

STATE OF HARYANA & ORS.  
v.  
S.L. ARORA & COMPANY  
(Civil Appeal No.1094 of 2010)

JANUARY 29, 2010

[R.V. RAVEENDRAN AND K.S. RADHAKRISHNAN, JJ.]

*Interest Act, 1978:*

s. 3 – *Interest – Compound interest or Interest upon interest – HELD: Section 3 enables the courts and arbitral tribunals to award interest from the date of cause of action to the date of institution of legal proceedings or initiation of arbitration proceedings – It does not deal with either pendente lite or future interest – Sub-section (3)(c) of s.3 makes it clear that nothing in the said section shall empower the court or arbitrator to award interest upon interest – Interest is usually quantified in terms of a percentage of the ‘principal’ or the ‘investment’ or the ‘amount of liability’ – Interest unless otherwise specified, refers to simple interest, that is interest paid on only the principal and not on any accrued interest – Compound interest refers to a method of charging interest where interest is computed not only on the principal, but also the accrued interest – For this purpose, periodical rests are provided for computation of interest, say yearly, or quarterly or monthly – Compound interest can be awarded only if there is a specific contract, or authority under a Statute, for compounding of interest – There is no general discretion in courts or tribunals to award compound interest or interest upon interest – Arbitration and Conciliation Act, 1996 – s.31(7). [Para 8-10]*

*State Bank of India vs. Ganjam District Tractor Owners Association, 1994 (5) SCC 238, relied on.*

A *Renusagar Power Co. Ltd v. General Electric Co. 1993(3) Suppl. SCR 22 = 1994 Suppl.(1) SCC 644; and Central Bank of India vs. Ravindra 2001(4) Suppl. SCR 323 = 2002 (1) SCC 367 – referred to.*

B *Arbitration and Conciliation Act, 1996:*

C *ss.31(7)(a) and (b) – Award of interest – Interest upon interest – Clauses (a) and (b) of sub-section(7) of s.31 clearly indicate that the section contemplates award of only simple interest and not compound interest or interest upon interest – s.31(7) makes no reference to compound interest – Nor does it require the interest which accrues till the date of award, to be treated as part of the principal from the date of award for calculating the post-award interest – In the absence of any provision for interest upon interest in the contract, the arbitral tribunals do not have the power to award interest upon interest or compound interest either for the pre-award period or for the post-award period – However, substantial the quantum of interest and costs may be in a given case, interest, in particular, interest from the date of the award, and costs are ancillary issues and are not substantive disputes – If the contract provides for compounding of interest, or provides for payment of interest upon interest, or provides for interest payable on the principal upto any specified stage/s being treated as part of principal for the purpose of charging of interest during any subsequent period, the arbitral tribunal will have to give effect to it – But when the award is challenged u/ s 34 of the Act, if the court finds that the interest awarded is in conflict with, or violating the public policy of India, it may set aside that part of the award – In the instant case, the award of interest upon the total amount of award refers to the total of the amounts awarded on substantive claims excluding the claim relating to interest – The contractor was entitled only to simple interest on the principal amount as per original calculation shown in the execution petition – Judgment. [Para 14-15, 17, 18.3 and 21]*

s. 31(7) – Legal position regarding award of interest by arbitral tribunals, as emerging from s.31(7) – Explained – Interest for pre-award period and interest for post-award period – Difference between clauses (a) and (b) of s.31(7) – Relevancy of contract in awarding interest – Discretion of arbitral tribunal – Purpose of post-award interest – Applicability of 18% interest – Explained. [para 18 to 18.6]

**Judgment** – Interpretation of – The observation in *Three Circles\** that *Mcdermott\*\** held that interest awarded on the principal amount upto the date of award becomes the principal amount and therefore award of future interest therein does not amount to award of interest on interest, is per incuriam due to an inadvertent erroneous assumption - Precedents. [Para 21]

*\*Uttar Pradesh Cooperative Federation Limited vs. Three Circles 2009 (14) SCR 310 = (2009) 10 SCC 374; and \*\*Mcdermott International Inc. vs. Burn Standard Co. Ltd and Others – 2006(2) Suppl. SCR 409=(2006) 11 SCC 181, referred to.*

*Oil & Natural Gas Commission v. M.C. Clelland Engineers S.A. - 1999 (2) SCR 830 =(1999) (4) SCC 327 – held inapplicable.*

**Case Law Reference:**

1993(3) Suppl. SCR 22	referred to	para 11	F
1994 (5) SCC 238	relied on	para 11	
2001(4) Suppl. SCR 323	referred to	para 11	
1999 (2) SCR 830	held inapplicable	para 19	G
2006(2) Suppl. SCR 409	referred to	para 19	
2009 (14)SCR 310	referred to	para 19	

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1094 of 2010.

B From the Judgment & Order dated 9.9.2008 of the High Court of Punjab & Haryana at Chandigarh in Civil Revision No. 259 of 2008.

B Govind Geol, Ambuj Agarwal, Nitin Singh, Naresh Bakshi, M.L. Sharma for the Appellants.

C Anusuya Salwan, S. Janani, Neha Mittal for the Respondent.

The Order of the Court was delivered by

**O R D E R**

D **R.V. RAVEENDRAN J.** 1. Leave granted. Heard the parties.

E 2. The appellants awarded a construction contract to the respondent. The work which had to be completed within 18 months from 18.3.1985, was actually completed on 30.11.1989. The delay led to claims by the contractor and counter-claims by the employer (appellants). The disputes were referred to a sole Arbitrator who made an award dated 22.06.2000. The Arbitral Tribunal rejected the counter claims of the appellants. It awarded in all Rs.14,94,000/- with interest to the respondent-contractor. The operative portion of the award is extracted below:

G “I award Rs.14.94 lacs (Rupees Fourteen Lacs Ninety Four Thousands only) along with interest at the rate of 12% with effect from 19.12.1990 till the date of award in favour of M/s. S.L. Arora and Company, 5E-10, Bunglow Plot, N.I.T., Faridabad(Claimant) to be paid by the Haryana PWD B&R Branch Department (respondent). In case *the total amount of award together with this interest* is not paid

within 30 days from the date of making this award, future interest shall be paid @ 18% per annum *on the sums due* to the claimant from the date of Award upto the actual date of payment .....

(emphasis supplied)

3. The application filed by the appellants to set aside the said the award, under Section 34 of the Arbitration and Conciliation Act 1996 ('Act' for short), was rejected by the civil court. Thereafter, on 26.10.2004, the respondent levied execution against the appellants, to recover the following amount:

- (i) Principal amount : Rs.14,94,000/-
  - (ii) Interest at 12% per annum on Rs.14,94,000/- from 19.12.1990 to 22.6.2000 (date of the award) : Rs.17,04,879/-
  - (iii) Interest at 18% per annum on Rs.14,94,000/- from 23.6.2000 to 23.10.2004 (date of execution petition) : Rs.11,67,039/-
- TOTAL : Rs.43,65,918/-  
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The appellants paid to the respondent, a sum of Rs.44,59,587/- on 1.3.2005, which was made up Rs.14,94,000/- plus interest thereon at the rate of 12% per annum from 19.12.1990 to 22.6.2000 plus interest at the rate of 18% per annum from 23.6.2000 to 28.2.2005. According to the appellants, the said payment was in full and final settlement, though full satisfaction of the decree was not entered.

4. On 25.5.2005, the respondent made an application for modification of the amount claimed, contending that due to inadvertence, a lesser amount had been claimed in the

A execution petition. The respondent alleged that earlier, due to oversight, it had calculated the future interest at the rate of 18% per annum from 23.6.2000 to date of execution petition (24.10.2004), only on the principal sum of Rs.14,94,000/-; that the future interest ought to have been calculated on a higher sum of Rs.31,98,879/= (made up of Rs.14,94,000/- being the principal amount plus Rs.17,04,879/- being the interest at 12% per annum which had accrued due up to the date of Award); and that therefore the amount due as on the date of execution petition was Rs.56,97,685/- instead of Rs.43,65,918/- claimed therein. The Executing Court after hearing the parties, by its order dated 5.9.2007 accepted the revised calculation made by the respondent. The revision petition filed by the appellants against the said order was dismissed by the High Court by the impugned order dated 9.9.2008 without examining the issue on merits, on the assumption that what was claimed was the balance of an admitted liability under the award.

5. The appellants did not dispute their liability to pay interest. They however contended that Section 31(7) of the Act does not contemplate award of interest on interest; that an arbitral tribunal can award future interest only on the principal amount but not on the interest thereon which had accrued due up to the date of award; and that the Arbitral Tribunal in this case has in fact awarded interest only on the principal of Rs.14,94,000/- and not on the interest which had accrued due up to the date of the award. It was also submitted that even if the Arbitral Tribunal had power to award interest, the award could not be interpreted as awarding interest upon interest, unless the arbitral tribunal expressly awards interest upon interest.

6. The respondent contended that Section 31(7) authorises and empowers the arbitral tribunal to award interest upon interest from the date of the award to date of payment. The respondent submitted that the operative portion of the award stated that future interest has been awarded at 18% per

annum “on the sums due to the claimant” from the date of award to the actual date of payment; and that as the interest up to date of award is a ‘sum due’ on the date of the award, the said amount would also carry interest at 18% per annum from the date of the award.

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7. On the contentions urged, the following questions arise for consideration:

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(i) Whether section 31(7) of the Act authorizes and enables arbitral tribunals to award interest on interest from the date of award?

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(ii) Whether the Arbitral Award granted future interest from the date of award, only on the principal amount found due to the respondent (that is Rs.14,94,000/-) or on the aggregate of the principal and interest upto the date of award (Rs.31,98,879/-).

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**Re : Question (i)**

8. Payment of interest arises in different circumstances. It can be the consideration paid by a borrower to a lender for use of the money lent or made available by the lender. It can be the return given by a bank, financial institution or a company on amounts deposited or invested with them by a customer or constituent. It can be the compensation paid by a person who withholds or defaults in paying an amount or in discharging a liability, when it is due and payable. Interest may be payable in pursuance of a contract, or a provision in a statute, or the fiat of a court of tribunal. It is usually quantified in terms of a percentage of the ‘principal’ or the ‘investment’ or the ‘amount of liability’. Interest unless otherwise specified, refers to simple interest, that is interest paid on only the principal and not on any accrued interest.

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9. Compound interest refers to a method of charging interest where interest is computed not only on the principal,

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A but also the accrued interest. For this purpose, periodical rests are provided for computation of interest, say yearly, or quarterly or monthly. At the end of the first ‘rest’, the interest accrued till then is added to the principal, so that for the second interest bearing period, the aggregate of the original principal and interest thereon becomes the enhanced principal. At the end of the second rest, the accrued interest on the enhanced principal is added to the enhanced principal so that such further enhanced principal becomes the principal for charging the interest for the third period. It goes on in this manner until repayment, by progressively enlarging the principal base by adding interest at regular intervals. As a result, the debtor is made to pay interest not only on the original principal, but on the interest on the principal, and on the interest upon the interest on the principal and so on. A variant of compound interest, involves limited compounding, where interest is not added to the principal with periodical rests, but only once or twice at agreed stages. For example, where a loan is repayable within one year, if a provision is made in the contract that in the event of the loan not being repaid within one year, the interest which had accrued during the one year period will be added to the principal, and as a consequence, after one year, interest will be payable on the aggregate of the principal and the interest for one year, it is a provision for interest upon interest. Compound interest can be awarded only if there is a specific contract, or authority under a Statute, for compounding of interest. There is no general discretion in courts or tribunals to award compound interest or interest upon interest.

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10. Section 3 of the Interest Act, 1978 enables the courts and arbitral tribunals to award interest from the date of cause of action to the date of institution of legal proceedings or initiation of arbitration proceedings. Sub-section (3)(c) of section 3 of the Interest Act, 1978 makes it clear that nothing in the said section shall empower the Court or arbitrator to award interest upon interest. It should be noted that section 3

of Interest Act does not deal with either pendente lite or future interest. A

11. This Court in *Renusagar Power Co. Ltd v. General Electric Co.* – [1994 Supp.(1) SCC 644] held that award of interest on interest was not opposed to the public policy of India, but could be awarded only if authorized by contract or statute. This Court observed: B

“Merely because in Section 3(3)(c) of the Interest Act, 1978, the court is precluded from awarding interest on interest *does not mean that it is not permissible to award such interest under a contract or usage or under the statute.* It is common knowledge that provision is made for the payment of compound interest in contracts for loans advanced by banks and financial institutions and the said contracts are enforced by courts. Hence it cannot be said that award of interest on interest, i.e., compound interest, is against the public policy of India. We are, therefore, unable to accept the contention that award of interest on interest i.e. compound interest is contrary to public policy of India.” C D E

[emphasis supplied]

In *State Bank of India vs. Ganjam District Tractor Owners Association* – 1994 (5) SCC 238, this Court again observed that in the absence of a provision for compound interest or interest with periodical rests in the agreement between a bank and the borrower, the bank cannot claim such interest. F

In *Central Bank of India vs. Ravindra* – 2002 (1) SCC 367, a constitution bench of this Court, after exhaustive consideration of the case law, summarized the legal position regarding compound interest thus: G

“The English decisions and the decisions of this Court and almost all the High courts of the country have noticed and H

A approved long established banking practice of charging interest at reasonable rates on periodical rests and capitalising the same on remaining unpaid. Such a practice is prevalent and also recognised in non-banking money lending transactions. Legislature has stepped in from time to time to relieve the debtors from hardship whenever it has found the practice of charging compound interest and its capitalization to be oppressive and hence needing to be curbed. The practice is permissible, legal and judicially upheld excepting when superseded by legislation. *There is nothing wrong in the parties voluntarily entering into transactions, evidenced by deeds incorporating covenant or stipulation for payment of compound interest at reasonable rates,* and authorising the creditor to capitalise the interest on remaining unpaid so as to enable interest being charged at the agreed rate on the interest component of the capitalised sum for the succeeding period. Interest once capitalised, sheds its colour of being interest and becomes a part of principal so as to bind the debtor/borrower.” B C D E

[emphasis supplied]

12. In the Arbitration Act, 1940 (‘old Act’ for short) there was no provision dealing with the power of arbitral tribunals to award interest. Section 29 of the old Act merely provided for post-decree interest and authorized the court to direct in the decree, where the award was for payment of money, payment of interest from the date of decree at such rate as the court deemed reasonable, to be paid on the principal sum as adjudged by the award and confirmed by the decree. The power of arbitral tribunals to award interest was governed by the provisions of Interest Act, 1978 and the law enunciated by courts. F G

13. The Arbitration and Conciliation Act 1996, on the other hand, contains a specific provision dealing with the power of the arbitral tribunal to award interest. The said provision is H

incorporated in sub-section (7) of Section 31 which deals with the form and contents of arbitral awards. The said Sub-section (7) is extracted below:-

“31(7)(a) Unless otherwise agreed by the parties, where and insofar as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made, interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per cent per annum from the date of the award to the date of payment.”

14. Section 31(7) makes no reference to payment of compound interest or payment of interest upon interest. Nor does it require the interest which accrues till the date of the award, to be treated as part of the principal from the date of award for calculating the post-award interest. The use of the words “*where and in so far as an arbitral award is for the payment of money*” and use of the words “*the arbitral tribunal may include in the sum for which the award is made, interest..... on the whole or any part of the money*” in clause (a) and use of the words “*a sum directed to be paid by an arbitral award shall carry interest*” in clause (b) of sub-section (7) of section 31 clearly indicate that the section contemplates award of only simple interest and not compound interest or interest upon interest. ‘*A sum directed to be paid by an arbitral award*’ refers to the award of sums on the substantive claims and does not refer to interest awarded on the ‘*sum directed to be paid by the award*’. In the absence of any provision for interest upon interest in the contract, the arbitral tribunals do not have the power to award interest upon interest, or

A compound interest, either for the pre-award period or for the post-award period.

