate that there is no absolute bar for the High Court to exercise jurisdiction under Article 226.

44. Both sides relied upon the decision of this Court in Rajni Tandon (supra). The question that arose in Rajni Tandon (supra)was as to whether the PoA required authentication by the Registering Authority, when a sale deed executed by the power agent himself is presented for registration by the power agent. This question was couched in a different language by this Court in paragraph 19 of the Report in Rajni Tandon (supra) as follows:-

"19. In view of the aforesaid situation, the issue that falls for our consideration is whether a person who executes a document under the terms of the power of attorney, is, insofar as the registration office is concerned, the actual executant of the document and is entitled under Section 32(a) to present it for registration and get it registered."

45. After analysing Sections 32 and 33 of the Registration Act, 1908 this Court came to the conclusion that whenever an agent is authorised to execute a document and present the same for registration and he accordingly executes the document in terms of PoA, he becomes the actual executant in so far as the Registering Authority is concerned and that therefore he becomes entitled under Section 33(a) to present it for registration. This Court further held that the authentication in terms of Section 33(1)(a) is required only in cases where Section 32(c) is invoked. Paragraph 33 of the Report in Rajni Tandon is reproduced for easy appreciation as follows:-

"33. Where a deed is executed by an agent for a principal and the same agent signs, appears and presents the deed or admits execution before the registering officer, that is not a case of presentation under Section 32(c) of the Act. As mentioned earlier the provisions of Section 33 will come into play only in cases where presentation is in terms of Section 32(c) of the Act. In other words, only in cases where the person(s) signing the document cannot present the document before the registering officer and gives a power of attorney to another to present the document that the provisions of Section 33 get attracted. It is only in such a case, that the said power of attorney has to be necessarily executed and authenticated in the manner provided under Section 33(1)(a) of the Act."

46. But we are not concerned in this case with the question whether the PoA relied upon by the power agent S.P. Velayutham in the sale deed executed by him, required authentication and whether the Registering Authority committed a blunder in accepting the sale deed presented by him for registration, without verifying the authentication of the PoA or not. We are concerned in this case with the most fundamental question whether the Registering Authority could have turned a blind eye to the fact that the deed of PoA on the basis of which the sale deed was executed as well as presented for registration by S.P. Velayutham contained an express prohibition for the power agent to create an encumbrance on the property, especially in the light of the Rules framed under section 69 of the Act. The decision in Thota Ganga Laxmi, was in a way approved by a 3-member Bench in Satya Pal Anand, on the basis of the rules in the State of Andhra Pradesh, showing thereby that statutory rules also play a crucial role. Rajni Tandon is not an authority for holding that the registering Authority has no duty even to verify the presence or absence of a power of sale in the deed of PoA, especially in the light of the rules.

47. In Amarnath vs. Gian Chand, (2022) SCC Online SC-102, this Court was concerned with a case arising out of peculiar circumstances. The said case arose out of a civil suit for a declaration of title and for permanent injunction. The plaintiff in that case entered into an oral agreement for the sale of his property and gave a special PoA in favour of the second defendant. But the agreement fell through and hence the plaintiff took back the original deed of PoA from the second defendant. However, the second defendant applied for a copy of the PoA and thereafter sold the property in collusion with the first defendant. Upon coming to know of the same, the original owner filed the suit as aforesaid, contending that the second defendant had no valid power and that the Registering Authority ought to have verified this aspect from the second defendant under Sections 32, 33 and 34 of the Registration Act, 1908. After trial, the trial court dismissed the suit on the ground

that the cancellation of the PoA also required registration and that the mere writing of the word "cancelled" on the original PoA cannot be taken to mean that the power was validly cancelled. The First Appellate Court confirmed the judgment and decree of the trial court. While reversing the judgments of the trial court and the Appellate Court, the High Court opined that under Section 18A of the Registration Act as applicable to the State of Himachal Pradesh, by way of an amendment under Himachal Pradesh Act 2 of 1969, the PoA ought to have accompanied the sale deed presented for registration and that if the Sub-Registrar had ensured this, he would have found that in view of the cancellation of the power, the agent ceased to have any power of sale. This decision of the High Court was reversed by this Court in Amar Nath (supra), after an exhaustive analysis of the provisions of the Registration Act, 1908. While doing so, this Court held in paragraph 26 as follows:-

"26. For reasons, which we have indicated, Section 32(c) read with Section 33 and Section 34(2)(c) are inter- related and they would have no application in regard to the document presented for registration by a power of attorney holder who is also the executant of the document. In other words, there is really no need for the production of the original power of attorney, when the document is presented for registration by the person standing in the shoes of the second defendant in this case as he would be covered by the provisions of Section 32(a) as he has executed the document though on the strength of the power of attorney. To make it even further clear, the inquiry contemplated under the Registration Act, cannot extend to question as to whether the person who executed the document in his capacity of the power of attorney holder of the principal, was indeed having a valid power of attorney or not to execute the document or not.."

48. Though the passage extracted above, lends credence to the contention of the learned senior counsel for the contesting respondents, there is some difficulty in accepting the same as a proposition of law of universal application. There are two reasons why we say so. They are: (i) as we have stated elsewhere, the interpretation of the provisions of the Registration Act, would depend upon the State amendments and the Rules framed in each State under Section 69; and (ii) in Amar Nath, the challenge to the sale was before the civil court, not merely on the ground that the Registering Authority failed to perform his duties, but also on the ground that the defendant conveyed what he could not have. Unfortunately, the parties in Amar Nath, appear to have gone on a wild goose chase. Instead of focussing their attack on the agent (who was the defendant in the suit), for executing the document without any power, the parties focussed their attack on the registering officer for permitting the registration of the document. This resulted in their failure. If a civil court finds that the

sale by a power agent was unauthorised, then the question whether the Registering Officer performed his duties properly or not, would lose its significance. An attack on the authority of the executant of a document, is not to be mixed with the attack on the authority of the Registering Officer to register the document. The distinction between the execution of a document and the registration of the document is to be borne in mind while dealing with these questions.

49. Actually, the registration of a document comprises of three essential steps among others. They are, (i) execution of the document, by the executant signing or affixing his left hand thumb impression; (ii) presenting the document for registration and admitting to the Registering Authority the execution of such document; and (iii) the act of registration of the document.

50. In cases where a suit for title is filed, with or without the relief of declaration that the registered document is null and void, what gets challenged, is a combination of all the aforesaid three steps in the process of execution and registration. The first of the aforesaid three steps may be challenged in a suit for declaration that the registered document is null and void, either on the ground that the executant did not have a valid title to pass on or on the ground that what was found in the document was not the signature of the executant or on the ground that the signature of the executant was obtained by fraud, coercion etc. The second step of presentation of the document and admitting the execution of the same, may also be challenged on the very same grounds hereinabove stated. Such objections to the first and second of the aforesaid three steps are substantial and they strike at the very root of creation of the document. A challenge to the very execution of a document, is a challenge to its very DNA and any defect or illegality on the execution, is congenital in nature. Therefore, such a challenge, by its very nature, has to be made only before the civil court and certainly not before the writ court.

51. The third step namely the act of registration, is something that the Registering Authority is called upon to do statutorily. While the executant of the document and the person claiming under the document (claimant) are the only actors involved in the first two steps, the Registering Officer is the actor in the third step. Apart from the third step which is wholly in the domain of the Registering Authority, he may also have a role to play in the second step when a document is presented for registration and the execution thereof is admitted. The role that is assigned to the Registrar in the second step is that of verification of the identity of the person presenting the document for registration.

52. Thus, the first two steps in the process of registration are substantial in nature, with the parties to the document playing the role of the lead actors and the

Registering Authority playing a guest role in the second step. The third step is procedural in nature where the Registering Authority is the lead actor.