15. There is a tendency among contractors to elevate the claims for interest and costs to the level of substantive disputes by describing them as separate and independent heads of claim. The long pendency of arbitration matters either due to prolonged arbitration proceedings or due to litigations (both intervening and post-arbitral), has the unfortunate effect of swelling the interest payable on the amount awarded and costs to very substantial amounts. In many arbitral awards for money, the interest awarded often exceeds the amount awarded, by several times. Leisurely arbitrations, avoidable judicial interventions, and indecisiveness on the part of decision makers in government and statutory bodies in accepting and settling genuine claims either at the stage when the claim is made or at least at the stage when the award is made have resulted in undue emphasis and importance being bestowed upon interest and costs. However substantial their quantum may be in a given case, interest, in particular interest from the date of the award, and costs are ancillary issues and are not substantive disputes.

16. Some Arbitral Tribunals have misconstrued clause (b) of section 31(7) of the Act and assumed that the said provision requires the rate of post-award interest in all arbitral awards should be 18% per annum, and that they do not have any discretion in regard to post-award interest. Some have misconstrued it further to infer the rate of interest mentioned therein is an indication that invariably the rate of interest in arbitrations, either pre-award or post-award, should be 18% per annum. Both these assumptions are baseless and erroneous. If that was the legislative intention, there would have been no need for vesting discretion in Arbitral Tribunals, in the matter of interest, under section 31(7)(a). The principles relating to award of interest, in general, are not different for courts and arbitral tribunals, except to the extent indicated in section 31(7) of the Act and CPC. A comparatively high rate of post-award

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interest is provided in section 31(7)(b) of the Act, not because 18% is the normal rate of interest to be awarded in arbitrations, but purely as a deterrent to award-debtors from avoiding payment or using delaying tactics. In fact a provision similar to section 31(7)(b) of the Act, if provided in section 34 of Code of Civil Procedure, will considerably reduce the travails of plaintiffs in executing their decrees in civil cases. Be that as it may.

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17. The difference between clauses (a) and (b) of section 31(7) of the Act may conveniently be noted at this stage. They are :

(i) Clause (a) relates to pre-award period and clause (b) relates to post-award period. The contract binds and prevails in regard to interest during the pre-award period. The contract has no application in regard to interest during the post-award period.

(ii) Clause (a) gives discretion to the Arbitral Tribunal in regard to the rate, the period, the quantum (principal which is to be subjected to interest) when awarding interest. But such discretion is always subject to the contract between the parties. Clause (b) also gives discretion to the Arbitral Tribunal to award interest for the post-award period but that discretion is not subject to any contract; and if that discretion is not exercised by the arbitral Tribunal, then the statute steps in and mandates payment of interest, at the specified rate of 18% per annum for the post-award period.

(iii) While clause (a) gives the parties an option to contract out of interest, no such option is available in regard to the post-award period.

In a nutshell, in regard to pre-award period, interest has to be awarded as specified in the contract and in the absence of contract as per discretion of the Arbitral Tribunal. On the other

A hand, in regard to the post-award period, interest is payable as per the discretion of the Arbitral Tribunal and in the absence of exercise of such discretion, at a mandatory statutory rate of 18% per annum.

B 18. As there is some confusion as to what section 31(7) authorizes and what it does not authorize, we will attempt to set out the legal position regarding award of interest by the arbitral tribunals, as emerging from section 31(7) of the Act.

C (18.1) The provision for interest in the Act is contained in section 31 dealing with the form and contents of arbitral award. It employs two significant expressions “where the arbitral award is for payment of money” and “the arbitral tribunal may include in the sum *for which the award is made*, interest..... on the whole or any part of the money”. The legislature has thus made it clear that award of interest under sub-section (7) of section 31 (and award of costs under sub-section (8) of Section 31 of the Act) are ancillary matters to be provided for by the award, when the arbitral tribunal decides the substantive disputes between the parties. The words ‘*sum for which the award is made*’ and ‘*a sum directed to be paid by an arbitral award*’ contextually refer to award on the substantive claims and not ancillary or consequential directions relating to interest and costs.

F (18.2.) The authority of the arbitral tribunals to award interest under section 31(7)(a) is subject to the contract between the parties and the contract will prevail over the provisions of section 31(7)(a) of the Act. Where the contract between the parties contains a provision relating to, or regulating or prohibiting interest, the entitlement of a party to the contract to interest for the period between the date on which the cause of action arose and the date on which the award is made, will be governed by the provisions of the contract, and the arbitral tribunal will have to grant or refuse interest, strictly in accordance with the contract. The arbitral tribunals cannot ignore the contract between the parties, while dealing with or awarding pre-award interest. Where the contract does not

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prohibit award of interest, and where the arbitral award is for payment of money, the arbitral tribunal can award interest in accordance with Section 31(7) (a) of the Act, subject to any term regarding interest in the contract.

(18.3) If the contract provides for compounding of interest, or provides for payment of interest upon interest, or provides for interest payable on the principal upto any specified stage/s being treated as part of principal for the purpose of charging of interest during any subsequent period, the arbitral tribunal will have to give effect to it. But when the award is challenged under Section 34 of the Act, if the court finds that the interest awarded is in conflict with, or violating the public policy of India, it may set aside that part of the award.

(18.4) Where an arbitral tribunal awards interest under section 31(7)(a) of the Act, it is given discretion in three areas to do justice between the parties. First is in regard to rate of interest. The Tribunal can award interest at such rate as it deems reasonable. The second is with reference to the amount on which the interest is to be awarded. Interest may be awarded on the whole or any part of the amount awarded. The third is with reference to the period for which the interest is to be awarded. Interest may be awarded for the whole or any part of the period between the date on which cause of action arose and the date on which the award is made.

(18.5) The Act does away with the distinction and differentiation among the four interest bearing periods, that is, pre-reference period, pendente lite period, post-award period and post-decree period. Though a dividing line has been maintained between pre-award and post-award periods, the interest bearing period can now be a single continuous period the outer limits being the date on which the cause of action arose and the date of payment, subject however to the discretion of the arbitral tribunal to restrict the interest to such period as it deems fit.

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(18.6) Clause (b) of Section 31(7) is intended to ensure prompt payment by the award-debtor once the award is made. The said clause provides that the “sum directed to be paid by an arbitral award” shall carry interest at the rate of 18% per annum from the date of award to the date of payment if the award does not provide otherwise in regard to the interest from the date of the award. This makes it clear that if the award grants interest at a specified rate up to the date of payment, or specifies the rate of interest payable from the date of award till date of payment, or if the award specifically refused interest, clause (b) of Section 31 will not come into play. But if the award is silent in regard to the interest from the date of award, or does not specify the rate of interest from the date of award, then the party in whose favour an award for money has been made, will be entitled to interest at 18% per annum from the date of award. He may claim the said amount in execution even though there is no reference to any post award interest in the award. Even if the pre-award interest is at much lower rate, if the award is silent in regard to post- award interest, the claimant will be entitled to post- award interest at the higher rate of 18% per annum. The higher rate of interest is provided in clause (b) with the deliberate intent of discouraging award-debtors from adopting dilatory tactics and to persuade them to comply with the award.

19. We will next deal with the three cases relied upon by the learned counsel for the respondent to contend that this Court has recognized and accepted the power of the arbitral tribunals to award interest upon interest: *Oil & Natural Gas Commission v. M.C. Clelland Engineers S.A.* - (1999) (4) SCC 327, *Mcdermott International Inc. vs. Burn Standard Co. Ltd and Others* - (2006) 11 SCC 181, and *Uttar Pradesh Cooperative Federation Limited vs. Three Circles* - (2009) 10 SCC 374. But out of these three decisions only the decision in *Mcdermott* relates to an award under the Arbitration and Conciliation Act, 1996. The other two decisions relate to awards under the old Act (Arbitration Act, 1940) and are of no assistance in

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interpreting section 31(7) of the new Act.

20. In *Mcdermott*, paras 154 to 159 of the judgment deal with the issue of interest. Relevant portions thereof are extracted below in entirety:

“The power of the arbitrator to award interest for pre-award period, interest pendent lite and interest post-award period is not in dispute. Section 31(7) (a) provides that the arbitral tribunal may award interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which award is made, i.e., pre-award period. This, however, is subject to the agreement as regard the rate of interest on unpaid sum between the parties. The question as to whether interest would be paid on the whole or part of the amount or whether it should be awarded in the pre- award period would depend upon the facts and circumstances of each case. The arbitral tribunal in this behalf will have to exercise its discretion as regards (i) at what rate interest should be awarded; (ii) whether interest should be awarded on whole or part of the award money; and (iii) whether interest should be awarded for whole or any part of the pre-award period.”

“The 1996 Act provides for award of 18% interest. The arbitrator in his wisdom has granted 10% interest both for the principal amount as also for the interim. By reason of the award, interest was awarded on the principal amount. An interest thereon was upto the date of award as also the future interest at the rate of 18% per annum.

However, in some cases, this Court was resorted to exercise its jurisdiction under Article 142 in order to do complete justice between the parties..... In this case, given the long lapse of time, it will be in furtherance of justice to reduce the rate of interest to 7 1/2%. ”

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A A careful reading of the same shows that there is no reference to awarding of compound interest or interest from the date of the award on the interest that had accrued due up to the date of award. The decision dealt with the rate of interest and exercise of jurisdiction under Article 142 of the Constitution to set right anomalies in regard to rate of interest. The said decision is therefore, of no assistance.

21. Learned counsel for the respondent submitted that in *Three Circles*, this Court has observed that *Mcdermott* recognized that interest awarded on the principal amount upto the date of the award becomes part of the principal from the date of the award. We extract below the relevant portion of *Three Circles* relied upon by the respondent :

“Now the question comes which is related to awarding of `interest on interest`. According to the appellant, they have to pay interest on an amount which was inclusive of interest and the principal amount and, therefore, this amount to a liability to pay `interest on interest. This question is no longer res integra at the present point of time. This Court in *McDermott International Inc. v. Burn Standard Co. Ltd, and Ors.- 2006 (11) SCC 181* has settled this question in which it had observed as follows:

The Arbitrator has awarded the principal amount and interest thereon upto the date of award and future interest thereupon which do not amount to award of interest on interest as interest awarded on the principal amount upto the date of award became the principal amount which is permissible in law.”

[emphasis supplied]

But a careful reading of the decision in *Mcdermott*, shows that the portion of *Mcdermott* extracted in *Three Circles*, assuming it to be the law laid down in *Mcdermott*, is not a finding or conclusion of this court, nor the *ratio decidendi* of the case, but

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is only a reference to the contention of the respondent in *Mcdermott*. Paras 1 to 27 (of the SCC report) in *Mcdermott* state the factual background. Paras 28 and 29 contain the submissions of the learned counsel for BSCL, the respondent therein. Paras 30 to 44 contain the submissions made by the learned counsel for *Mcdermott*, the appellant therein, in reply to the submissions made on behalf of BSCL. The passage that is extracted in *Three Circles* is part of para 44 of the decision which contains the last submission of the learned counsel for *Mcdermott* on the question of interest. The reasoning in the decision starts from para 45. This Court considered the several questions seriatim in paras 45 to 160. The question relating to interest was considered in paras 154 to 159 relevant portions of which we have extracted above. Therefore, the observation in *Three Circles* that *Mcdermott* held that interest awarded on the principal amount upto the date of award becomes the principal amount and therefore award of future interest therein does not amount to award of interest on interest, is *per incuriam* due to an inadvertent erroneous assumption.

**Re : Question (ii)**

22. The operative portion of an arbitral award dealing with several claims on which separate decisions have been recorded, is really an abstract of the decisions/awards on each of the claims. Therefore, the findings/award reached by the Arbitrator on claim No. (8) relating to interest, have to be read with the operative portion to know what is directed by the award. We therefore extract below the reasoning, finding and award on claim No. (8) relating to interest:

“Claim 8 : *Payment on account of interest at the rate of 30% per annum with effect from 18.8.1990 till final payment.*”

The claimant has claimed interest @ 30% per annum with effect from 18.8.1990 till final payment of Award. Keeping in view the reasonability of the claim, I allow interest @

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A 12% per annum *on the total amount of Award i.e. on Rs.14.94 lacs* with effect from 19.12.1990 (date of first reference of Arbitrator) upto the date of making this award. In case the *total amount of award* together with this interest is not paid within 30 days from the date of making this award, future interest shall be paid @ 18% per annum on the *entire Award* from the date of Award upto the actual date of payment”.

(emphasis supplied)

C The above portion of the award when read with the operative portion of the award shows that the words ‘entire award’ used in the para dealing interest and the words ‘sums due’ used in the operative portion of the award refer to the ‘total amount of award’ referred to earlier in the said two portions relating to interest.

D 23. The Arbitrator allowed interest at the rate 12% per annum on the total amount of the award, that is Rs.14,94,000/-, with effect from 19.12.1990 up to the date of the Award. He further directed that in case the “total amount of the award together with this interest” is not paid within 30 days from the date of making the award, future interest shall be paid at the rate 18% per annum on the entire Award from the date of Award upto the actual date of payment. The words “total amount of the Award together with interest” makes it clear that the Arbitrator has used the words “total amount of the Award” as referring to the total or aggregate of the awards on the substantive claims of the contractor (claims 1 to 7) excluding the ancillary claims (claim No.8) relating to interest. The Arbitrator has also used the words “entire award” and “sums due” synonymous with the words “total amount of the award”. Therefore, when the operative portion states that future interest is awarded on the “sums due”, it refers to the “total amount of the award”, that is total of the amounts awarded on substantive claims (that is claims (1) to (7) of the contractor) excluding the claim relating interest. Therefore, what was awarded by the

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Arbitrator was future interest at the rate of 18% per annum on the amounts awarded on various claims (that is Claim No.1 to 7) in all aggregating to Rs.14,94,000/- and not upon the interest awarded thereon upto to date of the award. It should be noted that the difference in the interest awarded for the pre-award period and post-award period, is only with reference to the rate of interest and not the quantum of principal (that bears interest).

**Conclusion**

24. Thus it is clear that section 31(7) merely authorizes the arbitral tribunal to award interest in accordance with the contract and in the absence of any prohibition in the contract and in the absence of specific provision relating to interest in the contract, to award simple interest at such rates as it deems fit from the date on which the cause of action arose till the date of payment. It also provides that if the award is silent about interest from the date of award till date of payment, the person in whose favour the award is made will be entitled to interest at 18% per annum on the principal amount awarded, from the date of award till date of payment. The calculation that was made in the execution petition as originally filed was correct and the modification by the respondent increasing the amount due under the award was contrary to the Award.

25. In view of the above, we allow this appeal, set aside the judgment of the Executing Court dated 5.9.2007 and the order of the High Court 9.9.2008 and hold that the respondent was entitled only to simple interest on the principal amount as per original calculation shown in the Execution Petition.

R.P. Appeal allowed.

A MRS. SHILPA AGGARWAL  
v.  
MR. AVIRAL MITTAL & ANR.  
Crl.M.P.No.1503 & 1504 of 2010  
IN  
B Crl. Appeal No.2357 of 2009  
FEBRUARY 2, 2010

**[ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.]**

C *Child and Family Welfare:*  
D *Custody and guardianship of child – Proceedings pending in U.K. – Proposal submitted by husband, at the instance of Supreme Court\*, regarding arrangements for the travel of the wife and the child from India to U.K. and for their stay and other expenses including litigation expenses – Direction issued to the husband to make the arrangements and bear the expenses for two months.*

E *\*Shilpa Aggarwal vs. Aviral Mittal & Anr. (2009) 16 SCR 287, referred to.*

**Case Law Reference:**

(2009) 16 SCR 287 referred to Para  
F CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2357 of 2009.