53. In suits for declaration of title and/or suits for declaration that a registered document is null and void, all the aforesaid three steps which comprise the entire process of execution and registration come under challenge. If a party questions the very execution of a document or the right and title of a person to execute a document and present it for registration, his remedy will only be to go to the civil court. But where a party questions only the failure of the Registering Authority to perform his statutory duties in the course of the third step, it cannot be said that the jurisdiction of the High Court under Article 226 stands completely ousted. This is for the reason that the writ jurisdiction of the High Court is to ensure that statutory authorities perform their duties within the bounds of law. It must be noted that when a High Court, in exercise of its jurisdiction under Article 226 finds that there was utter failure on the part of the Registering Authority to stick to the mandate of law, the Court merely cancels the act of registration, but does not declare the very execution of the document to be null and void. A declaration that a document is null and void, is exclusively within the domain of the civil court, but it does not mean that the High Court cannot examine the question whether or not the Registering Authority performed his statutory duties in the manner prescribed by law. It is well settled that if something is required by law to be done in a particular manner, it shall be done only in that manner and not otherwise. Examining whether the Registering Authority did something in the manner required by law or otherwise, is certainly within the jurisdiction of the High Court under Article 226. However, it is needless to say that the High Courts may refuse to exercise jurisdiction in cases where the violations of procedure on the part of the Registering Authority are not gross or the violations do not shock the conscience of the Court. Lack of jurisdiction is completely different from a refusal to exercise jurisdiction.

54. In the case on hand, the appellant has not sought a declaration from the High Court that the execution of the document in question was null and void or that there was no title for the executant to transfer the property. The appellant assailed before the High Court, only the act of omission on the part of the Registering Authority to check up whether the person who claimed to be the power agent, had the power of conveyance and the power of presenting the document for registration, especially in the light to the statutory rules. Therefore, the learned Single Judge rightly applied the law and allowed the writ petition filed by the appellant, but the Division Bench got carried away by the sound and fury created by the contesting respondents on the basis of (i) pendency of the civil suits; (ii) findings

recorded by the Special Court for CBI cases; and (iii) the order passed by this Court in the SLP arising out of proceedings under Section 145 Cr.P.C.

55. Arguments were advanced on the question whether the Registering Authority is carrying out an administrative act or a quasi-judicial act in the performance of his statutory duties. But we think it is not relevant for determining the availability of writ jurisdiction. If the Registering Authority is found to be exercising a quasi-judicial power, the exercise of such a power will still be amenable to judicial review under Article 226, subject to the exhaustion of the remedies statutorily available. On the contrary if the Registering Authority is found to be performing only an administrative act, even then the High Court is empowered to see whether he performed the duties statutorily ordained upon him in the manner prescribed by law.

56. Much ado was sought to be made by contending that the appellant approached the High Court without disclosing the previous orders of the High Court and this Court, relegating them to civil court for the adjudication of their claim. Reliance was also placed in this regard on the decision of this Court in Raj Kumar Soni vs. State of U.P., (2007) 10 SCC 635.

57. But we do not agree. The previous orders directing the appellant to go to the civil court arose out of the proceedings under Section 145 of the Cr.P.C. But it does not mean that the recourse to civil court was seen as the only panacea for all ills.

58. Therefore, in the light of (i) the Tamilnadu Registration Rules discussed above; (ii) the statutory scheme of Sections 32 to 35 of the Act as well as other provisions as amended by the State of Tamilnadu; and (iii) the distinction between a challenge to the first 2 steps in the process of execution of a document and the third step concerning registration, we are of the considered view that the Division bench of the High Court was not right in setting aside the order of the learned single Judge. If the Registering Officer under the Act is construed as performing only a mechanical role without any independent mind of his own, then even Government properties may be sold and the documents registered by unscrupulous persons driving the parties to go to civil court. Such an interpretation may not advance the cause of justice.

59. Therefore, in fine, the appeals are allowed, the impugned order of the Division Bench is set aside and the order of the learned single Judge is restored. There will be no order as to costs.

–X–

2022 (2) L.S. 33 (S.C)

IIN THE SUPREME COURT
OF INDIA

Present:
The Hon'ble Mr.Justice
Sanjay Kishan Kaul &
The Hon'ble Mr.Justice
M.M. Sundresh

Jafarudheen & Ors., ..Petitioner
Vs.
State of Kerala ..Respondent

(INDIAN) PENAL CODE, Secs. 143, 147, 148, 427, 452 & 302 R/w.49 - Convictions confirmed and acquittals reversed at the hands of Division Bench of the High Court are under challenge.

HELD: Appellate forum cannot change the conclusion arrived by the Trial Court by substituting its views - High Court has adopted the principle of preponderance of probability as could be applicable to the civil cases to the case on hand when more scrutiny is warranted for reversing an Order of acquittal - Conviction rendered by the High Court against the Appellants in Criminal Appeal stands set aside - Consequently, appeals filed by accused are allowed by setting aside the Judgment rendered by the High Court and restoring the acquittal rendered by the Trial Court.

J U D G M E N T
(per the Hon'ble Mr.Justice
M.M. Sundresh)

Convictions confirmed and acquittals reversed at the hands of the Division Bench of the High Court of Kerela are under challenge before us. The accused, who got their acquittal confirmed, stand as freemen with no further challenge. Appropriately, our common judgment disposes of these appeals emanating from the same occurrence.

BRIEF FACTS:

2. The deceased and the accused belong to two different political parties - one affiliated to CPI (M) and the other NDF (National Development Front). There was an altercation between the affiliated political members of CPI (M) and NDF on 17.07.2002 at about 4:00 p.m. with the deceased and P.W.8 as the CPI(M) members, and A-3 and A-10 as that of NDF. In the altercation the deceased had reportedly assaulted A-3.

3. Seeking to avenge, the accused, being 16 in numbers, assembled at the family house of A-5 on the same day (i.e. 17.07.2002) at about 7:00 p.m. and hatched a conspiracy to take out the life of the deceased. In pursuance to the aforesaid decision, A-1 to A-13 went to the residence of the deceased on 18.07.2002 at about 9:30 p.m. in three material objects, namely, - (i) an auto-rickshaw, (ii) a motorbike, and (iii) a jeep, armed with deadly weapons like swords, knives, chopper, etc. While four of them (A-7, A-10, A-12, and A-13) waited

outside, the others (A-1 to A-6, A-8, A-9, and A-11) barged in and indiscriminately attacked the deceased. In the process, they also exploded country bombs on two occasions.

4. The occurrence was witnessed by P.W.1, the author of the First Information Report - Ext. P-1 and others. For the occurrence, which took place at about 9.30 p.m. on 18.07.2002, the registration of FIR/ complaint was done in Crime No. 237/2002 at about 11.00 p.m. against six named accused and other identifiable ones for the offences punishable under Sections 143, 147, 148, 427, 452, 302 read with 149 of the Indian Penal Code (for short TPC) and Section 3 of the Explosives Substances Act. The registered complaint reached the jurisdictional Magistrate at about 4.15 p.m. the next day.

5. P.W. 64 took up the investigation, and accordingly arrested the accused, A-10, A-12 and A-13 on 31.07.2002. Thereafter, recoveries were made pursuant to their arrest. A-11 surrendered before the Judicial First Class Magistrate, Punalur, on 05.08.2002. Recoveries have been made from A-10, A-12 and A-13 on 01.08.2002. From A-11, recoveries were made on 13.08.2002.

6. On completion of the investigation, a charge sheet was laid against 16 accused. Charges were framed against A2, A-4, A-5, A-8, A-9 to A-16 for the offences punishable under Sections 120-B, 143, 147, 148, 427, 460, 302 read with 149 IPC and Sections 3 and 5 of the Explosives Substances Act. As A-1, A-3, A-6 and A-7 were absconding, the case against them got split up.

7. The prosecution examined 66 witnesses in total while marking Ext. P-1 to P-97. On behalf of the defence, particularly A-8 & A-9, one witness was examined as DW-1, while Ext. D-1 to D-18 were marked. The material objects 1 to 54 were exhibited and identified before the Court.

8. The learned Additional District and Sessions Judge, Court I, Kollam, while acquitting A-10 to A-16, convicted the others for the following offences:

A-2, A-4, A-5, A-8, A-9 - U/s 302 r/ w 149 IPC and sentenced to life imprisonment

A-2, A-4, A-5, A-8, A-9 - U/s 147 r/ w 149 IPC for 1 year S.I. and fine of Rs. 5000

A-2, A-4, A-5, A-8, A-9 - U/s 148, 149 IPC for 2 years S.I. and fine of Rs. 10,000

A-2, A-4, A-5, A-8, A-9 - U/s 460 IPC for 3 years R.I. and fine of Rs. 15,000

A-4 - U/s 427 IPC for 6 months S.I. and a fine of Rs. 5,000

9. Appeals and revisions were filed by both the prosecution and the de facto complainant, on the one hand, and the convicted accused, on the other. The High Court of Kerala upheld the conviction and the sentence imposed upon A-2, A-4, A-

5, A-8, and A-9 for offences under Sections 460, 148, 302 read with 149 IPC and further convicted them under Section 427 IPC and Section 3 of the Explosives Substances Act. The appeal filed by the State against the order of acquittal in favour of A-14 to A-16 was dismissed, while it was accordingly allowed by overturning the acquittal qua A-10 to A-13. As the legal battle against A-14 to A-16 attained finality, the convicted accused have filed these appeals.

EVIDENCE BEFORE THE COURT

10. P.W.1 is the relative of the deceased who had seen the occurrence from inside the house, hiding behind the chairs. All the accused are known to him. He attributed specific overt acts against a few accused and identified a few of them. However, this witness could not identify A-11, not even named in Ext. P-1, i.e. first information report, despite being a known person. Similarly, he does not identify A-10.

11. P.W.2 is the father of the deceased, who also took cover protecting himself by staying in a nearby room. Despite being an eye-witness and knowing the accused, he wrongly identified A-10 as A-5. P.W.2 also does not identify A-11 and A-12.

12. P.W.3 is the maid-servant working at the residence of the deceased at the relevant point of time. She also wrongly identified A-4 as A-10, notwithstanding her claim that she knew him prior to the occurrence. This witness did not say anything about the presence of A-11, A-12 and A-13, though she speaks of the other accused, as deposed by P.W.1 and P.W.2. Both these witnesses do not make any reference to A-13.

13. P.W.4 is the neighbour of the deceased, having witnessed the occurrence from outside. He identified A-10 and A-12 by deposing that they were standing on the south-western corner of the house. However, he did not speak of A-11 and A-13.

14. P.W.21 is the employee (worker) in the ASR Theatre, Thadikkad situated nearer to the deceased's house. He had seen the occurrence from the theatre. He identified A-10, having seen him near the vicinity of the deceased's house. His statement under Section 161 of the Code of Criminal Procedure (for short 'Cr.PC') was recorded nine days after the incident. Incidentally, the bloodstained clothes of A-10 were recovered from his house, he being not a party to the recovery mahazar. He also similarly identified A-11 and A-12. He attributes the specific overt act against A-13 of throwing a bomb. Though he states that he saw the occurrence along with C.W.22, the said person was not examined.

15. P.W.46 saw the incident while returning home. He heard the gunshot and attributes overt act as against A-10, A-12 and A-13. His statement was also recorded only on 20.07.2002. He wrongly identified A-10 as A-7 while unable to identify A-12. He has not expressed anything about A-11.

16. The doctor who has been examined as P.W.15 has issued Ext. P-

45 - the postmortem certificate which, on perusal, indicates about 30 ante-mortem injuries, of which the majority of them are incised.

17. A-8 and A-9 got injuries and took treatment in the hospital. The injuries were found to be incised and thus contrary to the statement made by them to P.W.45, corroborated with the entry of Accident Register of Medical Trust Hospital. The cause of the injury, as informed by A-8 and A-9, was that they sustained the injury when the lorry tyre fell upon them by accident when they tried to replace it with another. But, in his evidence, P.W. 45 has stated that it is unlikely, and the injury could only be due to a sharp-edged hard object.

TRIAL COURT

18. The Trial Court rendered its judgment as aforesaid by undertaking a thorough analysis through a laborious process. It took into consideration each and every aspect of evidence before rendering its decision. Perhaps, the only exercise not done was with respect to the recovery qua A-10 to A-13, particularly on the evidentiary value.

19. It found that A-2, A-4, A-5, A-8, and A-9 have clinching evidence staring at them. The evidence of eye-witnesses, as well as that of experts, was taken into account. The contentions regarding the delay in sending Ext. P-1 - first information report and the injuries suffered by A-8 and A-9 were duly considered. These two accused took the same plea under Section 313 Cr.PC questioning, denying their existence at the place of occurrence. The case projected by the defense that the witnesses are either set up by the prosecution or interested in securing the conviction was not accepted by giving adequate reasoning. After concluding that there is insufficient evidence to support the charge attracting Section 120B of the IPC, A-14 to A-16 were acquitted.

20. It acquitted A-10 to A-13 based on the inconsistencies in eye-witness statements. Two material objects, a motorbike and an auto-rickshaw were found unrelated to the occurrence of the event or the evidentiary value of the accused. As such, it granted acquittal to A-10 to A-13. The reasoning of the Trial Court is elucidated hereunder:

". Though PW1 would depose that accused Nos. 1 to 6 and 8 to 10 get down from the vehicle parked on the road he did not say that A13 was among them. He did not depose that A13 exploded Bomb. From the deposition of PW1 it is brought out that A 1 to A9 and A 11 entered into hall room first and inflicted injuries and on getting the cut injury of A4 on the left cheek Ashrar fell down. Before getting injury of A4 Ashraf suffered cut injury with sword on his right leg. Thereafter A7, A10, A12 entered into the hall room inflicted cut injuries on various parts- of. the person of Ashraf. Ext. A45 and the deposition of PW 58 proved that corresponding injuries found on the dead body of Ashraf. Though PW1 could depose the names of A1 to A12 he could not identify A 1, A3, A6, A7 and A 10, A 11, he could identify A2, A4, A5, AS and A9. His evidence