From the Judgment & Order dated 07.8.2009 of the High Court of Delhi at New Delhi in W.P. (Crl.) No. 1553 of 2008.

G Devendra Singh, Ghanshyam for the Appellant.  
P.P. Malhotra, ASG, J.S. Attri, S.B. Upadhyay, Prabhjit Jauhar, Anumpa Kaul, S.S. Jauhar, Shailendra Sharma, Anil Katiyar, Anil Katiyar for the Respondents.

The Order of the Court was delivered by

**ORDER**

**ALTAMAS KABIR, J.** 1. By our order dated 9 December, 2009, we had disposed of Criminal Appeal No.2357 of 2009, arising out of Special Leave Petition (Crl.) No.5995 of 2009, without interfering with the order of the High Court impugned in the appeal. In order to ensure that the directions of the High Court were complied with by the parties, we had directed the Respondent-husband to provide the initial expenses of the Appellant-wife and her minor child for travelling to and staying in the United Kingdom for at least a month to attend and contest the proceedings initiated by the Respondent No.1 husband before the Court of Justice, Family Division, U.K. We had also directed the matter to be listed for further orders on 15 December, 2009, to enable the Respondent-husband to submit a proposal for the travel and staying arrangements for the Appellant and her minor daughter in the U.K. for at least a month.

2. Pursuant to the said order, a proposal was duly filed by the Respondent-husband on 15 December, 2009, but finding the same to be inadequate, we had directed the Respondent-husband to give a detailed proposal with regard to the said arrangements. The Appellant was also directed to file a proposal as to how she intended to work out the order which had been passed on 9 December, 2009. The matter was, accordingly, listed on 29 January, 2010, to consider the fresh proposals to be made by the Respondent-husband and the views of the Appellant-wife in respect thereof.

3. By his application dated 23.12.2009 and filed on 12 January, 2010, the Respondent-husband, inter alia, indicated as follows :-

(a) That tickets had been booked by the Respondent for the Appellant and the minor child, Elina, to fly

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from Delhi to London by Virgin Atlantic Airways on 1 February, 2010. Upon arrival in the United Kingdom at London Airport, arrangements had been made for travel via National Express Coach Service to Swindon where the respondent resides.

(b) The Respondent has a three-bed room house in Swindon, U.K., where the Appellant and Elina were welcome to stay with him, but in case the Appellant did not want to stay in the matrimonial home, she could stay in the named hotel for which bookings had been made from 30 January, 2010, till 28 February, 2010.

(c) The Respondent would pay the Appellant a daily allowance of 40 a day towards maintenance, upon her arrival in the United Kingdom.

(d) The Respondent was willing to reimburse any reasonable expense above 50 which the Appellant may incur for herself in the U.K. till 28.2.2010.

4. In response to the aforesaid offers, the Appellant-wife agreed to stay with the Respondent in their matrimonial home in Swindon along with her minor daughter and her father, till such time as they were required to stay in the U.K. for the purpose of contesting the custody case, subject to the Respondent agreeing to undergo psychiatric evaluation and treatment. The Appellant also sought the permission of the Court to allow her to be accompanied by her father to the United Kingdom for which her father was ready and willing to bear his travelling expenses. The Appellant has also wanted the expenses of her father's stay in the U.K., for the security and support of her minor daughter and herself, to be borne by the Respondent.

5. Apart from her place of stay, the Appellant also made detailed suggestions regarding expenses that would have to

be incurred by her on account of travel and commuting in the U.K., for the minor's admission in a Child Nursery, private medical expenses, day-to-day expenses, including clothing, legal expenses, recreational expenses, expenses for acquiring a Computer/Laptop with accessories and other sundry miscellaneous expenses which would add up to an estimated 8342 per month. A direction was also sought for that the monthly expenses as indicated above for a period of six months should be deposited in the bank account of the Appellant in the U.K. before the Appellant left India for the U.K.

6. We have heard learned counsel for the parties on the proposals and counter-proposals made for the purpose of implementing the order passed by this Court on 9 December, 2009. What has emerged is that the Appellant-wife is willing to stay with the Respondent-husband in their matrimonial home at Swindon, U.K., provided he agreed to undergo psychiatric evaluation and treatment. Counsel appearing for the Respondent-husband has, in consultation with the Respondent, who was present in Court, accepted the condition indicated by the Appellant-wife and undertook to undergo psychiatric evaluation and treatment on his return to the U.K. The Respondent-husband also had no objection to the proposal of the Appellant to allow her father to accompany her and Elina to the United Kingdom and to stay with her during the period of her stay in the U.K. for the purpose of contesting the custody case. The Respondent also agreed to bear the ancillary expenses involved relating to admission of the child into a Nursery, day-to-day expenses for the Appellant, her daughter and her father, clothing, expenses to purchase Computer/Laptop and accessories, recreational expenses and other sundry miscellaneous expenses.

7. A note of discord was, however, sounded on behalf of the Respondent-husband regarding expenses for private medical treatment, legal expenses and payments made by the Government into the Child Trust Fund and Child Benefit. As far

A as expenses for private medical treatment is concerned, on behalf of the Respondent it was submitted that the Appellant and the minor child would be entitled to medical coverage as soon as they landed in the U.K. and that, as a result, the question of incurring expenses for private medical treatment did not arise. As to legal expenses, it was submitted on behalf of the Respondent that the amount indicated by the Appellant-wife was extremely high and that he himself was paying his lawyers at the rate of 200 per hour. As far as transfer of Child Trust Fund and Child Benefit is concerned, it was submitted on behalf of the Respondent that whatever amounts had been received by him on the minor daughter's account, which had remained unutilized, would be returned to the State, to which the Appellant's response was that since expenses had been incurred by her in India for Elina, the same should be made over to her instead of being returned to the Government.

8. Since the points of disagreement had been narrowed down to the aforesaid proposals, we direct that as far as expenses for private medical treatment is concerned, the Respondent-husband shall initially provide a sum of 200 for such expenses and will also arrange for medical coverage in terms of the Health Insurance and Life Insurance Cover for the Appellant, her minor daughter and her father. As far as legal expenses are concerned, the Respondent shall initially pay to the Appellant a sum of 2000 per month to enable the Appellant to apply for free legal assistance under the Access to Justice Act, 1999, and other connected enactments and regulations, subject always to the condition that the same are applicable to her. In the event such legal aid is available to the Appellant, further payment by the Respondent towards legal expenses shall be discontinued. Regarding transfer of the Child Trust Fund and Child Benefit to the Appellant, since the Appellant has been looking after the expenses of the child, the same should be reimbursed to her from the amount being held by the Respondent, unless legally prohibited from doing so.

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9. Apart from the above, since all the other proposals, as indicated above, have been duly agreed upon, there will be an order to the following effect :-

- (i) The Respondent-husband shall bear the travel expenses of the Appellant and her minor child from India to the United Kingdom and, if necessary, back to India. The Appellant's father shall bear his own expenses towards travelling to the U.K. A
- (ii) During their stay in the U.K. for the purpose of contesting the custody case, the Appellant, her minor daughter and her father will reside with the Respondent in the matrimonial home in Swindon in London, as long as it is necessary for the purpose of contesting the case. B
- (iii) Within 15 days of the Appellant's arrival in the U.K., both the Appellant and the Respondent shall undergo psychiatric evaluation and treatment and shall also participate in marriage counselling programmes with a mutually agreed upon Marriage Counsellor and the expenses for the same shall be borne by the Respondent. C
- (iv) The Respondent shall provide 300 per month towards the travelling expenses for the Appellant, her child and her father during their stay in the U.K. for the aforesaid purpose. The Child Benefit which the Respondent had been receiving on account of the expenses for the minor child (Elina) should be made over to the Appellant on account of the expenses already incurred by her for the said purpose, if not legally prohibited from doing so. D
- (v) The Respondent shall provide a sum of 300 per month, for the child's admission in a Child Nursery, during her stay in the U.K. E

- (vi) The Respondent shall provide an initial amount of 200 for expenses that may be incurred by the Appellant and her minor daughter and father towards private medical treatment. A
- (vii) The Respondent shall pay an amount of 1200 per month towards food and daily incidental expenses, such as toiletries, soap, detergent, etc, telephone and broadband. B
- (viii) The Respondent shall provide for Health Insurance and Life Insurance cover to the Appellant and her minor daughter on their arrival in the U.K. C
- (ix) The Respondent shall pay a sum of 1600 per month towards the Appellant's legal expenses for contesting the custody and guardianship case. D
- (x) The Respondent shall provide for a Laptop and printer for the use of the Appellant. E

10. The above amounts are to be paid into either of the two accounts of the Appellant maintained by her in Barclays Bank, Hemel Hempstead 20-39-07, Nos.10865826 and 10620122, in the U.K. covering a period of two months, in two instalments, in modification of the earlier order directing arrangements to be made for the Appellant's stay in the U.K. for at least a month to contest the custody and guardianship case. F

11. As far as airline tickets are concerned, the same may be purchased by the Respondent and made over to the Appellant, or, in the alternative, the price of the tickets may be deposited in the account of the Appellant in the U.K. to enable the Appellant to access the same for travelling to the U.K. in pursuance of the order passed by this Court on 9 December, 2009. G

12. Immediately on deposit of the first instalment into the H

A Appellant's account in the U.K., and on being provided with the  
B airline tickets, the Appellant shall proceed to the U.K. along with  
her minor daughter, Elina, and, if she chooses, her father, within  
a month from the date of being informed of the said deposit,  
with prior intimation to the Respondent. The second instalment  
is to be deposited within two weeks of the Appellant's arrival  
in the U.K.

13. In order to meet any other eventuality, the Appellant-  
wife may make appropriate applications before the High Court  
of Justice (Family Division), at London, in the pending custody  
and guardianship case. C

14. A copy of this order be made available to the parties  
forthwith.

15. CrI. M.P. Nos.1503 and 1504 of 2010 in Criminal  
Appeal No.2357 of 2009 are disposed of, accordingly. D

R.P. Petitions disposed of.

A

STATE OF U.P. & ORS.  
v.  
SAROJ KUMAR SINHA  
(Civil Appeal No. 254 of 2008)

B

FEBRUARY 02, 2010

**[V.S. SIRPURKAR AND SURINDER SINGH NIJJAR, JJ.]**

*Service Law:*

C

*Uttar Pradesh Government Servant (Discipline and  
Appeal) Rules, 1999:*

*r. 7(5) – Charges framed against delinquent officer –  
Non-supply of relevant documents to delinquent officer  
despite repeated request – Final order of removal passed by  
the authority, despite interim direction of High Court to  
consider the representation of delinquent. – Held: Denial of  
supply of the relevant documents to the delinquent officer  
being in flagrant disregard of r. 7(5), the enquiry proceeding  
is vitiated – The inquiry proceeding was also in violation of  
principles of natural justice and in disregard of the mandate  
under Article 311(2) of the Constitution – Administrative Law  
– Principles of natural justice – Constitution of India, 1950 –  
Article 311(2).*

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*r. 7(x) – Departmental enquiry – Chargesheet – Failure  
to reply the charge-sheet – Enquiry officer not fixing the date  
for appearance of delinquent officer for answering the charges  
– Held: Failure to fix the date being in violation of r. 7(x), such  
inquiry is vitiated.*

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**Charge-sheet was issued against the respondent u/  
r.7 of Uttar Pradesh Government Servant (Discipline and  
Appeal) Rules, 1999 making allegations of misconduct. He**

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was thereafter suspended. Respondent made a representation demanding copies of documents relied on in the charge-sheet. The copies of the documents were not supplied to the respondent. He was asked to submit the reply to the charge-sheet.

Apprehending bias, the respondent made a representation for change of the Enquiry Officer. The request was accepted. Respondent requested the new Enquiry Officer for supply of the documents. Despite several reminders, the documents were not supplied to the respondent.

The first Enquiry Officer had completed the enquiry report on 3.8.2001 i.e. before appointment of the second Enquiry Officer. The second Enquiry Officer addressed a communication to the Government that the enquiry report given by the former Enquiry Officer was correct. Respondent was thereafter, served with a show cause notice.

The respondent filed writ petition, challenging issuance of show-cause notice. High Court declined to interfere in the matter stating that it was open to the respondent to put his case in his reply to show-cause notice.

The respondent in his reply to the show-cause notice again requested supply of the relevant documents. Thereafter, a letter was issued directing supply of the relevant documents. Despite the direction, the documents were not supplied.

The respondent, therefore, filed another writ petition making a prayer to restrain the appellant from taking any final decision. The High Court, by an interim order, directed the authority concerned, to consider the

representation of the respondent before passing of the final order.

Despite the direction of the High Court, appellant passed the final order of removal from service. High Court, by final order allowed the writ petition, directing to reinstate the respondent with all consequential benefits. Hence the present appeal.

Dismissing the appeal, the court

HELD: 1.1 A perusal of the charges shows that the three charges were based on official documents/official communications. The relentless efforts made by the respondent to secure copies of the documents, which was sought to be relied upon, to prove the charges. These were denied by the department in flagrant disregard of the mandate of Rule 7 sub rule 5 of Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999. Therefore the Enquiry proceedings are clearly vitiated having been held in breach of the mandatory sub rule (5) of Rule 7 of the 1999 Rules. [Para 24] [343-F-H]

1.2. The first enquiry report is vitiated also on the ground that the Enquiry Officer failed to fix any date for the appearance of the respondent to answer the charges. Rule 7(x) shows that when the respondent had failed to submit the explanation to the charge-sheet, it was incumbent upon the Enquiry Officer to fix a date for his appearance in the enquiry. It is only in a case when the Government servant despite notice of the date fixed failed to appear, that the Enquiry Officer can proceed with the enquiry *ex parte*. Even in such circumstances it is incumbent on the Enquiry Officer to record the statement of witnesses mentioned in the charge-sheet. Since the Government servant is absent, he would clearly



lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges, the department is required to produce the necessary evidence before the Enquiry Officer. This is so as to avoid the charge that the Enquiry Officer has acted as a prosecutor as well as a judge. [Paras 25 and 26] [349-A-C-F]

1.3. Enquiry Officer acting in a quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined, the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents. [Para 26] [344-F-H; 345-A]

1.4. By virtue of Article 311(2) of the Constitution of India, the departmental enquiry had to be conducted in accordance with rules of natural justice. It is a basic requirement of rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceeding which may culminate in a punishment being imposed on the employee. [Para 27] [345-A-C]

1.5. When a departmental enquiry is conducted against the Government servant, it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The Enquiry Officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice

is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a Government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service. [Para 28] [345-C-E]

1.6. The High Court, has rightly observed that the entire proceedings are vitiated having been conducted in complete violation of principles natural justice and total disregard of fair play. The respondent never had any opportunity at any stage of the proceedings to offer an explanation against the allegations made in the charge-sheet. [Para 31] [346-D-E]

1.7. It is not correct to say that since respondent had failed to give reply to the show cause notice issued u/r. 9, the removal order was therefore justified. The first enquiry report dated 3.8.2001, is clearly vitiated. The appellants have deliberately misconstrued the directions issued by the High Court in Writ Petition 937/2003. In terms of the aforesaid order the respondent was required to submit a reply to the charge sheet upon supply of the necessary document by the appellant. It is for this reason that the High Court subsequently while passing an interim order on 7.6.2004 in Writ Petition No. 793/2004 directed the appellant to ensure compliance of the order passed by the Division Bench on 23.7.2003. The actions of the Enquiry Officers in preparing the reports *ex-parte* without supplying the relevant documents has resulted in miscarriage of justice to the respondent. The conclusion is irresistible that the respondent has been denied a reasonable opportunity to defend himself in the enquiry proceedings. [Para 37] [350-B-G]

1.8. The appellants have miserably failed to give any reasonable explanation as to why the documents have not been supplied to the respondent. The Division Bench

of the High Court, therefore, very appropriately set aside the order of removal. [Para 38] [350-G-H; 351-A] A

*Kashinath Dikshita vs. Union of India, (1986) 3 SCC 229; Trilok Nath vs. Union of India 1967 SLR 759 (SC); State of Punjab vs. Bhagat Ram (1975) 1 SCC 155, relied on* B

*Shaughnessy v. United States, 345 US 206 (1953), referred to*

'Judicial Review of Administrative Action' by De Smith, Woolf and Jowell; Fifth Edition P. 441, referred to C

**Case Law Reference:**

**345 US 206 (1953) Referred to Para 28**

**1986 3 SCC 229 Relied on Para 31** D

**1967 SLR 759 (SC) Relied on Para 35**

**1975 1 SCC 155 Relied on Para 36**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 254 of 2008. E

From the Judgment & Order dated 7.3.2006 of the High Court of Judicature at Allahabad in Lucknow Bench, Lucknow in Writ Petition No. 46 (S/B) of 2005.