shows that A11 did not inflict any injury on Ashraf. PW2 also stated the name of the assailants came inside the house and caused injury on the person of Ashraf. Though PW2 stated the names of A2, A4, A5, AS, A9, A 11 he could identify only AS and A9. No overt act stated by PW2 against A 11 and on analyzing the evidence of PW2 it is seen that A11 was armed with sword and it was catched by Ashraf and attacked the assailants. Thus PW2 has identified accused 8 and 9 only. The evidence of PWs 1 and 2 and PW58 and Ex. P45 proved that the version of PWs 1 and 2 is credible probable to believe. The victim sustained 20 incised wounds, on the right side of vertex, right eye brow, left cheek and also on various parts of his body. The evidence of PW58 and Ext. P45 corroborate the testimony of PWs 1 and 2. The other witnesses especially .PW4, PW7, PW21 and PW32 and PW46 have deposed about the incident they have seen outside the house. Since I have discussed in the earlier paragraphs not reproducing. PW4 identified A4, A8, A9, A10 and A12. As per the evidence he saw A4 took A8 and A9 through the kitchen door on the southern side of the house. A 10 and A 12 were in front of the house of Ashraf. No overt act stated. PW7 through hostile witness his evidence shows that A4 was driving jeep towards the house of Ashraf and A5 was in the jeep. According to him he was relation with A5. There is no evidence to corroborate his testimony that A11 has driven motor cycle towards the house of Ashraf. PW21 though narrated the presence of accused NOs. 2,4,5,8,9, 11 and 13 he says that 4 accused has broken the glasses of motor cycle and car. He also stated that A4 took A8 and A9 in front of the house were A11 and A 13 were present. No overt act stated against A 11. He could identify A2, A4, A5, A8 and A9, stated that A13 Kochansar exploded bomb. As per the prosecution records no accused named Kochansar. The name of A13 is Ansarudheen. The prosecution failed to prove that A13 Ansarudheen is also known as Kochansar. Therefore the evidence of PW21, PW32 and PW46 that A13 exploded bomb at the yard of the house cannot be believed. The prosecution could not prove that impact of Explosion at the yard or nearby place. Hence it cannot be held that the accused are guilty of offence U/s 3 and 5 Explosive Substance Act. The above witnesses not properly identified A13. The above prosecution witnesses properly identified A2, A4, A5, A8 and A9. The prosecution evidence proved that the accused Nos. 2,4,5,8 and 9 formed an unlawful assembly at the yard of the house committed rioting and trespassed in to the house of Ashraf by break opening the front door with the intention to commit the murder of Ashraf. The prosecution not succeeded to prove the offence alleged against the accused NOs, A10, A11 and A12. The prosecution has not succeeded to prove that the accused were formed conspiracy at the house of A5 and taken decision to commit the murder of Ashraf. None of the accused are guilty of offence U/s 120B."

HIGH COURT

21. The High Court confirmed the order of acquittal against A-14 to A-16 and confirmed the conviction against the other accused, namely, A-2, A-4, A-5, A-8, and A-9. However, it overturned the order of

acquittal of A-10, A-11, A-12, and A-13 granted by the Trial Court on the premise that the witnesses who spoke about these accused's presence failed to consider the import of Section 149 IPC. These minor discrepancies ought to have been ignored, and the prosecution case is supported by both recoveries and medical, forensic, and scientific evidence.

SUBMISSIONS

22. Counsel appearing for A-2, A-4, A-5, A-8, and A-9 contended that the first information report registered as Ext. P-1 is an after-thought, created subsequently and thus ante-dated. There is no proper explanation for referring the jeep with the registration number, which is one of the material objects recovered under Ext. P-1, when P.W.1 states that he came to know about it only the next day of the occurrence. Though Ext. P-1 was sent after its registration at about 11.00 p.m., it did reach the jurisdictional Magistrate only at about 4.15 p.m. the next day. This delay has not been examined properly. The witnesses are either interested or chance and, therefore, the courts ought to have rejected their testimonies. They are not only the members of the deceased's family but also members of a particular party. The injuries suffered by A-8 and A-9 have not been considered in the correct perspective.

23. Mr. R. Basant, learned senior counsel appearing for A-10 to A-13, has taken us through the law governing the cases pertaining to appeals filed against orders of acquittal as there is an enlarged presumption of innocence. The High Court has committed a jurisdictional error in reversing the well-merited judgment of the Trial Court by replacing its views with that of the Trial Court. What is required to be seen is whether the view of the Trial Court is a possible one. The High Court has committed an error in placing reliance upon recoveries. It did not go into the manner in which the recoveries have been made. Section 149 IPC though being a substantive offence, is to be proved in the manner known to law. There must be a proof of common object. When the witnesses are not able to identify the accused, the testimonies rendered would become highly doubtful. The learned senior counsel took us through the law laid down by this Court in Mohan @ Srinivas @ Seena @Tailor Seena v. State of Karnataka, 2021 SCC OnLine SC 1233, wherein it was held that when after due examination and review of evidence, the Trial Court has passed an order of acquittal, the exercise of the power of the High Court as imposed by the code must be with circumspect.

SUBMISSIONS ON BEHALF OF THE STATE

24. It is submitted that in the absence of any apparent illegality, the concurrent decisions rendered by the courts do not warrant any interference. Both the Courts below considered all the evidence, eye-witnesses, material objects and recoveries while also taking into account the scientific evidence. The motive has also been proved through the prior occurrence. The High Court rightly considered the recoveries made along with the oral evidence. It has given its reasons for reversing the order of acquittal passed

by the Trial Court. The Trial Court did not even consider the evidentiary value of the recoveries. There is no need for any interference in such a case, particularly when the contentions raised were noted. On the issue qua the mentioning of the number of the vehicle in the FIR, it is submitted that it has not been placed before the Court and, in any case, the conviction was rendered based on the materials available on record.

DISCUSSION

Scope of Appeal filed against the Acquittal:

25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, the Appellate Court has to consider whether the Trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal.

Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters. Precedents:

Mohan @Srinivas @Seena @Tailor Seena v. State of Karnataka, [2021 SCC Online SC 1233] as hereunder: -

"20. Section 378 CrPC enables the State to prefer an appeal against an order of acquittal. Section 384 CrPC speaks of the powers that can be exercised by the Appellate Court. When the trial court renders its decision by acquitting the accused, presumption of innocence gathers strength before the Appellate Court. As a consequence, the onus on the prosecution becomes more burdensome as there is a double presumption of innocence. Certainly, the Court of first instance has its own advantages in delivering its verdict, which is to see the witnesses in person while they depose. The Appellate Court is expected to involve itself in a deeper, studied scrutiny of not only the evidence before it, but is duty bound to satisfy itself whether the decision of the trial court is both possible and plausible view. When two views are possible, the one taken by the trial court in a case of acquittal is to be followed on the touchstone of liberty along with the advantage of having seen the witnesses. Article 21 of the Constitution of India also aids the accused after acquittal in a certain way, though not absolute. Suffice it is to state that the Appellate Court shall remind itself of the role required to play, while dealing with a case of an acquittal.

21. Every case has its own journey towards the truth and it is the Court's role undertake. Truth has to be found on the basis of evidence available before it. There is no room for subjectivity nor the nature of offence affects its performance. We have a hierarchy of courts in dealing with cases. An Appellate Court shall not expect the trial court to act in a particular way depending

upon the sensitivity of the case. Rather it should be appreciated if a trial court decides a case on its own merit despite its sensitivity.

22. At times, courts do have their constraints. We find, different decisions being made by different courts, namely, trial court on the one hand and the Appellate Courts on the other. If such decisions are made due to institutional constraints, they do not augur well. The district judiciary is expected to be the foundational court, and therefore, should have the freedom of mind to decide a case on its own merit or else it might become a stereotyped one rendering conviction on a moral platform.

Indictment and condemnation over a decision rendered, on considering all the materials placed before it, should be avoided. The Appellate Court is expected to maintain a degree of caution before making any remark.

23. This court, time and again has laid down the law on the scope of inquiry by an Appellate court while dealing with an appeal against acquittal under Section 378 CrPC. We do not wish to multiply the aforesaid principle except placing reliance on a recent decision of this court in Anwar Ali v. State of Himanchal Pradesh, (2020) 10 SCC 166:

14.2. When can the findings of fact recorded by a court be held to be perverse has been dealt with and considered in paragraph 20 of the aforesaid decision, which reads as under : (Babu case [Babu v. State of Kerala, (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179])

"20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide Rajinder Kumar Kindra v. Delhi Admn. [Rajinder Kumar Kindra v. Delhi Admn., (1984) 4 SCC 635:1985 SCC (L&S) 131], Excise & Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons [Excise & Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons, 1992 Supp (2) SCC 312], Triveni Rubber & Plastics v. CCE [Triveni Rubber & Plastics v. CCE, 1994 Supp (3) SCC 665], Gaya Din v. Hanuman Prasad [Gaya Din v. Hanuman Prasad, (2001) 1 SCC 501], Aruvelu [Arulvelu v. State, (2009) 10 SCC 206 : (2010) 1 SCC (Cri) 288] and Gamini Bala Koteswara Rao v. State of A.P. [Gamini Bala Koteswara Rao v. State of AP, (2009) 10 SCC 636 : (2010) 1 SCC (Cri) 372])"

It is further observed, after following the decision of this Court in Kuldeep Singh v. Commr. of Police [Kuldeep Singh v. Commr. of Police, (1999) 2 SCC 10 : 1999 SCC (L&S) 429], that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with.

14.3. In the recent decision of Vijay Mohan Singh [Vijay Mohan Singh v. State of Karnataka, (2019) 5 SCC 436 : (2019) 2 SCC (Cri) 586], this Court again had an occasion to consider the scope of Section 378 CrPC and the interference by the High Court [State of Karnataka v. Vijay Mohan Singh, 2013 SCC Online Kar 10732] in an appeal against acquittal. This Court considered a catena of decisions of this Court right from 1952 onwards. In para 31, it is observed and held as under:

"31. An identical question came to be considered before this Court in Umedbhai Jadavbhai [Umedbhai Jadavbhai v. State of Gujarat, (1978) 1 SCC 228 : 1978 SCC (Cri) 108]. In the case before this Court, the High Court interfered with the order of acquittal passed by the learned trial court on reappreciation of the entire evidence on record. However, the High Court, while reversing the acquittal, did not consider the reasons given by the learned trial court while acquitting the accused. Confirming the judgment of the High Court, this Court observed and held in para 10 as under:

'10. Once the appeal was rightly entertained against the order of acquittal, the High Court was entitled to reappreciate the entire evidence independently and come to its own conclusion. Ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the same were arrived at after proper appreciation of the evidence. This rule will not be applicable in the present case where the Sessions Judge has made an absolutely wrong assumption of a very material and clinching aspect in the peculiar circumstances of the case.'

31.1. In Sambasivan [Sambasivan v. State of Kerala, (1998) 5 SCC 412 : 1998 SCC (Cri) 1320], the High Court reversed the order of acquittal passed by the learned trial court and held the accused guilty on reappreciation of the entire evidence on record, however, the High Court did not record its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. Confirming the order passed by the High Court convicting the accused on reversal of the acquittal passed by the learned trial court, after being satisfied that the order of acquittal passed by the learned trial court was perverse and suffered from infirmities, this Court declined to interfere with the order of conviction passed by the High Court. While confirming the order of conviction passed by the High Court, this Court observed in para 8 as under:

'8. We have perused the judgment under appeal to ascertain whether the High Court has conformed to the aforementioned principles. We find that the High Court has not strictly proceeded in the manner laid down by this Court in Doshi case [Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225 : 1996 SCC (Cri) 972] viz. first recording its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable, which alone will justify interference in an order of acquittal though the High Court has rendered a well-

considered judgment duly meeting all the contentions raised before it. But then will this non-compliance per se justify setting aside the judgment under appeal? We think, not. In our view, in such a case, the approach of the court which is considering the validity of the judgment of an appellate court which has reversed the order of acquittal passed by the trial court, should be to satisfy itself if the approach of the trial court in dealing with the evidence was patently illegal or conclusions arrived at by it are demonstrably unsustainable and whether the judgment of the appellate court is free from those infirmities; if so to hold that the trial court judgment warranted interference. In such a case, there is obviously no reason why the appellate court's judgment should be disturbed. But if on the other hand the court comes to the conclusion that the judgment of the trial court does not suffer from any infirmity, it cannot but be held that the interference by the appellate court in the order of acquittal was not justified; then in such a case the judgment of the appellate court has to be set aside as of the two reasonable views, the one in support of the acquittal alone has to stand. Having regard to the above discussion, we shall proceed to examine the judgment of the trial court in this case.'

31.2. In K. Ramakrishnan Unnithan [K. Ramakrishnan Unnithan v. State of Kerala, (1999) 3 SCC 309: 1999 SCC (Cri) 410], after observing that though there is some substance in the grievance of the learned counsel appearing on behalf of the accused that the High Court has not adverted to all the reasons given by the trial Judge for according an order of acquittal, this Court refused to set aside the order of conviction passed by the High Court after having found that the approach of the Sessions Judge in recording the order of acquittal was not proper and the conclusion arrived at by the learned Sessions Judge on several aspects was unsustainable. This Court further observed that as the Sessions Judge was not justified in discarding the relevant/material evidence while acquitting the accused, the High Court, therefore, was fully entitled to reappreciate the evidence and record its own conclusion. This Court scrutinised the evidence of the eyewitnesses and opined that reasons adduced by the trial court for discarding the testimony of the eyewitnesses were not at all sound. This Court also observed that as the evaluation of the evidence made by the trial court was manifestly erroneous and therefore it was the duty of the High Court to interfere with an order of acquittal passed by the learned Sessions Judge.

31.3. In Atley [Atley v. State of U.P., AIR 1955 SC 807 : 1955 Cri LJ 1653], in para 5, this Court observed and held as under:

'5. It has been argued by the learned counsel for the appellant that the judgment of the trial court being one of acquittal, the High Court should not have set it aside on mere appreciation of the evidence led on behalf of the prosecution unless it came to the conclusion that the judgment of the trial Judge was perverse. In our opinion, it is not correct to say that unless the appellate court in an appeal under Section 417 CrPC came to the conclusion that the judgment of acquittal under appeal was

perverse it could not set aside that order.

It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to come to its own conclusion, of course, keeping in view the well-established rule that the presumption of innocence of the accused is not weakened but strengthened by the judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses whose evidence have been recorded in its presence.

It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal.

If the appellate court reviews the evidence, keeping those principles in mind, and comes to a contrary conclusion, the judgment cannot be said to have been vitiated. (See in this connection the very cases cited at the Bar, namely, Surajpal Singh v. State [Surajpal Singh v. State, 1951 SCC 1207 : AIR 1952 SC 52]; Wilayat Khan v. State of U.P. [Wilayat Khan v. State of UP., 1951 SCC 898 : AIR 1953 SC 122]) In our opinion, there is no substance in the contention raised on behalf of the appellant that the High Court was not justified in reviewing the entire evidence and coming to its own conclusions.'

31.4. In K. Gopal Reddy [K. Gopal Reddy v. State of A.P., (1979) 1 SCC 355 : 1979 SCC (Cri) 305], this Court has observed that where the trial court allows itself to be beset with fanciful doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but barely possible, it is the obvious duty of the High Court to interfere in the interest of justice, lest the administration of justice be brought to ridicule."

. N. Vijayakumar v. State of T.K, [(2021) 3 SCC 687] as hereunder: -

"20. Mainly it is contended by Shri Nagamuthu, learned Senior Counsel appearing for the appellant that the view taken by the trial court is a "possible view", having regard to the evidence on record. It is submitted that the trial court has recorded cogent and valid reasons in support of its findings for acquittal. Under Section 378 CrPC, no differentiation is made between an appeal against acquittal and the appeal against conviction. By considering the long line of earlier cases this Court in the judgment in Chandrappa v. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325 has laid down the general principles regarding the powers of the appellate Court while dealing with an appeal against an order of acquittal. Para 42 of the judgment which is relevant reads as under: (SCC p. 432)

"42. From the above decisions, in our considered view, the following general

principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

21. Further in the judgment in Murugesan [Murugesan v. State, (2012) 10 SCC 383: (2013) 1 SCC (Cri) 69] relied on by the learned Senior Counsel for the appellant, this Court has considered the powers of the High Court in an appeal against acquittal recorded by the trial court. In the said judgment, it is categorically held by this Court that only in cases where conclusion recorded by the trial court is not a possible view, then only the High Court can interfere and reverse the acquittal to that of conviction. In the said judgment, distinction from that of "possible view" to "erroneous view" or "wrong view" is explained. In clear terms, this Court has held that if the view taken by the trial court is a "possible view", the High Court not to reverse the acquittal to that of the conviction.