T.N. Singh, Mukesh Verma, Chandra Prakash Pandey for the Appellants. F

Anurag Kishore, Abhinav Shrivastava, Rajesh Kumar for the Respondent.

The Judgment of the Court was delivered by G

**SURINDER SINGH NIJJAR, J.** 1. This appeal has been filed by the State of U.P. challenging the order passed by the High Court of Judicature at Allahabad, Lucknow Bench, H

A Lucknow in Writ Petition No.46 (S/B) of 2005 whereby the High Court allowed the writ petition of the respondent by quashing and setting aside the order of his removal dated 24.12.2004 and further directing his reinstatement in service with all consequential benefits.

B 2. The respondent had been in the service of the appellant since 17.5.1971. During the period 6.1.2001 to 12.2.2001 and from 17.3.2001 to 28.4.2003 he was posted as Executive Engineer at Construction Division-I, Public Works Department (P.W.D.), Rai Barielly. While functioning at Rai Barielly, he was served with the charge sheet dated 24.2.2001 under Rule 7 of the U.P. Government Servant (Discipline & Appeal) Rules, 1999 (hereinafter referred to as 1999 Rules) making serious allegations of misconduct against him. C

D 3. The respondent having been initially selected through the Lok Sewa Ayog, U.P. was appointed as an Assistant Engineer in the Public Works Department on 17.5.1971 in a substantive capacity. In due course he was promoted as Executive Engineer. E

F 4. We may notice here that the 1999 Rules have been promulgated by the Governor of U.P. in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. The Rules prescribe detailed procedure to be followed in matters of enforcing discipline and imposing penalties/punishments against government servants in U.P., in cases of proven misconduct. Rule 3 gives a list of minor and major penalties that may be imposed by the appointing authority on the government servants. Removal from service is a major penalty. Rule 4 provides that the government servant may be suspended in case an enquiry is contemplated against him. In the present case, the respondent was suspended on 5.2.2001 prior to the issue of the charge sheet dated 24.02.2001. We presume it was in contemplation of the forthcoming disciplinary proceedings against him. Rule 7 prescribes in detail, the G

A procedure and the manner in which an enquiry shall be conducted before imposing any major penalty on a government servant. Rule 7 sub rule (2) provides the facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge or charges to be called charge sheet. This charge sheet has to be approved by the disciplinary authority. Rule 7 sub rule (3) further provides that the charge(s) framed shall be so precise and clear as to give sufficient indication to the charged government servant of the facts and circumstances against him. It is mandatory that the proposed documentary evidence and the name of witnesses proposed to prove the charges together with any oral evidence(s) that may be recorded be mentioned in the charge sheet. Thereafter under Rule 7 sub rule (4) the government servant is given an opportunity to put in a written statement, of his defence, within a specified period of time which shall not be less than 15 days. The government servant is also required to indicate whether he desires to cross examine any witnesses mentioned in charge sheet. Thereafter he is to be informed that in case he does not appear or file the written statement it will be presumed that he does not intend to furnish any defence. In such circumstances the enquiry shall proceed *ex parte*. Sub rule 5 of Rule 7 mandates that the copies of the documentary evidence mentioned in the charge sheet has to be served on the government servant along with the charge sheet. The aforesaid sub rule is as under:

F “(v) The charge-sheet, along with the copy of documentary evidences mentioned therein and list of witnesses and their statements, if any shall be served on the charged Government servant personally or by registered post at the address mentioned in the official records in case the charge-sheet could not be served in aforesaid manner the charge-sheet shall be served by publication in a daily newspaper having wide circulation:

H Provided that where the documentary evidence is

A voluminous, instead of furnishing its copy with charge-sheet, the charged Government servant shall be permitted to inspect the same before the Inquiry Officer.”

B 5. A perusal of the aforesaid rule would clearly show that the disciplinary authority is duty bound to make available all relevant documents which are sought to be relied upon against the government servant in proof of the charges. It is only when the charge sheet together with documents is supplied that the government servant can be said to have had an effective and reasonable opportunity to present his written statement of defence.

D 6. Keeping in view the mandate of the aforesaid sub rule the respondent made a written request to the appellant demanding copies of the documents relied upon in the charge sheet. This representation was dated 10.6.2001. In spite of the mandate of the 1999 Rules neither the disciplinary authority nor the enquiry officer made the documents available to the respondent rather a reminder was issued to him by the enquiry officer on 15.6.2001 to submit the reply to the charge sheet.

E 7. Apprehending that the inquiry officer may be biased respondent submitted a representation on 19/6/2001 to the Government for change of the inquiry officer. This request of the respondent was accepted by the Government by office memo dated 22.9.2001. It later transpired that the inquiry officer, Mr. I.D. Singhal, had already completed the inquiry report on 3.8.2001 whereas the new inquiry officer, G.S. Kahlon was appointed on 22.9.2001. The respondent only came to know about the existence of inquiry report dated 3.8.2001 in the month of April, 2003.

G 8. Being unaware of the inquiry report dated 3.8.2001 respondent made the representation dated 6.10.2001 to the new inquiry officer, G.S. Kahlon praying for supply of the relevant documents numbering 19 to enable him to prepare an appropriate reply to the charge sheet and to prepare his

A defence. Since, no response was received from the inquiry officer the respondent sent a reminder dated 22.11.2001. The last reminder submitted by the respondent is dated 3.3.2002.

B 9. The respondent later came to learn that the inquiry officer had addressed a communication to the Government dated 8.4.2002 stating that the inquiry report dated 3.8.2001 submitted by the former inquiry officer, Mr. I.D. Singhal “seems to be correct” because the delinquent officer should be deemed to have accepted the charges levelled against him inasmuch as he had not submitted the reply/explanation to the charge sheet. Based on the inquiry report dated 8.4.2002, which merely reiterated the findings in the inquiry report dated 3.8.2001, respondent was served a show cause notice dated 29.4.2003.

D 10. At this stage the respondent challenged the issuance of the show cause notice in Civil Writ Petition No.937 of 2003. The respondent had sought quashing of the two inquiry reports as well as the show cause notice. He also made a prayer that a fresh inquiry be conducted by giving appropriate opportunity to him to submit his defence. The aforesaid writ petition was disposed of with the following order:

F “We do not intend to interfere with the matter but would like to observe that we have not adjudicated the matter of the petitioner on merits nor we intend to observe that the case set up by the petitioner is correct on merit, therefore, it will be open to the petitioner to put his case before the authority concerned while submitted his reply to the Show Cause Notice. In case such a reply is given within a period of 15 days, the same shall be considered before passing any final orders in the matter.”

H 11. The respondent furnished the certified copy of the aforesaid order to the appellant on 25.7.2003. In this communication respondent also mentioned that he would soon submit a detailed representation/reply in response to the show

A cause notice dated 29.4.2003. He accordingly submitted the representation on 6.8.2003 briefly touching upon the circumstances in which the aforesaid two inquiries were held. He pointed out that the aforesaid two inquiries had been held in patent violation of principles of natural justice, fairness and justice, as well as the basic requirements of law relating to departmental inquiry. The respondent reiterated his utter helplessness in making an effective reply to the show cause notice as he had not been supplied the relevant documents in spite of numerous representations and reminders. He again made a plea for supply of documents.

D 12. Ultimately the respondent was served a copy of communication dated 19.11.2003 from the office of the Executive Engineer (Prantiya Khand), P.W.D. Rai Bareilly addressed to the Executive Engineer (Nirman Khand-I), P.W.D., Rai Bareilly directing supply of the copies of the relevant documents to the respondent. A perusal of this letter would clearly show that the documents were not available in the office of the Executive Engineer (Nirman Khand-I). The observations made by the Executive Engineer (Prantiya Khand) in his communication dated 19.11.2003 are as under:

F “Therefore, you are requested to collect the aforesaid three letters issued from the Government level and five letters issued from the level of Engineer-in-Chief level and two letters from your own level and as per the direction by the Government send the same to Sh. S.K. Sinha, Executive Engineer at his Lucknow address.”

G 13. In spite of this direction the documents were not supplied. The respondent therefore again made a representation to the inquiry officer on 30.11.2003 for supply of certified photocopies of the relevant documents.

H 14. It was not disputed before the High court nor is it disputed before us that the documents were not supplied to the respondent. In fact, in the counter affidavit filed before the High

Court, in reply to the grievance made by the respondent in the writ petition, about non-supply of the documents, it has been stated as under:

“Petitioner has requested for supply of certain documents to the enquiry officer regarding which it is stated that the petitioner has been informed that the documents pertain to the division in which petitioner has been posted as Executive Engineer. Therefore, it was not required to supply the same as the documents were in his custody and the petitioner has deliberately delayed the filing of reply. Therefore, Enquiry Officer has sent the enquiry report after the completion of enquiry to the Govt. on the basis of documents on 03.08.2001.”

15. Thereafter the then Principal Secretary, PWD, Shri Chandra Pal addressed a communication on 16.4.2004 to the Secretary of Public Service Commission, U.P., Allahabad recommending and proposing the punishment of removal from service as well as recovery of the sum of Rs.1,29,600/- be inflicted on the respondent. Aggrieved by the recommendation the respondent addressed a representation to the Commission setting out the entire factual situation vide communication dated 30.5.2004.

16. Further more, the respondent again moved the Allahabad High Court by preferring Civil Writ Petition No.793 (SB) of 2004. In this writ petition respondent had made a prayer to restrain the appellant from taking any final decision with regard to the proposed removal of the respondent from service. In the aforesaid writ petition, the Division Bench passed an interim order on 17.6.2004 with the observations as under:

“In the meantime, opposite parties no.1 and 2 are expected to ensure the compliance of the order passes by the Division Bench of this Court on 23.7.2003 as contained in Annexure No.6 of this writ petition. Further representation of the petitioner, if submitted in pursuance

A of the order passed by this Court on 23.7.2003, shall be considered before conclusion of the departmental inquiry and passing final order.”

B 17. It is the claim of the respondent that despite the pre-emptory direction of the High Court in the aforesaid order appellant-Government passed the order of removal dated 24.12.2004 removing the respondent from service and directed recovery of Rs.1,29,600/- from him. Passing of the aforesaid order was brought to the notice of the High Court by the respondent, which by order dated 12.1.2005 directed that no recovery shall be made from the respondent pursuant to the order of removal.

C 18. Upon due consideration of the extensive pleadings of the parties, the Division Bench has recorded the following D conclusions:

E “After hearing the rival submission of learned counsel for the parties as well as the averments made in the affidavits, we are of the view that the inquiry officer has not afforded opportunities to the petitioner insofar as he fails to supply the documents to the petitioner which he has relied while framing the charges and further the petitioner was not afforded opportunity to lead the evidence and also denied the opportunities to cross-examination of the person. The inquiry officer has also failed to prove the charges during the inquiry proceedings by the recording any evidence. Thus, the inquiry is vitiated and is violation of principle of natural justice.”

F 19. With these observations the writ petition has been G allowed. The appellant has been directed to reinstate the respondent with all consequential benefits. However, the State was granted liberty to conduct fresh inquiry in accordance with law and the principles of natural justice.

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20. We have heard the learned counsel for the parties. A

21. We have noticed at some length the sequence of events and the efforts made by the respondent to receive copies of the documents which were relevant for the preparation of his defence in the departmental inquiry. As noticed earlier all the requests made by the respondent fell on deaf ears. In such circumstances, the conclusions recorded by the High Court were fully justified. B

22. Copies of the documents which formed the foundation of the charge sheet against the respondents have been denied to the respondent on the lame excuse, as projected in the pleadings of the appellant, at different stages before the High Court as well as this Court, that the respondent, at the relevant time, was posted in the same division and the documents could have been received by him and the reply could have been given. According to the appellant all the concerned documents were with the Division in which the petitioner (respondent herein) was posted as Executive Engineer. In the counter-affidavit filed in the High Court it is specifically mentioned that the documents pertain to the same division in which the respondent had been posted as Executive Engineer and therefore he being in knowledge and custody of the said documents, there was no requirement for the said documents to be supplied to the respondent. The very same submission has been reiterated before us by the learned Counsel of the Appellants. In our opinion, the submission is without any basis as the respondent had been suspended on 5.2.2001. Even if the respondent had continued in the same department it would not have been possible for him to take the custody of the documents as he would no longer be in charge of the office. Further more, it is evident from the letter dated 19.11.2003 that the documents had to be collected from different offices and made available to the respondent. This fact is so mentioned in the letter of the Executive Engineer. In such circumstances, we are unable to accept the submission of the learned counsel for the appellants C D E F G H

A that it was possible for the respondent to make an effective representation against the charge sheet.