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23. Further, in Hakeem Khan v. State of M.P., (2017) 5 SCC 719 : (2017) 2 SCC (Cri) 653 this court has considered the powers of the appellate court for interference in cases where acquittal is recorded by the trial court. In the said judgment it is held that if the "possible view" of the trial court is not agreeable for the High Court, even then such "possible view" recorded by the trial court cannot be interdicted. It is further

held that so long as the view of the trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, verdict of the trial court cannot be interdicted and the High Court cannot supplant over the view of the trial court. Para 9 of the judgment reads as under: (SCC pp. 722-23)

"9. Having heard the learned counsel for the parties, we are of the view that the trial court's judgment is more than just a possible view for arriving at the conclusion of acquittal, and that it would not be safe to convict seventeen persons accused of the crime of murder i.e. under Section 302 read with Section 149 of the Penal Code. The most important reason of the trial court, as has been stated above, was that, given the time of 6.30 p.m. to 7.00 p.m. of a winter evening, it would be dark, and, therefore, identification of seventeen persons would be extremely difficult. This reason, coupled with the fact that the only independent witness turned hostile, and two other eyewitnesses who were independent were not examined, would certainly create a large hole in the prosecution story. Apart from this, the very fact that there were injuries on three of the accused party, two of them being deep injuries in the skull, would lead to the conclusion that nothing was premeditated and there was, in all probability, a scuffle that led to injuries on both sides. While the learned counsel for the respondent may be right in stating that the trial court went overboard in stating that the complainant party was the aggressor, but the trial court's ultimate conclusion leading to an acquittal is certainly a possible view on the facts of this case. This is coupled with the fact that the presence of the kingpin Sarpanch is itself doubtful in view of the fact that he attended the Court at some distance and arrived by bus after the incident took place."

24. By applying the abovesaid principles and the evidence on record in the case on hand, we are of the considered view that having regard to material contradictions which we have already noticed above and also as referred to in the trial court judgment, it can be said that acquittal is a "possible view". By applying the ratio as laid down by this Court in the judgments which are stated supra, even assuming another view is possible, same is no ground to interfere with the judgment of acquittal and to convict the appellant for the offence alleged. From the evidence, it is clear that when the Inspecting Officer and other witnesses who are examined on behalf of the prosecution, went to the office of the appellant-accused, the appellant was not there in the office and office was open and people were moving out and in from the office of the appellant. It is also clear from the evidence of PWs 3, 5 and 11 that the currency and cellphone were taken out from the drawer of the table by the appellant at their instance. There is also no reason, when the tainted notes and the cellphone were given to the appellant at 5.45 p.m. no recordings were made and the appellant was not tested by PW 11 till 7.00 p.m."

Delay in sending the (FIR) First Information Report to the Magistrate:

26. The jurisdictional Magistrate plays a pivotal role during the investigation

process. It is meant to make the investigation just and fair. The Investigating Officer is to keep the Magistrate in the loop of his ongoing investigation. The object is to avoid a possible foul play. The Magistrate has a role to play under Section 159 of Cr.PC.

27. The first information report in a criminal case starts the process of investigation by letting the criminal law into motion. It is certainly a vital and valuable aspect of evidence to corroborate the oral evidence. Therefore, it is imperative that such an information is expected to reach the jurisdictional Magistrate at the earliest point of time to avoid any possible ante-dating or ante-timing leading to the insertion of materials meant to convict the accused contrary to the truth and on account of such a delay may also not only gets bereft of the advantage of spontaneity, there is also a danger creeping in by the introduction of a coloured version, exaggerated account or concocted story as a result of deliberation and consultation. However, a mere delay by itself cannot be a sole factor in rejecting the prosecution's case arrived at after due investigation. Ultimately, it is for the Court concerned to take a call. Such a view is expected to be taken after considering the relevant materials.

Precedents:

Shivlal v. State of Chhattisgarh, [(2011) 9 SCC 561] as hereunder :-

"18. This Court in Bhajan Singh v. State of Haryana, (2011) 7 SCC 421 : (2011) 3 SCC (Cri) 241 has elaborately dealt with the issue of sending the copy of the FIR to the Ilaqa Magistrate with delay and after placing reliance upon a large number of judgments including Shiv Ram v. State of U.P, (1998) 1 SCC 149 : 1998 SCC (Cri) 278 : AIR 1998 SC 49 and Arun Kumar Sharma v. State of Bihar, (2010) 1 SCC 108 : (2010) 1 SCC (Cri) 472 came to the conclusion that CrPC provides for internal and external checks: one of them being the receipt of a copy of the FIR by the Magistrate concerned. It serves the purpose that the FIR be not ante-timed or ante-dated. The Magistrate must be immediately informed of every serious offence so that he may be in a position to act under Section 159 CrPC, if so required. The object of the statutory provision is to keep the Magistrate informed of the investigation so as to enable him to control the investigation and, if necessary, to give appropriate direction. However, it is not that as if every delay in sending the report to the Magistrate would necessarily lead to the inference that the FIR has not been lodged at the time stated or has been ante-timed or ante-dated or the investigation is not fair and forthright. In a given case, there may be an explanation for delay. An unexplained inordinate delay in sending the copy of the FIR to the Ilaqa Magistrate may affect the prosecution case adversely. However, such an adverse inference may be drawn on the basis of attending circumstances involved in a case."

Rajeevan v. State of Kerala, [(2003) 3 SCC 355] as hereunder: -

"12. Another doubtful factor is the delayed lodging of FIR. The learned counsel for the appellants highlights this factor. Here it is worthwhile to refer Thulia Kali v. State

of T.N. [(1972) 3 SCC 393 : 1972 SCC (Cri) 543] wherein the delayed filing of FIR and its consequences are discussed. At para 12 this Court says: (SCC p. 397)

"First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in lodging of the first information report should be satisfactorily explained." (emphasis supplied)

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14. As feared by the learned counsel for the appellants, the possibility of subsequent implication of the appellants as a result of afterthought, maybe due to political bitterness, cannot be ruled out. This fact is further buttressed by the delayed placing of FIR before the Magistrate, non-satisfactory explanation given by the police officer regarding the blank sheets in Ext. P-30, counterfoil of the FIR and also by the closely written bottom part of Ext. P-1, statement by PW 1. All these factual circumstances read with the aforementioned decisions of this Court lead to the conclusion that it is not safe to rely upon the FIR in the instant case. The delay of 12 hours in filing FIR in the instant case irrespective of the fact that the police station is situated only at a distance of 100 metres from the spot of incident is another factor sufficient to doubt the genuineness of the FIR. Moreover, the prosecution did not satisfactorily explain the delayed lodging of the FIR with the Magistrate.

15. This Court in Marudanal Augusti v. State of Kerala, (1980) 4 SCC 425 : 1980 SCC (Cri) 985 while deciding a case which involves a question of delayed dispatch of the FIR to the Magistrate, cautioned that such delay would throw serious doubt on the prosecution case, whereas in Arjun Marik v. State of Bihar, 1994 Supp (2) SCC 372 : 1994 SCC (Cri) 1551 it was reminded by this Court that: (SCC p. 382, para 24)

"[T]he forwarding of the occurrence report is indispensable and absolute and it has to be forwarded with earliest dispatch which intention is implicit with the use of the word 'forthwith' occurring in Section 157 CrPC, which means promptly and without any undue delay. The purpose and object is very obvious which is spelt out from the combined reading of Sections 157 and 159 CrPC. It has the dual purpose, firstly to avoid the possibility of improvement in the

prosecution story and introduction of any distorted version by deliberations and consultation and secondly to enable the Magistrate concerned to have a watch on the progress of the investigation."

State of Rajasthan v. Om Prakash, [(2002) 5 SCC 745] as hereunder: -

"9. There was delay of nearly 26 hours in lodging the FIR. The offence is alleged to have taken place at about 9 a.m. The FIR was registered at about 11.30 a.m. on the next day. It was contended by Mr. Bachawat, learned counsel for the respondent, that this delay had assumed importance and was fatal particularly when the brother of the prosecutrix, namely, Mam Raj (PW 6) was admittedly at the house. The delay, according to the counsel, has resulted in embellishments. Reliance has been placed on the decision in the case of Thulia Kali v. State of T.N. [(1972) 3 SCC 393 : 1972 SCC (Cri) 543 : AIR 1973 SC 501] holding that the first information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye-witnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of an afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. There can be no dispute about these principles relied upon by Mr. Bachawat but the real question in the present case is about the explanation for the delay. It is not at all unnatural for the family members to await the arrival of the elders in the family when an offence of this nature is committed before taking a decision to lodge a report with the police. The reputation and prestige of the family and the career and life of a young child is involved in such cases. Therefore, the presence of the brother of the prosecutrix at home is not of much consequence. It has been established that the father of the girl along with his brother came back to their house at 7 o'clock in the evening. The girl was unconscious during the day. PW 2 told her husband as to what had happened to their daughter. The police station was at a distance of 15 km. According to the testimony of PW 1 no mode of conveyance was available. The police was reported to the next day morning and FIR was recorded at 11.30 a.m. The delay in reporting the matter to the police has thus been fully explained."

Delay in Recording the Statement under Section 161 Cr.PC:

28. The Investigating Officer is expected to kick start his investigation immediately after registration of a cognizable offense. An inordinate and unexplained delay may be fatal to the prosecution's case but only to be considered by the Court, on the facts of each case. There may be adequate

circumstances for not examining a witness at an appropriate time. However, non-examination of the witness despite being available may call for an explanation from the Investigating Officer. It only causes doubt in the mind of the Court, which is required to be cleared.

29. Similarly, a statement recorded, as in the present case, the investigation report is expected to be sent to the jurisdictional Magistrate at the earliest. A long, unexplained delay, would give room for suspicion.

Precedents:

Shahid Khan v. State of Rajasthan, [(2016) 4 SCC 96] as hereunder: -

"20. The statements of PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir were recorded after 3 days of the occurrence. No explanation is forthcoming as to why they were not examined for 3 days. It is also not known as to how the police came to know that these witnesses saw the occurrence. The delay in recording the statements casts a serious doubt about their being eyewitnesses to the occurrence. It may suggest that the investigating officer was deliberately marking time with a view to decide about the shape to be given to the case and the eyewitnesses to be introduced. The circumstances in this case lend such significance to this delay. PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir, in view of their unexplained silence and delayed statement to the police, do not appear to us to be wholly reliable witnesses. There is no corroboration of their evidence from any other independent source either. We find it rather unsafe to rely upon their evidence only to uphold the conviction and sentence of the appellants. The High Court has failed to advert to the contentions raised by the appellants and reappreciate the evidence thereby resulting in miscarriage of justice. In our opinion, the case against the appellants has not been proved beyond reasonable doubt."

Ganesh Bhavan Patel v. State of Maharashtra, [(1978) 4 SCC 371] as hereunder: -

"15. As noted by the trial Court, one unusual feature which projects its shadow on the evidence of PWs Welji, Pramila and Kuvarbai and casts a serious doubt about their being eyewitnesses of the occurrence, is the undue delay on the part of the investigating officer in recording their statements. Although these witnesses were or could be available for examination when the investigating officer visited the scene of occurrence or soon thereafter, their statements under Section 161, Cr.P.C. were recorded on the following day. Welji (PW 3) was examined at 8 a.m., Pramila at 9.15 or 9.30 a.m., and Kuvarbai at 1 p.m. Delay of a few hours, simpliciter, in recording the statements of eyewitnesses may not, be itself, amount to a serious infirmity in the prosecution case. But it may assume such a character if there are concomitant circumstances to suggest that the investigator was deliberately marking time with a view to decide about the shape to be given to the case and the eyewitnesses to be introduced. A catena of circumstances which lend such significance to this delay,

exists in the instant case.

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29. Thus considered in the light of the surrounding circumstances, this inordinate delay in registration of the 'F.I.R.' and further delay in recording the statements of the material witnesses, casts a cloud of suspicion on the credibility of the entire warp and woof of the prosecution story.

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47. All the infirmities and flaws pointed out by the trial Court assumed importance, when considered in the light of the all-pervading circumstance that there was inordinate delay in recording Ravji's statement (on the basis of which the "F.I.R." was registered) and further delay in recording the statements of Welji, Pramila and Kuvarbai. This circumstance, looming large in the back-ground, inevitably leads to the conclusion, that the prosecution story was conceived and constructed after a good deal of deliberation and delay in a shady setting, highly redolent of doubt and suspicion."

Recovery under Section 27 of the Evidence Act:

30. Section 27 of the Evidence Act is an exception to Sections 24 to 26. Admissibility under Section 27 is relatable to the information pertaining to a fact discovered. This provision merely facilitates proof of a fact discovered in consequence of information received from a person in custody, accused of an offense. Thus, it incorporates the theory of "confirmation by subsequent facts" facilitating a link to the chain of events. It is for the prosecution to prove that the information received from the accused is relatable to the fact discovered. The object is to utilize it for the purpose of recovery as it ultimately touches upon the issue pertaining to the discovery of a new fact through the information furnished by the accused. Therefore, Section 27 is an exception to Sections 24 to 26 meant for a specific purpose and thus be construed as a proviso.

31. The onus is on the prosecution to prove the fact discovered from the information obtained from the accused. This is also for the reason that the information has been obtained while the accused is still in the custody of the police. Having understood the aforesaid object behind the provision, any recovery under Section 27 will have to satisfy the Court's conscience. One cannot lose sight of the fact that the prosecution may at times take advantage of the custody of the accused, by other means. The Court will have to be conscious of the witness's credibility and the other evidence produced when dealing with a recovery under Section 27 of the Evidence Act.

Precedents:

Kusal Toppo v. State of Jharkhand, [(2019) 13 SCC 676] as hereunder: -

"25. The law under Section 27 of the Evidence Act is well settled now, wherein this Court in Geejaganda Somaiah v. State of Karnataka, (2007) 9 SCC 315 : (2007)

3 SCC (Cri) 135 has observed as under : (SCC p. 324, para 22)

"22. As the section is alleged to be frequently misused by the police, the courts are required to be vigilant about its application. The court must ensure the credibility of evidence by police because this provision is vulnerable to abuse. It does not, however, mean that any statement made in terms of the aforesaid section should be seen with suspicion and it cannot be discarded only on the ground that it was made to a police officer during investigation. The court has to be cautious that no effort is made by the prosecution to make out a statement of the accused with a simple case of recovery as a case of discovery of fact in order to attract the provisions of Section 27 of the Evidence Act."

26. The basic premise of Section 27 is to only partially lift the ban against admissibility of inculpatory statements made before the police, if a fact is actually discovered in consequence of the information received from the accused. Such condition would afford some guarantee. We may additionally note that, the courts need to be vigilant while considering such evidence.

27. This Court in multiple cases has reiterated the aforesaid principles under Section 27 of the Evidence Act and only utilised Section 27 for limited aspect concerning recovery (refer Pulukuri Kotayya v. King Emperor, 1946 SCC Online PC 47 : (1946-47) 74 IA 65; Jaffar Hussain Dastagir v. State of Maharashtra, (1969) 2 SCC 872 : AIR 1970 SC 1934). As an additional safeguard we may note that reliance on certain observations made in certain precedents of this Court without understanding the background of the case may not be sustainable. There is no gainsaying that it is only the ratio which has the precedential value and the same may not be extended to an obiter. As this Court being the final forum for appeal, we need to be cognizant of the fact that this Court generally considers only legal aspects relevant to the facts and circumstances of that case, without elaborately discussing the minute hyper-technicalities and factual intricacies involved in the trial."