23. At this stage it would be appropriate to notice the charges that had been framed against the respondent which are as under: B

"I. Work pertaining to Salon Jagat Pur Road, had been given to Sri Jitendra Mohan Bajpai, Contractor vide Tender No.5/AE-2 dated 10.06.1996 through 3054-PW Work Plan. The last payment of the Tender has been paid by the then Executive Engineer Sri Akash Deep Sonkar and accordingly payment of Rs.193047/- was to be paid vide cheque No.13/256064 dated 02.08.1996. Thereafter you have made this payment through No.142 dated 31.12.1998 to the amount of Rs.193047 through Cheque No.78/001355 dated 31.12.1998. At page 138 of the Cash Book Part-73, Entry No. illegible has been made. You have deliberately made aforesaid entry in order to cause loss to the Govt. and had made the payment twice through voucher No.142 for the amount 193047 dated 31.12.1998 and the amount of Rs.193047 has been changed to 134305. Therefore the payment of Rs.58742 which has already made has been shown to be not paid in the aforesaid entry. C D E F

In this manner you have deliberately caused loss to the Government by the fraudulent act conspiring for the same and had recovered Rs.58742/- from the contractor through voucher No.141 dated 21.3.2000, reason for which has been mentioned that Rs.58742 has been deducted due to excess payment made for the work at Salon Jagat Pur Road through voucher No.142 dated 31.12.1998. Nowhere in voucher No.142 dated 31.12.1998 it is mentioned that due to what reason deduction has G H

been made after the issuing of cheque regarding the amount to be paid which shows bad intention on your part. You have made wrong entries regarding deduction mention in the voucher amount which is proved to be violation of financial handbook Section-5(Part-1) para 4 D and 83. Voucher No.141 dated 31.03.2000 and entry to such effect proves that the Divisional Accounts Officer has issued the cheque of Rs.0185777/- regarding the aforesaid payment through cheque and the cheque for amount Rs.0185777/- has been passed by the Assistant Engineer. At the time of issuing cheque deduction of Rs.58742/- from the amount to be paid makes your conduct suspicious and you are found responsible for the misconduct in this regard. Therefore, you are found guilty of misconduct according to Para 3 U.P. Govt. Servant Conduct Rules 1956.

ii. You had passed order for supply of mobile patcher 6 to M/s B.N. Traders, Karhal Mainpuri through letter Memo-2/Camp-72-99 dated 17.07.1999, M/s B.N. Traders, Karhal Mainpuri had submitted receipt No.149 regarding the aforesaid supply. The supply has been passed for the amount of Rs.129600/- by the Asstt. Engineer and had been passed by you for the amount of Rs.129600/- vide Cheque No.96/002075 dated 16.11.1999. The Cheque dated 16.11.1999 has been issued to your name which has been provided for the payment to B.N. Traders to Bank draft. In the place of this cheque you had issued Cheque No.005/003492 dated 13.11.1999 for Rs.129600/- to M/s B.N. Traders and had to be encashed by them. It is clear from the documents that the original cheque dated 31.11.1999 has been cut and self has been inserted and the cheque has been encashed by you. In the counter filed of

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cheque book name of M/s B.N. Trader had been mentioned. Therefore, the cheque has been wrongly encashed by you after making fraud entry by self name and the amount has not been taken in cash book. Therefore, the forgery in this regard is proved. You have made bank drafts in favour of M/s B.N. Traders on 08.03.2000 for Rs.129600/- from State Bank of India, Rai Bareilly. In the application of form of the draft the name of M/s B.N. Traders is mentioned whereas the order regarding supply of the draft to M/s B.N. Traders, Karhal, Mainpuri has been made in favour of the firm. Therefore bank draft was to be sent on the address of Mainpuri. M/s B.N. Traders, Karhal, Mainpuri had informed Chief Engineer, Lucknow on 28.07.2000 that you have made payment at the address of firm in Mainpuri. In this regard the bank draft has been made in the name of M/s B.N. Traders and the draft amount has been received in the name of your relative and no payment as such has been made to M/s B.N. Traders. You had cut the cheque and had violated Para 77 of the financial handbook Section 6 and Para 19-22 of financial handbook Section 5, Part-I. Receiving of payment after cutting the name of firm from the cheque and entering our own name (self) shows that the payment had been received after committing fraud. Again in order to conceal this Act you had made draft No.PL00008/392289 dated 08.03.2000 for Rs.129600/- from SBI, Rai Bareilly. The bank draft had been made for the address of Lucknow of the firm not of the address Karhal, Mainpuri so that the fraud can be committed and no payment as such has been made to the firm. The firm has alleged that you had received payment after committing fraud therefore, you are found guilty and misconduct regarding the

misappropriation of amount of Rs.129600/- after committing fraud on the documents and violating the financial rules. You are also held guilty for misconduct according to para 3 U.P. Govt. Servant Conduct Rules 1956.

III. Case No.37/98 has been instituted for adjudication between M/s Indian Coal Suppliers vs. Govt. of U.P. The case has been decided on 05.01.2000 according to which demand for Rs.26, 00,000/- along with interest has been made by the concerned firm from the Department. The fact has been in your knowledge that the option of appeal in the aforesaid case has been rejected by the Govt. In such situation you had not prepared the defence regarding validity of the agreement during framing of issues in proper manner. The case has been dismissed only on the ground of deficient Court Fees. You have deliberately appointed Special Advocate without permission of Govt., had not paid Court Fees and had colluded with M/s Indian Cola Suppliers to cause loss of Rs.26,00,000/- to the Govt. by presenting weak case before the court in order to cause benefit to the contractor. The aforesaid Act is violation of para 9.01, 9.02 and 9.03 of financial handbook and para 3 of U.P. Govt. Servant Conduct Rules 1956.”

24. A bare perusal of the aforesaid charges shows that the three charges were based on official documents/official communications. We have earlier noticed the relentless efforts made by the respondent to secure copies of the documents, which was sought to be relied upon, to prove the charges. These were denied by the department in flagrant disregard of the mandate of Rule 7 sub rule 5. Therefore the inquiry proceedings are clearly vitiated having been held in breach of the mandatory sub rule (5) of Rule 7 of the 1999 Rules.

25. The first inquiry report is vitiated also on the ground that the inquiry officers failed to fix any date for the appearance of the respondent to answer the charges. Rule 7(x) clearly provides as under:

“(x) Where the charged Government servant does not appear on the date fixed in the inquiry or at any stage of the proceeding inspite of the service of the notice on him or having knowledge of the date, the Inquiry Officer shall proceed with the inquiry *ex parte*. In such a case the Inquiry Officer shall record the statement of witnesses mentioned in the charge-sheet in absence of the charged Government servant.”

26. A bare perusal of the aforesaid sub-Rule shows that when the respondent had failed to submit the explanation to the charge sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the Government servant despite notice of the date fixed failed to appear that the enquiry officer can proceed with the inquiry *ex parte*. Even in such circumstances it is incumbent on the enquiry officer to record the statement of witnesses mentioned in the charge sheet. Since the Government servant is absent, he would clearly lose the benefit of cross examination of the witnesses. But nonetheless in order to establish the charges the department is required to produce the necessary evidence before the enquiry officer. This is so as to avoid the charge that the enquiry officer has acted as a prosecutor as well as a judge. Enquiry officer acting in a quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/ Government. His function is to examine the evidence presented by the department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been



proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents. A

27. Apart from the above by virtue of Article 311(2) of the Constitution of India the departmental inquiry had to be conducted in accordance with rules of natural justice. It is a basic requirement of rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceeding which may culminate in a punishment being imposed on the employee. B

28. When a department enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service. In the case of *Shaughnessy v. United States, 345 US 206 (1953) (Jackson J)*, a judge of the United States Supreme Court has said “procedural fairness and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied.” C D E F

29. The affect of non disclosure of relevant documents has been stated in *Judicial Review of Administrative Action* by De Smith, Woolf and Jowell, Fifth Edition, Pg.442 as follows:

“If relevant evidential material is not disclosed at all to a party who is potentially prejudiced by it, there is prima facie unfairness, irrespective of whether the material in question arose before, during or after the hearing. This proposition can be illustrated by a large number of modern cases involving the use of undisclosed reports by H

A administrative tribunals and other adjudicating bodies. If the deciding body is or has the trappings of a judicial tribunal and receives or appears to receive evidence *ex parte* which is not fully disclosed, or holds *ex parte* inspections during the course or after the conclusion of the hearing, the case for setting the decision aside is obviously very strong; the maxim that justice must be seen to be done can readily be invoked.” B

30. In our opinion the aforesaid maxim is fully applicable in the facts and circumstances of this case. C

31. As noticed earlier in the present case not only the respondent has been denied access to documents sought to be relied upon against him, but he has been condemned unheard as the enquiry officer failed to fix any date for conduct of the enquiry. In other words, not a single witness has been examined in support of the charges levelled against the respondent. The High Court, therefore, has rightly observed that the entire proceedings are vitiated having been conducted in complete violation of principles natural justice and total disregard of fair play. The respondent never had any opportunity at any stage of the proceedings to offer an explanation against the allegations made in the charge sheet. D E

32. This Court in the case of *Kashinath Dikshita vs. Union of India, (1986) 3 SCC page 229*, had clearly stated the rationale for the rule requiring supply of copies of the documents, sought to be relied upon by the authorities to prove the charges levelled against a Government servant. In that case the enquiry proceedings had been challenged on the ground that non supply of the statements of the witnesses and copies of the documents had resulted in the breach of rules of natural justice. The appellant therein had requested for supply of the copies of the documents as well as the statements of the witnesses at a preliminary enquiry. The request made by the appellant was in terms turned down by the disciplinary authority. F G H

In considering the importance of access to documents in

statements of witnesses to meet the charges in an effective manner this Court observed as follows:

“When a government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies, how can the concerned employee prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible? It is difficult to comprehend why the disciplinary authority assumed an intransigent posture and refused to furnish the copies notwithstanding the specific request made by the appellant in this behalf. Perhaps the disciplinary authority made it a prestige issue. If only the disciplinary authority had asked itself the question: “What is the harm in making available the material?” and weighed the pros and cons, the disciplinary authority could not reasonably have adopted such a rigid and adamant attitude. On the one hand there was the risk of the time and effort invested in the departmental enquiry being wasted if the courts came to the conclusion that failure to supply these materials would be tantamount to denial of reasonable opportunity to the appellant to defend himself. On the other hand by making available the copies of the documents and statements the disciplinary authority was not running any risk. There was nothing confidential or privileged in it.”

33. On an examination of the facts in that case, the submission on the behalf of the authority that no prejudice had been caused to the appellant, was rejected, with the following observations:

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“Be that as it may, even without going into minute details it is evident that the appellant was entitled to have an access to the documents and statements throughout the course of the inquiry. He would have needed these documents and statements in order to cross-examine the 38 witnesses who were produced at the inquiry to establish the charges against him. So also at the time of arguments, he would have needed the copies of the documents. So also he would have needed the copies of the documents to enable him to effectively cross-examine the witnesses with reference to the contents of the documents. It is obvious that he could not have done so if copies had not been made available to him. Taking an overall view of the matter we have no doubt in our mind that the appellant has been denied a reasonable opportunity of exonerating himself.”

34. We are of the considered opinion that the aforesaid observations are fully applicable in the facts and circumstances of this case. Non-disclosure of documents having a potential to cause prejudice to a government servant in the enquiry proceedings would clearly be denial of a reasonable opportunity to submit a plausible and effective rebuttal to the charges being enquired into against the government servant.

35. The aforesaid proposition of law has been reiterated in the case of *Trilok Nath vs. Union of India* 1967 SLR 759 (SC) wherein it was held that non-supply of the documents amounted to denial of reasonable opportunity. It was held as follows:

“Had he decided to do so, the document would have been useful to the appellant for cross-examining the witnesses who deposed against him. Again had the copies of the documents been furnished to the appellant he might, after perusing them, have exercised his right under the rule and asked for an oral inquiry to be held. Therefore, in our view the failure of the Inquiry Officer to furnish the appellant with

copies of the documents such as the FIR and the statements recorded at Shidipura house and during the investigation must be held to have caused prejudice to the appellant in making his defence at the inquiry.”

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be able to have an effective and useful cross-examination.

36. The proposition of law that a government employee facing a department enquiry is entitled to all the relevant statement, documents and other materials to enable him to have a reasonable opportunity to defend himself in the department enquiry against the charges is too well established to need any further reiteration. Nevertheless given the facts of this case we may re-emphasise the law as stated by this Court in the case of *State of Punjab vs. Bhagat Ram (1975) 1 SCC 155*:

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It is unjust and unfair to deny the government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the government servant. A synopsis does not satisfy the requirements of giving the government servant a reasonable opportunity of showing cause against the action proposed to be taken.”

“The State contended that the respondent was not entitled to get copies of statements. The reasoning of the State was that the respondent was given the opportunity to cross-examine the witnesses and during the cross-examination the respondent would have the opportunity of confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the respondent with the gist of the evidence.

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37. We may also notice here that the counsel for the appellant sought to argue that respondent had even failed to give reply to the show cause notice, issued under Rule 9. The removal order, according to him, was therefore justified. We are unable to accept the aforesaid submission. The first enquiry report dated 3.8.2001, is clearly vitiated, for the reasons stated earlier. The second enquiry report can not legally be termed as an enquiry report as it is a reiteration of the earlier, enquiry report. Asking the respondent to give reply to the enquiry report without supply of the documents is to add insult to injury. In our opinion the appellants have deliberately misconstrued the directions issued by the High Court in Writ Petition 937/2003. In terms of the aforesaid order the respondents was required to submit a reply to the charge sheet upon supply of the necessary document by the appellant. It is for this reason that the High Court subsequently while passing an interim order on 7.6.2004 in Writ Petition No. 793/2004 directed the appellant to ensure compliance of the order passed by the Division Bench on 23.7.2003. In our opinion the actions of the enquiry officers in preparing the reports ex-parte without supplying the relevant documents has resulted in miscarriage of justice to the respondent. The conclusion is irresistible that the respondent has been denied a reasonable opportunity to defend himself in the enquiry proceedings.

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The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against the charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant. Unless the statements are given to the government servant he will not

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38. In our opinion, the appellants have miserably failed to give any reasonable explanation as to why the documents have

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not been supplied to the respondent. The Division Bench of the High Court, therefore, very appropriately set aside the order of removal.

39. Taking into consideration the facts and circumstances of this case we have no hesitation in coming to the conclusion that the respondent had been denied a reasonable opportunity to defend himself the inquiry. We, therefore, have no reason to interfere with the judgment of the High Court.

40. Appeal is dismissed.

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Appeal dismissed.

A M/S. SANGHVI RECONDITIONERS PVT. LTD.  
v.  
UNION OF INDIA AND ORS.  
(Civil Appeal No.1435 of 2003)

B FEBRUARY 05, 2010

**[D.K. JAIN AND T.S. THAKUR, JJ.]**

C *Customs Act, 1962 – ss.127B and 127C – Settlement – Duty exemption notification – Appellant-importer suppressed facts to clandestinely avail benefit of the notification – Demand of duty by Commissioner of Customs besides penalty and interest – Appellant filed application for settlement – Settlement Commission confirmed the order of adjudication by Commissioner, but waived penalty and interest and also*  
D *granted total immunity to appellant from prosecution – Still aggrieved, appellant filed writ petition and sought to urge additional ground relating to applicability of ss.54 and 69 – High Court did not permit appellant to urge the additional ground and confirmed the order of Settlement Commission*  
E *– Justification of – Held: On facts, justified – The order of Settlement Commission did not suffer from any error, legal or factual – Having opted to get their customs duty liability settled by the Settlement Commission, appellant cannot be permitted to dissect the Settlement Commission’s order with a view to accept what is favourable to it and reject what is not*  
F *– Additional ground sought to be raised before the High Court was not only an afterthought, adjudication thereon involved investigation into facts and, therefore, the decision of High Court in not entertaining the additional ground did not suffer from any infirmity – Customs Tariff Act, 1975 – Exemption Notification No.211/83-Cus dated 23rd July, 1983, as amended – Constitution of India, 1950 – Art. 226.*

*Circulars/ Government Orders/ Notifications – Exemption Notification – Interpretation of – Held: Exemption Notifications*

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*have to be strictly construed – A person claiming benefit of exemption notification, must show that he satisfies the eligibility criteria.* A

It was alleged that the appellant-importer, a registered ship repair unit, clandestinely availed the benefit of import duty Exemption Notification No.211/83-Cus dated 23rd July, 1983, as amended, on import of multiple consignments of engineering cargo as “ship spares”. B

The Commissioner of Customs demanded customs duty of Rs.68.78 lakhs besides penalty, as also interest under Section 28AB of the Customs Act, 1962. Appellant filed appeal before the Tribunal, but later withdrew the same and thereafter filed an application under Section 127B with the Settlement Commission, disclosing and admitting a duty liability of Rs.20.98 lakhs. The Settlement Commission called for the statutory report from the Jurisdictional Commissioner in terms of Section 127C of the Act. Upon consideration of the information furnished by the Commissioner, particularly the fact that the appellant had given details of the “consignee” as the ship owners, without disclosing the sale of imported “spare parts” to one M/s Elektronik Lab, the Settlement Commission was satisfied that there was suppression of facts on the part of the appellant so as to avail the benefit of duty exemption fraudulently. C D E F

Finally, concluding that the Revenue had been able to produce documentary evidence showing sale of imported “spare parts” by the appellant to M/s Elektronik Lab, who in turn sold the same items to ship owners, the appellant could not claim any benefit under exemption Notification No.211/83, the Settlement Commission sustained the demand of duty of Rs.68.78 lakhs. However, *inter alia*, observing that though the appellant had not G

A made a full and true disclosure of their duty liability but had cooperated with the Settlement Commission, the Settlement Commission waived penalty in excess of Rs.18 lakhs and granted total immunity to the appellant from prosecution. The Settlement Commission also held that since the case of the appellant pertained to a period prior to April, 1995, when Section 28AB of the Act was inserted by the Finance Act, 1996, interest on delayed payment of duty could not be levied on the appellant. B

The appellant filed writ petition before the High Court, and later filed an application for amendment of the writ petition, seeking to urge an additional ground to the effect that some of the consignments of “spare parts” having been imported under the procedure to be followed for “transshipment” or for “warehoused goods for exportation”, hence, no customs duty was payable by virtue of the provisions contained in Sections 54 and 69 of the Act. Although, the amendment was allowed by the High Court in order to examine whether the initial stand, based on the exemption notification, could go hand in hand with the case now sought to be pleaded in the amended petition, but, ultimately, the High Court did not permit the appellant to urge the additional ground relating to the applicability of Sections 54 and 69 of the Act and dismissed the writ petition. Hence the present appeal. C D E F

Dismissing the appeal, the Court

HELD:1. In the present case, the order of the Settlement Commission did not suffer from any error, legal or factual, and, therefore, the High Court was fully justified in dismissing the writ petition. [Para 23] [379-E] G

*Tarini Kamal Pandit & Ors. v. Prafulla Kumar Chatterjee (Dead) by Legal Representatives (1979) 3 SCC 280; Ajajib*

*Singh v. State of Punjab* (2000) 4 SCC 510; *Municipal Corporation of the City of Jabalpur v. State of Madhya Pradesh & Anr.*, (1963) 2 SCR 135; *Collector of Central Excise; Ahmedabad v. Pioma Industries and Imperial Soda Factory* (1997) 10 SCC 400; *Jyotendrasinhji v. S.I. Tripathi & Ors.* 1993 Supp (3) SCC 389; *Paul Industries (India) v. Union of India & Ors.* (2004) 13 SCC 340; *Commissioner of C. Ex., Visakhapatnam v. True Woods Pvt. Ltd.* (2006) 199 E.L.T. 388 (Delhi); *Union of India v. Anil Chanana* (2008) 222 E.L.T. 481 (S.C.) and *C.I.T. Mumbai City XIV, Mumbai v. The Income Tax Settlement Commission, Mumbai & Ors.* (2000) 246 ITR 63 Bom, referred to.

2.1. It is manifest from a bare reading of the provision that in the application filed under Section 127B of the Customs Act, 1962, an applicant is required to make a full and true disclosure of his duty liability, which he had failed to disclose before the proper officer. He is also required to exhaustively explain to the Settlement Commission the manner in which such liability has been incurred; the additional amount of customs duty accepted to be payable by him as also the price of such dutiable goods in respect of which he admits short levy on account of misclassification or otherwise of goods. In other words, the applicant is supposed to make a clean breast of his affairs in regard to short levy or non payment of customs duty admitted to be payable by him. [Para 13]

2.2. Section 127C of the Act prescribes the procedure to be followed by the Settlement Commission on receipt of an application under Section 127B. The section mandates that on receipt of an application under Section 127B, the Settlement Commission shall call for a report from the Commissioner of Customs having jurisdiction and on the basis of the materials contained in such report and having regard to the nature and circumstances of the

case or the complexity of the investigation involved therein, the Settlement Commission may allow the application to be proceeded with or reject the application. [Para 14]

2.3. Section 127H of the Act empowers the Settlement Commission to grant immunity from penalty and prosecution, with or without conditions, in cases where it is satisfied that the assessee has made a full and true disclosure of his duty liability. Section 127J declares that every order of settlement passed under sub-Section (7) of Section 127C shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in Chapter XIVA, be reopened in any proceeding under the Act or under any other law for the time being in force. [Para 15]

3.1. Exemption Notifications have to be strictly construed. A person claiming the benefit of exemption notification, must show that he satisfies the eligibility criteria. [Para 17]

3.2. It is clear from the language of the Exemption Notification No.211/83 dated 23rd July, 1983 (which provided exemption to capital goods, raw materials and consumables for repairs of ocean going vessels) that in order to avail of the benefit of exemption from whole of the duty of customs leviable under the Customs Tariff Act, 1975, twin conditions, viz., (1) capital goods, components, etc. are required for repairs of ocean going vessels, and (2) the ship repair unit should be registered with the Director General of Shipping, Government of India, are to be fulfilled. Both the conditions are cumulative and admit of no exception. Being the foundation for availing the benefits under the notification, both the conditions have to be strictly complied with.

Besides, under the Notification, an importer is also required to maintain a proper account of import, use and consumption of the capital goods, components, etc. imported for the aforesaid purpose in a prescribed form and failure to satisfy the Collector about their installation or consumption for the said purpose makes the importer liable to pay an amount equal to the duty payable on such goods. [Para 17] [373-E-H; 374-A]

*Kartar Rolling Mills v. Commissioner of Central Excise, New Delhi (2006) 4 SCC 772; Eagle Flask Industries Ltd. v. Commissioner of Central Excise, Pune 2004 (171) E.L.T. 296 (S.C.) AND MSCO. Pvt. Ltd. v. Union of India and Ors. 1985 (19) E.L.T. 15, relied on.*

4. In the present case, taking into consideration the documents on record and the sale pattern of the goods and not the value addition, the Settlement Commission came to the conclusion that in the first instance, the goods in question were sold by the appellant to M/s Elektronik Lab and then by the latter to the ship owners under the cover of their own sales invoices and, therefore, the appellant was not entitled to duty exemption under the said Notification. Similarly, M/s Elektronik Lab were also not eligible for duty exemption under the said Notification because they were not registered with the Director General of Shipping, Government of India, as required under the Exemption Notification. Before the High Court an unsuccessful attempt was made to lay more emphasis on exemption from payment of customs duty on the consignments in terms of Sections 54 and 69 of the Act and not under the Exemption Notification No.211/83-CUS dated 23rd July, 1983. Thus, there was a shift in the stand of the appellant before the High Court when sale of the imported components by them to a third party stood proved on the basis of overwhelming documentary evidence on record, disentitling them to the

benefit of the exemption notification. In the final analysis, the High court rightly came to the conclusion, that in the light of the material available on record, the order of the Settlement Commission did not suffer from any error warranting its interference. [Para 20] [376-A-F]

5.1. In so far as the issue with regard to the applicability of Sections 54 and 69 of the Customs Act, 1962 is concerned, it was too late in the day for the appellant to raise such a plea. In the first instance, if the appellant felt that 8 consignments were intended for transshipment and were cleared from the warehouse for exportation and, therefore, no import duty was payable, there was no occasion for them to withdraw their appeal before the Tribunal and prefer an application before the Settlement Commission, moreso when in respect of the remaining consignment, they had accepted and paid the customs duty. When according to the appellant, no customs duty was payable in respect of the 8 consignments, then on the plain language of Section 127B, the appellant's application before the Settlement Commission was not maintainable. An application under Section 127B of the Act would be maintainable only if it discloses duty liability, which had not been disclosed to the proper officer. A disclosure contemplated by the said Section is in the nature of voluntary disclosure of the concealed additional customs duty. Secondly, such a plea was neither raised before the adjudicating authority in response to the show cause notices issued to the appellant nor before the Tribunal as also before the Settlement Commission. [Para 21] [376-F-H; 377-A-C]

5.2. Even before the High Court, in the original writ petition, such a plea was not raised and it was only by way of an amendment application, that an additional ground was sought to be raised. Though it is true that there is no bar in the High Court and for that matter this

A Court entertaining an additional ground, involving a pure  
question of law, but on facts at hand, in the light of the  
findings of the Settlement Commission, based on  
documentary evidence that the goods in question  
imported by the appellant were actually sold by them to  
M/s Elektronik Lab, before these were used for repair of  
ocean going ships, it cannot be held that the additional  
ground did not involve any investigation into facts.  
Documents on record show that the bills of transshipment  
as also bills of export were filed by the appellant before  
the proper officer after the property in the said goods had  
passed to M/s Elektronik Lab. It is clear that since M/s  
Elektronik Lab. was not registered with the Director  
General of Shipping, they were not eligible to avail of duty  
exemption under the said notification, they entered into  
an arrangement with the appellant, a registered ship  
repairing unit, to import the goods for repair of ocean  
going vessels without payment of import duty under the  
Exemption Notification. Thus, the sole object of the  
transactions was to avail of duty exemption under the  
said notification. [Para 21] [377-C-H]

5.3. Additionally, in order to claim the benefit of the  
Exemption Notification, the components, consumables  
etc. had to be used by the importer himself for repair of  
the vessels and not through someone else, who  
incidentally was not even named in the shipping bills.  
Moreover, proper accounts of imports, use and  
consumption of such goods was to be maintained by the  
importer, and in the event of failure to render the account  
for such consumption, the importer was liable to pay the  
customs duty as may be demanded by the  
Commissioner of Customs. However, once the imported  
goods were sold to a third party, the appellant was  
incapacitated from maintaining and rendering the account  
to the Commissioner in terms of the notification. All these

A factors go to show that the additional ground sought to  
be raised before the High Court was not only an  
afterthought, adjudication thereon did involve  
investigation into facts and, therefore, the decision of the  
High court in not entertaining the additional ground did  
not suffer from any infirmity. [Para 21] [377-H; 378-A-D]

6. Since the appellant had not made a full and true  
disclosure, their application should have been rejected  
by the Settlement Commission on that count itself and no  
relief should have been granted to the appellant. However,  
in view of the fact that order passed by the Settlement  
Commission allowing the application of the appellant to  
be proceeded was not challenged by the Commissioner  
nor such a plea was urged by the Revenue before the  
High Court or in their reply to the present appeal, it is  
difficult to reject the application at this stage, though,  
having perused some of the documents available on  
record, it is clear that the appellant had not made a full  
and true disclosure of its affairs before the Settlement  
Commission. Be that as it may, having opted to get their  
customs duty liability settled by the Settlement  
Commission, under Chapter XIVA of the Act, the  
appellant cannot be permitted to dissect the Settlement  
Commission's order with a view to accept what is  
favourable to them and reject what is not. [Para 22] [378-  
D-H; 379-A]

7. It is manifest from the procedure laid down in  
Section 127C of the Act that interim order under sub-  
Section (1) of Section 127C as also the final order under  
sub-Section (7) of the said Section are to be made by the  
Settlement Commission after examination of the reports  
of the Commissioner of Customs or its Commissioner  
(Investigation). These reports are submitted on the  
disclosures made in the application under Section 127B  
of the Act and, therefore, the applicant cannot be

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permitted to resile from his pleadings in the application at any stage of proceedings before the Settlement Commission or set up a new case before the higher Fora. [Para 22] [379-B-D] A

*CIT v. B.N. Bhattacharjee (1979) 4 SCC 121*, referred to. B

**Case Law Reference:**

(1979) 3 SCC 280	referred to	Para 10	
(2000) 4 SCC 510	referred to	Para 10	C
(1963) 2 SCR 135	referred to	Para 10	
(1997) 10 SCC 400	referred to	Para 10	
1993 Supp (3) SCC 389	referred to	Para 10	D
(2004) 13 SCC 340	referred to	Para 10	
(2006) 199 E.L.T. 388 (Delhi)	referred to	Para 11	
(2008) 222 E.L.T. 481 (S.C.)	referred to	Para 11	E
(2000) 246 ITR 63 Bom.	referred to	Para 11	
(2006) 4 SCC 772	relied on	Para 17	
2004 (171) E.L.T. 296 (S.C.)	relied on	Para 17	
1985 (19) E.L.T. 15	relied on	Para 17	F
(1979) 4 SCC 121	referred to	Para 22	

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1435 of 2003. G

From the Judgment & Order dated 23.4.2002 of the High Court of Bombay in Writ Petition No. 633 of 2002.

S.K. Bagaria, Tarun Gulati, Rony John, Ankur Saigal, Bina Gupta, Gaurav Singh, Kishore Kunal for the Appellant. H

A H.P. Rawal, ASG, T.V. Ratnam, B.K. Prasad, Anil Katiyar for the Respondent.

The Judgment of the Court was delivered by

B **D.K. JAIN, J.** 1. This appeal, by special leave, is directed against the final judgment and order dated 23rd April, 2002 rendered by the High Court of Judicature at Bombay in Writ Petition No.633 of 2002, whereby the High Court has dismissed the writ petition, affirming the decision of the Settlement Commission, Customs and Central Excise, Mumbai (hereinafter referred to as, "the Settlement Commission"). C

2. The facts, giving rise to the present appeal, may be summarised thus:

D The appellant is an importer and ship repair unit registered with the Director General of Shipping, Government of India. On the basis of the intelligence gathered, premises of the appellant were searched by the officers of the Customs Commissionerate, Mumbai in December, 1997, resulting in the recovery of incriminating documents. The investigations revealed that the appellant had clandestinely availed of benefit of import duty Exemption Notification No.211/83-Cus dated 23rd July, 1983, as amended, on the import of multiple consignments of engineering cargo as "Ship Spares". Based on the material collected in the course of investigations, two show cause notices dated 29th December, 1997 and 17th June, 1998, were issued to the appellant, demanding customs duty of Rs.3,12,030/- and Rs.65,66,076/- respectively (totalling Rs.68,78,106/-). Upon consideration of the reply furnished by the appellant, the Commissioner of Customs (Preventive), Mumbai by his order dated 26th February, 1999 confirmed the demand of customs duty of Rs.68,78,106/-, besides penalty and interest under Section 28AB of the Customs Act, 1962 (for short "the Act"). F G

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3. Aggrieved, the appellant preferred an appeal to the erstwhile Customs, Excise and Gold (Control) Appellate Tribunal. However, the said appeal was withdrawn by the appellant on the ground that they proposed to prefer an application in terms of Section 127MA of the Act before the Settlement Commission, constituted under the Act and have their case settled under Chapter XIVA of the Act. The appeal was permitted to be withdrawn. The appellant, thereafter, on 17th October, 2000, filed an application under Section 127B of the Act with the Settlement Commission, disclosing and admitting a duty liability of Rs.20,98,786/-.

4. On receiving the application, the Settlement Commission called for the statutory report from the Jurisdictional Commissioner in terms of Section 127C of the Act. In his report, it was submitted by the Commissioner that out of 18 consignments, in respect of 10 imports, the appellant had imported spare parts of Caterpillars and while clearing the cargo, they submitted transshipment permit/shipping bills to the Customs Authorities declaring the cargo as 'ship spares' meant for repairs of ocean going vessels. However, in the course of investigation, documents, viz., sales bills, account registers, etc. retrieved from the appellant, revealed the sale of these goods to one M/s Mehta Earthmovers. In fact, diversion of these goods was admitted by the appellant during investigation and they voluntarily deposited Rs.15 lakhs towards duty liability against these 10 imports. As regards the 2nd show cause notice, the stand of the Commissioner was that one M/s Elektronik Lab, a partnership firm dealing in sales and servicing/maintenance of ship spares and navigation equipment, had placed purchase orders on the appellant for import of spare parts to be fitted on ocean going vessels, as they were not registered with the Director General of Shipping as a ship repair unit and were not eligible for duty free imports under the aforementioned Notification. The appellant imported the spare parts and sold the same to M/s Elektronik Lab; in contravention of the exemption notification.

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5. Taking into consideration the report of the Commissioner and the case records, the Settlement Commission, vide order dated 8th February, 2001, allowed the application of the appellant to be proceeded with under sub-Section (1) of Section 127C of the Act. The amount of additional duty determined to be payable under sub-Section (3) of said Section was duly paid by the appellant.