Navaneethakrishnan v. State, [(2018) 16 SCC 161] as hereunder: -

"23. The learned counsel for the appellant-accused contended that the statements given by the appellant-accused are previous statements made before the police and cannot be therefore relied upon by both the appellant-accused as well as the prosecution. In this view of the matter, it is pertinent to mention here the following decision of this Court in Selvi v. State of Karnataka, (2010) 7 SCC 263 : (2010) 3 SCC (Cri) 1 wherein it was held as under : (SCC pp. 334-35, paras 133 & 134)

"133. We have already referred to the language of Section 161 CrPC which protects the accused as well as suspects and witnesses who are examined during the course of investigation in a criminal case. It would also be useful to refer to Sections 162, 163 and 164 CrPC which lay down procedural safeguards in respect of statements made by persons during the course of investigation. However, Section

27 of the Evidence Act incorporates the "theory of confirmation by subsequent facts" i.e. statements made in custody are admissible to the extent that they can be proved by the subsequent discovery of facts. It is quite possible that the content of the custodial statements could directly lead to the subsequent discovery of relevant facts rather than their discovery through independent means. Hence such statements could also be described as those which "furnish a link in the chain of evidence" needed for a successful prosecution....."

H.R Admn. v. Om Prakash, [(1972) 1 SCC 249] as hereunder: -

"8...We are not unaware that Section 27 of the Evidence Act which makes the information given by the accused while in custody leading to the discovery of a fact and the fact admissible, is liable to be abused and for that reason great caution has to be exercised in resisting any attempt to circumvent, by manipulation or ingenuity of the Investigating Officer, the protection afforded by Section 25 and Section 26 of the Evidence Act. While considering the evidence relating to the recovery we shall have to exercise that caution and care which is necessary to lend assurance that the information furnished and the fact discovered is credible."

Aghnoo Nagesia v. State of Bihar, [(1966) 1 SCR 134] as hereunder: -

"9. Section 25 of the Evidence Act is one of the provisions of law dealing with confessions made by an accused. The law relating to confessions is to be found generally in Sections 24 to 30 of the Evidence Act and Sections 162 and 164 of the Code of Criminal Procedure, 1898. Sections 17 to 31 of the Evidence Act are to be found under the heading "Admissions". Confession is a species of admission, and is dealt with in Sections 24 to 30. A confession or an admission is evidence against the maker of it, unless its admissibility is excluded by some provision of law. Section 24 excludes confessions caused by certain inducements, threats and promises. Section 25 provides: "No confession made to a police officer, shall be proved as against a person accused of an offence". The terms of Section 25 are imperative. A confession made to a police officer under any circumstances is not admissible in evidence against the accused. It covers a confession made when he was free and not in police custody, as also a confession made before any investigation has begun. The expression "accused of any offence" covers a person accused of an offence at the trial whether or not he was accused of the offence when he made the confession. Section 26 prohibits proof against any person of a confession made by him in the custody of a police officer, unless it is made in the immediate presence of a Magistrate. The partial ban imposed by Section 26 relates to a confession made to a person other than a police officer. Section 26 does not qualify the absolute ban imposed by Section 25 on a confession made to a police officer. Section 27 is in the form of a proviso, and partially lifts the ban imposed by Sections 24, 25 and 26. It provides that when any fact is deposed to as discovered in consequence of

information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. Section 162 of the Code of Criminal Procedure forbids the use of any statement made by any person to a police officer in the course of an investigation for any purpose at any enquiry or trial in respect of the offence under investigation, save as mentioned in the proviso and in cases falling under sub-section (2), and it specifically provides that nothing in it shall be deemed to affect the provisions of Section 27 of the Evidence Act. The words of Section 162 are wide enough to include a confession made to a police officer in the course of an investigation. A statement or confession made in the course of an investigation may be recorded by a Magistrate under Section 164 of the Code of Criminal Procedure subject to the safeguards imposed by the section. Thus, except as provided by Section 27 of the Evidence Act, a confession by an accused to a police officer is absolutely protected under Section 25 of the Evidence Act, and if it is made in the course of an investigation, it is also protected by Section 162 of the Code of Criminal Procedure, and a confession to any other person made by him while in the custody of a police officer is protected by Section 26, unless it is made in the immediate presence of a Magistrate. These provisions seem to proceed upon the view that confessions made by an accused to a police officer or made by him while he is in the custody of a police officer are not to be trusted, and should not be used in evidence against him. They are based upon grounds of public policy, and the fullest effect should be given to them."

K. Chinnaswamy Reddy v. State of A.R, [(1963) 3 SCR 412] as here-under:

"9. Let us then turn to the question whether the statement of the appellant to the effect that "he had hidden them (the ornaments)" and "would point out the place" where they were, is wholly admissible in evidence under Section 27 or only that part of it is admissible where he stated that he would point out the place but not that part where he stated that he had hidden the ornaments. The Sessions Judge in this connection relied on Pulukuri Kotayya v. King-Emperor [(1946) 74 IA 65] where a part of the statement leading to the recovery of a knife in a murder case was held inadmissible by the Judicial Committee. In that case the Judicial Committee considered Section 27 of the Indian Evidence Act, which is in these terms:

"Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

This section is an exception to Sections 25 and 26, which prohibit the proof of a confession made to a police officer or a confession made while a person is in police custody, unless it is made in immediate presence of a Magistrate. Section

27 allows that part of the statement made by the accused to the police "whether it amounts to a confession or not" which relates distinctly to the fact thereby discovered to be proved. Thus even a confessional statement before the police which distinctly relates to the discovery of a fact may be proved under Section 27. The Judicial Committee had in that case to consider how much of the information given by the accused to the police would be admissible under Section 27 and laid stress on the words "so much of such information ... as relates distinctly to the fact thereby discovered" in that connection. It held that the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. It was further pointed out that "the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact"....."

On Merit:

We shall first take the case of the accused who suffered conviction at the hands of the Trial Court and the High Court. On perusal, we find that the courts have dealt with all the contentions thoroughly. The Trial Court considered the issue qua the delay, and the reasoning rendered there under does not warrant interference. We do not find any material to hold that the delay is willful and deliberate to the extent of creating any suspicion. The occurrence happened at night and Ext. P1 reached on the next day evening. There is no clarity on the mode. Perhaps it reached late during the day as it would have been felt not to place it before the jurisdictional Magistrate during the night-time, at the time of occurrence. The Trial Court has considered this aspect, and as we find no infirmity in its reasoning, which is rendered by taking into consideration the other evidence available on record, including the deposition of the eye-witnesses, we are inclined to reject the said contention.

32. It is also contended that it would not be probable to make a reference in Ext. P1 about the registration number of vehicles which was known to P.W.1 only the next day. Though not raised before the Trial Court, the said contention also deserves to be rejected for the reasoning aforesaid. The evidence available on record would suggest the place of occurrence and the manner in which it happened. The Trial Court found acceptance of the testimonies of the witnesses who saw the occurrence. The deposition was rendered by P.W.1 after the registration of Exhibit P1. This would not materially alter the case of the prosecution.

33. Though A-8 and A-9 were injured, they have taken a plea that they were not present at the place of occurrence. The Trial Court was right in holding that the doctor's evidence and the evidence of the eye-witnesses would clearly explain the reasons behind the injury suffered. The accused (A-8 and A-9) suffered the injury at the place of occurrence, which they denied. Thus, the said contention raised also deserves to be rejected.

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