6. At the next hearing before the Settlement Commission, it was asserted on behalf of the appellant that they had fulfilled all the conditions as stipulated in Notification No.211/83 dated 23rd July, 1983 and that no spare parts, so imported, were sold by them to M/s Elektronik Lab. The stand of the appellant was that they had installed the imported equipment on the ocean going vessels with the assistance of M/s Elektronik Lab, who were the authorised agents of the foreign supplier, M/s Kelvin Hughes, in India from whom the appellant had imported the goods. It was argued that the said Notification did not prohibit an importer from taking assistance of a third party in the repair of the ships. It was reiterated that all the "ship spares" imported by the appellant were fitted in the ocean going vessels directly by them with the assistance of M/s Elektronik Lab and, therefore, all the conditions, stipulated in the Notification, were fulfilled. Apparently, the Settlement Commission was not convinced with the explanation offered by the appellant. On the contrary, the Settlement Commission felt that the appellant had transferred/sold the imported goods to M/s Elektronik Lab; as pleaded by the Commissioner. Accordingly, vide order dated 24th September, 2001, the Settlement Commission directed the Commissioner to submit his final report along with the relevant material to establish that the goods imported by the appellant were actually sold to M/s Elektronik Lab.

7. In his final report dated 27th September, 2001, the Commissioner submitted that the appellant had imported navigational equipments, such as, Radar System, SART,

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A NATEX and EPIRB in pursuance of the Purchase Orders  
placed by M/s Elektronik Lab on them; delivered the cargo on  
board the ships of M/s Dredging Corporation, M/s Chowgule  
Steamships Ltd. and M/s Essar Coastal Ltd. and the purchaser,  
M/s Elektronik Lab, subsequently carried out installation of the  
said equipments on board the ships owned by the above three  
shipping companies. The stand of the Commissioner was that  
since M/s Elektronik Lab, who had purchased the imported  
spare parts from the appellant for the purpose of fitting on board  
the ships of the said three shipping companies, was not  
registered with the Director General of Shipping, they were not  
eligible to claim benefit of exemption Notification, and,  
therefore, they routed the imports through the appellant and  
further, since the "spare parts" imported for carrying out repairs  
of the ships were not actually used by the appellant and had  
been sold to M/s Elektronik Lab; prior to its usage on ships,  
the appellant was also not entitled to the benefit of duty  
exemption under the said Notification. It was also pointed out  
that the rates of the spare parts charged by M/s Elektronik Lab  
to the ship owners for the same items were higher than those  
charged by the appellant from them, which undisputedly showed  
the value addition.

8. Upon consideration of the information furnished by the  
Commissioner, particularly the fact that the appellant had given  
details of the "consignee" as the ship owners, without disclosing  
the sale of imported "spare parts" to M/s Elektronik Lab, the  
Settlement Commission was satisfied that there was  
suppression of facts on the part of the appellant so as to avail  
of the benefit of duty exemption fraudulently. According to the  
Settlement Commission, the sale of ship spares/navigational  
equipments by the appellant to M/s Elektronik Lab was an  
independent transaction, distinct from the subsequent sale by  
the latter to the ship owners, which was in the nature of home  
consumption. Finally, concluding that the Revenue had been  
able to produce documentary evidence showing sale of

A imported "spare parts" by the appellant to M/s Elektronik Lab,  
who in turn sold the same items to ship owners, the appellant  
could not claim any benefit under exemption Notification  
No.211/83, the Settlement Commission sustained the demand  
of duty of Rs.47,79,320/- in respect of 8 consignments sold by  
the appellant to M/s Elektronik Lab. The Settlement  
Commission, thus, confirmed the additional customs duty of  
Rs.68,78,106/- demanded from the appellant under the order  
of adjudication by the Commissioner. *Inter alia*, observing that  
though the appellant had not made a full and true disclosure of  
their duty liability but had cooperated with the Settlement  
Commission, the Settlement Commission waived penalty in  
excess of Rs.18 lakhs and granted total immunity to the  
appellant from prosecution. The Settlement Commission also  
held that since the case of the appellant pertained to a period  
prior to April, 1995, when Section 28AB of the Act was inserted  
by the Finance Act, 1996, interest on delayed payment of duty  
could not be levied on the appellant.

9. Being dissatisfied with the order passed by the  
Settlement Commission, the appellant took the matter to the  
High Court by preferring the aforementioned writ petition. Before  
the High Court, an application was moved by the appellant for  
amendment of the writ petition, seeking to urge an additional  
ground to the effect that some of the consignments of "spare  
parts" having been imported under the procedure to be followed  
for "Transshipment" or for "warehoused goods for exportation",  
no customs duty was payable by virtue of the provisions  
contained in Sections 54 and 69 of the Act. Although, the  
amendment was allowed by the High Court in order to examine  
whether the initial stand, based on the exemption notification,  
could go hand in hand with the case now sought to be pleaded  
in the amended petition, but, ultimately, the High Court did not  
permit the appellant to urge the additional ground relating to  
the applicability of Sections 54 and 69 of the Act. The High  
Court was of the view that since the ground now sought to be

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raised was in fact contradictory to the earlier stand, at this belated stage, a fresh ground could not be entertained. As stated above, the High Court has dismissed the writ petition. Aggrieved by the said decision, the appellant is before us in this appeal.

10. Assailing the decisions of the Settlement Commission as also of the High Court, Mr. S.K. Bagaria, learned senior counsel appearing on behalf of the appellant, strenuously urged that the High Court committed a serious illegality in declining to entertain the additional ground regarding applicability of Sections 54 and 69 of the Act in respect of 8 consignments in question, particularly when the point raised was a pure question of law going to the root of the matter and did not involve any investigation of facts. In support of the contention that a pure question of law can be raised for the first time even before this Court, reliance was placed on the decisions of this Court in *Tarini Kamal Pandit & Ors. Vs. Prafulla Kumar Chatterjee (Dead) by Legal Representatives*<sup>1</sup>, *Ajaib Singh Vs. State of Punjab*<sup>2</sup>, *Municipal Corporation of the City of Jabalpur Vs. State of Madhya Pradesh & Anr.*<sup>3</sup>, *Collector of Central Excise, Ahmedabad Vs. Pioma Industries and Imperial Soda Factory*<sup>4</sup>. Relying on *Jyotendrasinhji Vs. S.I. Tripathi & Ors.*<sup>5</sup> and *Paul Industries (India) Vs. Union of India & Ors.*<sup>6</sup>, it was contended that the finality clause contained in Section 127J of the Act did not bar the jurisdiction of the High Court under Article 226 of the Constitution to interfere with the order passed by the Settlement Commission when it was contrary to the provisions of the Act. It was urged that instead of outrightly declining to go into the merits of the additional ground raised, at best, the

1. (1979) 3 SCC 280.

2. (2000) 4 SCC 510.

3. (1963) 2 SCR 135.

4. (1997) 10 SCC 400.

5. 1993 Supp (3) SCC 389.

6. (2004) 13 SCC 340.

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A High Court could have given an opportunity to the Revenue to meet the stand of the appellant. It was also contended that the expression “clearance of the goods for home consumption” under Section 47 of the Act has a definite connotation and meaning under the Act and the imported goods can be cleared for home consumption only when a bill of entry for home consumption is filed; it is assessed; duties assessed are paid and an order is passed by the proper officer for clearance of the goods for home consumption, which is not the case here, as no bill of entry for home consumption was filed. Learned counsel was at pains to explain that the said consignments were correctly released for transshipment and re-export and the conditions as stipulated in Sections 54 and 69 of the Act having been complied with, no customs duty was leviable on the said 8 consignments. It was, thus, pleaded that the matter deserved to be remitted back to the High Court for reconsideration on merits.

11. Mr. H.P. Rawal, learned Additional Solicitor General, appearing on behalf of the Revenue, on the other hand, supporting the decision of the Settlement Commission as also of the High Court strenuously urged that having specifically pleaded before the Commissioner of Customs in adjudication proceedings and also in the application before the Settlement Commission that there was no sale of the imported equipment to M/s Elektronik Lab and that they were brought into the picture for the purpose of installation and regular maintenance of the said equipment and, therefore, there was no impediment in their availing of benefit under the Exemption Notification, the subsequent change in their stance that even sale of these parts to M/s Elektronik Lab for the purpose of installation on ocean going vessels was not prohibited under the said Notification or that 8 consignments were otherwise exempt from payment of customs duty under Sections 54 and 69 of the Act, clearly shows that even before the Settlement Commission, the appellant had not made a full and true disclosure of the duty

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liability under the Act. It was argued that the Settlement Commission having itself recorded a finding that the appellant had not made a full and true disclosure of their duty liability, their application ought to have been rejected by the Settlement Commission on this ground alone. Referring to the invoices raised by the appellant on M/s Elektronik Lab, learned counsel submitted that the documents on record clearly establish that the transactions between the appellant and M/s Elektronik Lab were purely trading transactions, which not only show the untruthfulness of the appellant's initial stance but also prove the violation of the order passed in favour of the appellant permitting re-export of the consignments in question. As regards the plea of the appellant that these consignments were not exigible to any duty in terms of Sections 54 and 69 of the Act, learned counsel submitted that apart from the fact that it involved determination of disputed questions of fact, an application under Section 127B of the Act for determination of question whether an item is dutiable or not, was not maintainable before the Settlement Commission. In support of the proposition, learned counsel relied on the decision of the Delhi High Court in *Commissioner of C. Ex., Visakhapatnam Vs. True Woods Pvt. Ltd*<sup>7</sup>. Relying heavily on the decision of this Court in *Union of India Vs. Anil Chanana*<sup>8</sup> and a decision of the Bombay High Court in *C.I.T. Mumbai City XIV, Mumbai Vs. The Income Tax Settlement Commission, Mumbai & Ors.*,<sup>9</sup> wherein while explaining the concept of compounding in terms of Rule 6 of the Customs (Compounding of Offences) Rules, 2005, which confers power on the compounding authority to grant immunity from prosecution to a person who has made full and true disclosure of facts relating to the case and has cooperated in the proceedings before him, it was held that applications for compounding ought to be disallowed if

7. 2006 (199) E.L.T. 388 (Delhi).

8. 2008 (222) E.L.T. 481 (S.C.).

9. 2000 (246) ITR 63 (Bom).

there are demonstrable contradictions or inconsistencies or incompleteness in the case of the applicant, learned counsel asserted that in the light of the facts found by the Settlement Commission and affirmed by the High Court, the appellant does not deserve any further relief.

12. Before advertng to the merits of the issues raised on behalf of the parties, it would be appropriate to briefly notice the scheme of Chapter XIVA of the Act. The said Chapter was inserted in the Act by the Finance Act, 1998 (Act 21 of 1998) with effect from 1st August, 1998, for setting up of Customs and Central Excise Settlement Commission on lines of similar Commission already functioning under the Income Tax Act, 1961 since its incarnation on the recommendation of Justice Wanchoo Committee. The proceedings under the Chapter commence by an application being made under Section 127B, relevant part whereof reads thus:

“127B. *Application for settlement of cases.*- (1) Any importer, exporter or any other person (hereinafter in this Chapter referred to as the applicant) may, at any stage of a case relating to him, make an application in such form and in such manner as may be specified by rules, and containing a full and true disclosure of his duty liability which has not been disclosed before the proper officer, the manner in which such liability has been incurred, the additional amount of customs duty accepted to be payable by him and such other particulars as may be specified by rules including the particulars of such dutiable goods in respect of which he admits short levy on account of misclassification or otherwise of goods, to the Settlement Commission to have the case settled and such application shall be disposed of in the manner hereinafter provided:.....”

13. It is manifest from a bare reading of the provision that in the application filed under Section 127B, an applicant is

required to make a full and true disclosure of his duty liability, which he had failed to disclose before the proper officer. He is also required to exhaustively explain to the Settlement Commission the manner in which such liability has been incurred; the additional amount of customs duty accepted to be payable by him as also the price of such dutiable goods in respect of which he admits short levy on account of misclassification or otherwise of goods. In other words, the applicant is supposed to make a clean breast of his affairs in regard to short levy or non payment of customs duty admitted to be payable by him.

14. Section 127C of the Act prescribes the procedure to be followed by the Settlement Commission on receipt of an application under Section 127B of the Act. The section mandates that on receipt of an application under Section 127B, the Settlement Commission shall call for a report from the Commissioner of Customs having jurisdiction and on the basis of the materials contained in such report and having regard to the nature and circumstances of the case or the complexity of the investigation involved therein, the Settlement Commission may allow the application to be proceeded with or reject the application.

15. Section 127E empowers the Settlement Commission to reopen the completed proceedings in appropriate cases, while Section 127F confers all the powers upon the Settlement Commission, which are vested in an officer of the Customs under the Act. Section 127H empowers the Settlement Commission to grant immunity from penalty and prosecution, with or without conditions, in cases where it is satisfied that the assessee has made a *full and true disclosure* of his duty liability. Under Section 127-I, the Settlement Commission can send back the matter to the proper officer where it finds that the applicant is not cooperating with it. Section 127J declares that every order of settlement passed under sub-Section (7) of

A Section 127C shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in Chapter XIVA, be reopened in any proceeding under the Act or under any other law for the time being in force.

B 16. To appreciate the rival submissions in this behalf, it would be appropriate at this juncture to refer to Exemption Notification No.211/83 dated 23rd July, 1983. In so far as it is relevant for this appeal, the Notification reads as follows:

C “Exemption to capital goods, raw materials and consumables for repairs of ocean-going vessels - In exercise of the powers conferred by sub-Section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts capital goods, components, raw materials and consumables, when imported into India for repairs of Ocean-going vessels by the ship repair unit registered with the Director General of Shipping, Government of India, from the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), and from the whole of the additional duty leviable thereon under Section 3 of the said Customs Tariff Act, subject to the following conditions, namely:-

F (1) the importer shall maintain a proper account of import, use and consumption of the capital goods, components, raw materials and consumables imported into India for the aforesaid purpose and shall submit such account periodically to the Collector of Customs in such form and in such manner as may be specified by the said Collector;

G (2) the importer, by the execution of a bond in such form and for such sum as may be specified by the

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Collector of Customs, binds himself to pay on demand an amount equal to the duty leviable:-

- (a) on goods which are capital goods, as are not proved to the satisfaction of the Collector of Customs to have been installed or otherwise used for the aforesaid purpose:
- (b) on goods which are components, raw material and consumables, as are not proved to the satisfaction of the Collector of Customs to have been used or consumed for the aforesaid purpose; within a period of three months from the date of importation thereof or within such extended period as the Collector of Customs, on being satisfied that there is sufficient cause for not installing, using or consuming them, as the case may be, for the aforesaid purpose within the said period, allow.

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.....”

17. It is clear from the language of the Notification that in order to avail of the benefit of exemption from whole of the duty of customs leviable under the Customs Tariff Act, 1975, twin conditions, viz., (1) capital goods, components, etc. are required for repairs of ocean going vessels, and (2) the ship repair unit should be registered with the Director General of Shipping, Government of India, are to be fulfilled. Both the conditions are cumulative and admit of no exception. Being the foundation for availing the benefits under the notification, both the conditions have to be strictly complied with. Besides, under the Notification, an importer is also required to maintain a proper account of import, use and consumption of the capital goods, components, etc. imported for the aforesaid purpose in a prescribed form and failure to satisfy the Collector about their installation or consumption for the said purpose makes the

A importer liable to pay an amount equal to the duty payable on such goods. It is a settled position in law that Exemption Notifications have to be strictly construed. A person claiming the benefit of exemption notification, must show that he satisfies the eligibility criteria. (See: *Kartar Rolling Mills Vs. Commissioner of Central Excise, New Delhi*<sup>10</sup>, *Eagle Flask Industries Ltd. Vs. Commissioner of Central Excise, Pune*<sup>11</sup> and *Msc. Pvt. Ltd. Vs. Union of India and Ors.*<sup>12</sup>)

18. With this background, we may now advert to the facts at hand to examine if the findings recorded by the Settlement Commission and the view taken by the High court in the judgment in appeal, holding that the appellant could not be permitted to urge additional ground was justified or hit by the contentions to the contrary raised on behalf of the appellant.

19. In so far as the first issue is concerned, we feel that it would be expedient to extract the stand of the appellant before the Settlement Commission, which is as follows:

“During the hearing the learned Advocate of the applicant gave his written submission. He argued that the applicant has fulfilled the conditions of Notification No.211/83. All the end use bonds have been finalised. The Commission asked the applicant whether he has sold the material to M/s Elektronik Lab. The applicant submitted that he has not sold the goods to M/s Elektronik Lab. He is the importer and he installed the equipment on the vessel with the assistance of M/s Elektronik Lab. M/s Elektronik Lab is the authorised agent in India of the foreign supplier M/s Kelvin Hughes from whom the applicant imported the goods. He argued that the Notification does not say that the imported cannot get the assistance from a third party. The Commission asked him about his argument on the

10. (2006) 4 SCC 772.

11. 2004 (171) E.L.T. 296 (S.C.)

12. 1985 (19) E.L.T. 15.

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statement of Shri K.D. Motta, Manager of M/s Sanghvi Reconditioners that the signature of representatives of M/s Shipping Corpn. of India were forged by him. The applicant submitted that he is admitting it and he is guilty of that. The Commission further asked him on not admitting the duty of Rs.47,79,320/-. The applicant submitted that the ship spares were imported and fitted in the ocean going vessels directly by him with the assistance of M/s Elektronik Lab. and, therefore, he fulfilled the conditions of Notification No.211/83. The Commission drew his attention to some of the invoices issued by M/s Sanghvi Reconditioners to M/s Elektronik Lab which showed that the goods were cleared from Customs and delivered to M/s Elektronik Lab. If it is so, it appears that the applicant has transferred/sold the goods to M/s Elektronik Lab. To this query of the Commission, the applicant submitted that it is only a language mistake and all the bills do not show this and these invoices are issued only for collecting the money.”

20. It is evident from the afore-extracted paragraph that the unequivocal stand of the appellant was that the material imported by them was installed/used for repairs of ocean going vessels directly by them with the assistance of M/s Elektronik Lab, an authorised agent in India of the foreign supplier from whom the appellant had imported the goods. It was pleaded that the Exemption Notification did not bar the importer getting assistance from a third party for installation of the equipment on the vessels. The appellant stood its ground even when they were confronted by the Settlement Commission with some invoices, showing that the goods imported were got cleared from Customs and delivered to M/s Elektronik Lab. When the Settlement Commission asked the Revenue to submit further report to establish their case that the goods imported by the appellant were actually sold by them to M/s Elektronik Lab, the Revenue produced sale invoices and delivery challans, showing sale of imported cargo by the appellant to M/s Elektronik Lab,

A who in turn, sold these goods to the ship owners for which necessary documents, such as, bills were raised. Taking into consideration the documents on record and the sale pattern of the goods and not the value addition, the Settlement Commission came to the conclusion that in the first instance, the goods in question were sold by the appellant to M/s Elektronik Lab and then by the latter to the ship owners under the cover of their own sales invoices and, therefore, the appellant was not entitled to duty exemption under the said Notification. Similarly, M/s Elektronik Lab were also not eligible for duty exemption under the said Notification because they were not registered with the Director General of Shipping, Government of India, as required under the Exemption Notification. As stated above, before the High Court an unsuccessful attempt was made to lay more emphasis on exemption from payment of customs duty on eight consignments in terms of Sections 54 and 69 of the Act and not under the Exemption Notification No.211/83-CUS dated 23rd July, 1983. Thus, there was a shift in the stand of the appellant before the High Court when sale of the imported components by them to a third party stood proved on the basis of overwhelming documentary evidence on record, disentitling them to the benefit of the exemption notification. In the final analysis, the High court came to the conclusion, and in our opinion correctly, that in the light of the material available on record, the order of the Settlement Commission did not suffer from any error warranting its interference.

21. In so far as the second issue with regard to the applicability of Sections 54 and 69 of the Act is concerned, in our view, it was too late in the day for the appellant to raise such a plea. In the first instance, if the appellant felt that these 8 consignments were intended for transshipment and were cleared from the warehouse for exportation and, therefore, no import duty was payable, there was no occasion for them to withdraw their appeal before the Tribunal and prefer an application before the Settlement Commission, more so when



A in respect of the remaining consignment, they had accepted and paid the customs duty. We feel that when according to the appellant, no customs duty was payable in respect of the 8 consignments, then on the plain language of Section 127B of the Act, appellant's application before the Settlement Commission was not maintainable. In our view, an application under Section 127B of the Act would be maintainable only if it discloses duty liability, which had not been disclosed to the proper officer. Obviously, a disclosure contemplated by the said Section is in the nature of voluntary disclosure of the concealed additional customs duty. Secondly, indubitably, such a plea was neither raised before the adjudicating authority in response to the show cause notices issued to the appellant nor before the Tribunal as also before the Settlement Commission. Even before the High Court, in the original writ petition, such a plea was not raised and it was only by way of an amendment application, that an additional ground was sought to be raised. Though it is true that there is no bar in the High court and for that matter this Court entertaining an additional ground, involving a pure question of law, but on facts at hand, in the light of the findings of the Settlement Commission, based on documentary evidence that the goods in question imported by the appellant were actually sold by them to M/s Elektronik Lab, before these were used for repair of ocean going ships, it cannot be held that the additional ground did not involve any investigation into facts. Documents on record show that the bills of transshipment as also bills of export were filed by the appellant before the proper officer after the property in the said goods had passed to M/s Elektronik Lab. It is clear that since M/s Elektronik Lab. was not registered with the Director General of Shipping, they were not eligible to avail of duty exemption under the said notification, they entered into an arrangement with the appellant, a registered ship repairing unit, to import the goods for repair of ocean going vessels without payment of import duty under the Exemption Notification. Thus, the sole object of the transactions was to avail of duty exemption under the said notification. Additionally, in order to claim the benefit

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A of the Exemption Notification, the components, consumables etc. had to be used by the importer himself for repair of the vessels and not through someone else, who incidentally was not even named in the shipping bills. Moreover, proper accounts of imports, use and consumption of such goods was to be maintained by the importer, and in the event of failure to render the account for such consumption, the importer was liable to pay the customs duty as may be demanded by the Commissioner of Customs. However, once the imported goods were sold to a third party, the appellant was incapacitated from maintaining and rendering the account to the Commissioner in terms of the notification. All these factors go to show that the additional ground sought to be raised before the High Court was not only an after thought, adjudication thereon did involve investigation into facts and, therefore, the decision of the High court in not entertaining the additional ground did not suffer from any infirmity.

22. We also find substance in the contention of learned counsel for the Revenue that having observed that the appellant had not made a full and true disclosure, their application should have been rejected by the Settlement Commission on that count itself and no relief should have been granted to the appellant. However, in view of the fact that order dated 8th February, 2001 passed by the Settlement Commission allowing the application of the appellant to be proceeded was not challenged by the Commissioner nor such a plea was urged by the Revenue before the High Court or in their reply to the present appeal, we find it difficult to reject the application at this stage, though, having perused some of the documents available on record, we are convinced that the appellant had not made a full and true disclosure of its affairs before the Settlement Commission. Be that as it may, we are of the opinion that having opted to get their customs duty liability settled by the Settlement Commission, under Chapter XIVA of the Act, the appellant cannot be permitted to dissect the Settlement Commission's order with a view to accept what is favourable to them and

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A reject what is not. As observed by Krishna Iyer, J. in *CIT Vs. B.N. Bhattacharjee*<sup>13</sup>, the recommendation of Wanchoo Committee was a compromise measure of a statutory settlement machinery, where a big evader could make a disclosure, disgorge what the Commission fixes and thus buy quittance for himself and accelerate recovery of taxes in arrears by the State, although less than what may be fixed after long protracted litigation and recovery proceedings. It is manifest from the procedure laid down in Section 127C of the Act that interim order under sub-Section (1) of Section 127C as also the final order under sub-Section (7) of the said Section are to be made by the Settlement Commission after examination of the reports of the Commissioner of Customs or its Commissioner (Investigation). Obviously, these reports are submitted on the disclosures made in the application under Section 127B of the Act and, therefore, the applicant cannot be permitted to resile from his pleadings in the application at any stage of proceedings before the Settlement Commission or set up a new case before the higher Fora.

E 23. Having considered the rival submissions with reference to the pleadings, the provisions of Section 127B of the Act and exemption notification No.211/83 dated 23rd July, 1983, we are of the opinion that the order of the Settlement Commission did not suffer from any error, legal or factual, and, therefore, the High Court was fully justified in dismissing the writ petition.

24. In view of the foregoing discussion, we see no merit in this appeal. The appeal is dismissed accordingly with costs, quantified at Rs.50,000/-.

B.B.B. Appeal dismissed.

A G.V. SIDDARAMESH  
v.  
STATE OF KARNATAKA  
(Criminal Appeal No. 160 of 2006)

B FEBRUARY 05, 2010

**[P. SATHASIVAM AND H.L. DATTU, JJ.]**

C *Penal Code, 1860 – ss.304-B and 498A – Dowry Prohibition Act, 1961 – ss.3 and 4 – Dowry death – Wife subjected to cruelty and harassment by husband on account of demand for dowry – Wife committed suicide by hanging herself – Conviction and sentence u/ss.304-B, 498A and ss.3,4 of 1961 Act – Conviction upheld by High Court and sentence partly modified – On appeal, held: Ingredients of s.304-B satisfied – It pointed towards the guilt of husband – Husband failed to discharge presumption raised against him – Conviction u/s 304-B upheld but sentence reduced from life imprisonment to R.I. for 10 years while other conviction and sentence upheld – Evidence Act, 1872 - s.113.*

E **The question which arose for consideration in this appeal was whether the High Court was justified in upholding the conviction for offences punishable u/s. 4 of Dowry Prohibition Act, 1961, ss. 498-A and 304-B IPC and sentence of imprisonment for life u/s. 304-B IPC, sentence of simple imprisonment for 3 years with fine u/s. 498A IPC, sentence of simple imprisonment for 2 years with fine u/s. 4 of the 1961 Act; and modifying the sentence for the offence punishable u/s. 3 of the 1961 Act from 5 years to 2 years and a fine from Rs. 2,50,000/- to Rs. 1,25,000/-.**

Partly dismissing the appeal, the Court

**HELD: 1.1. The essential ingredients which need to**

13. (1979) 4 SCC 121.

be proved in order to attract the offence of dowry death u/s. 304-B IPC are: (i) death is caused in unnatural circumstances; (ii) death must have occurred within seven years of the marriage of the deceased; and (iii) it needs to be shown that soon before her death, the deceased was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry. [Para 10] [390-E-F]

1.2. The post mortem report suggests that the body of the deceased was bearing the mark of hanging and there is the indication of an injury mark 8 inches long around the neck. The cause of death was shock and asphyxia as a result of hanging. There are also unexplained traces of scratches around the neck region. This raises serious doubts about the possibility of strangulation of the deceased, as opined by the doctor. Therefore, it is beyond doubt that the death was an unnatural death. The second ingredient is also proved as the marriage between the deceased took place on 13.12.1997 and the death of the deceased took place on 17.1.998, which is within the 7 year timeframe. [Para 11] [390-G-H; 391-A-B]

1.3. The complainant PW-1 asserts that the appellant and his family demanded 20 tolas of gold, Rs. 2 lakhs in cash and a motorcycle as dowry. Ultimately as negotiations progressed, the money was settled at Rs. 1,65,000 in cash, 18 tolas of gold and a motorcycle. These demands were met by the complainant. Also against the will of the family of the deceased, the deceased was taken to her matrimonial home two days before the incident, which coincided with Pushyamasa, which is considered as an inauspicious time by the family of the deceased. Appellant himself in his statement u/s. 313 Cr.PC stated that there were negotiations taking place as to the

A amount of money and gold, which will change hands during the course of the marriage, but he is unclear as to the place where the negotiations took place. The brother and sister of the deceased, PW-10-friend of the family of the deceased, PW-15 and PW-16 testified the said fact. PW-6-goldsmith testified that 18 tolas of gold were given to him by the complainant to prepare various ornaments like bangles, mangalya chain, ear hangings, nose rings etc for the bride. Some of these ornaments were recovered during the investigation and some were found on the body of the deceased. The prosecution also established through PW-2 that he was instrumental in arranging a loan of Rs. 50,000/- from his friend S who in turn had withdrawn money from the Bank and in this regard, the receipt has also been produced. PW-10, PW-16 and PW-9 also stated being present at the medical store of the appellant, where the money to the tune of Rs. 1,65,000/- changed hands. Therefore, there is no doubt that there was a demand for dowry prior to the death of the deceased, which was met by the family of the deceased. [Para 12] [391-C-H; 392-A-B]

1.4. Cruelty can either be mental or physical. It is difficult to straightjacket the term cruelty by means of a definition, because cruelty is a relative term. What constitutes cruelty for one person may not constitute cruelty for another person. [Para 13] [392-F]

*V. Bhagat v. D. Bhagat* AIR 1994 SC 710, referred to.

1.5. PW 3-elder sister of deceased stated in her evidence that when she went to the matrimonial house of the deceased on the day of incident, the deceased confided in her that there is further demand of Rs. 50,000/- by way of dowry by the appellant, and on account of the failure to meet the demand, she is being treated with cruelty and is harassed physically and mentally. She also

stated that the deceased also requested her elder sister not to disclose these developments to their father as he had health problems related to high blood pressure. When PW-2- brother of deceased went to the house of the deceased, he also came back with the same version. The testimony of the two witnesses is consistent and very clear that the deceased was indeed mentally disturbed, the day she committed suicide by hanging herself. [Para 13] [392-C-E]

1.6. The circumstances surrounding the instant case, where there was pressure on the deceased to arrange a further sum of Rs. 50,000/- and the consequent misdemeanor on the part of appellant no doubt puts serious apprehension on the mind of the deceased, that, if she continues to stay with the appellant, she might be assaulted physically and mentally. It is difficult how different people react to different situations. The threats by the husband of the deceased over the course of two days, when the deceased was in her matrimonial home might have been enough for the deceased who was in a fragile state of mind to reach breaking point and end her life. Therefore, all the ingredients of section 304-B have been satisfied, pointing towards the guilt of the appellant. [Para 13] [392-G-H; 393-A-B]

2. A reading of s. 113-B of the Evidence Act shows that there must be material to show that soon before the death of woman, such woman was subjected to cruelty or harassment for or in connection with demand of dowry, then only a presumption can be drawn that a person has committed the dowry death of a women. It is then up to the appellant to discharge this presumption. The appellant has not brought on record anything substantial to dispel the theory of the prosecution. Appellant failed to prove that there were demands for

dowry immediately before the marriage, there were negotiations which took place involving both the families and that there was a further demand of Rs. 50,000/- on his part. All these circumstances point to the fact that the appellant has not rebutted or discharged the presumption. [Para 15] [393-F-H; 394-E-F]

3. In the facts and circumstances of the case, the appellant was rightly convicted u/s. 304-B IPC, for being responsible for the death of his wife. However, his sentence of life imprisonment imposed by the courts below appears to be excessive. The appellant is a young man and has already undergone 6 years of imprisonment after being convicted by the trial court and the High Court. In the facts and circumstances of the case, a sentence of 10 years rigorous imprisonment would meet the ends of justice. While confirming the conviction of the appellant u/s. 304-B IPC, the sentence of imprisonment for life is reduced to 10 years rigorous imprisonment. The other conviction and sentence passed against the appellant are confirmed. [Para 17] [395-C-E]

*Hemchand v. State of Haryana* 1994 (4) Suppl. SCR 295, referred to.

Case Law Reference:

AIR 1994 SC 710 Referred to. Para 13  
 1994 (4) Suppl. SCR 295 Referred to. Para 16

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 160 of 2006.

From the Judgment & Order dated 23.3.2005 of the High Court of Karnataka at Bangalore in Criminal Appeal No. 1755 of 2003.

Brijesh Kalappa, Gopal Singh, Divya Nair, N. Ganpathy for the Appellant. A

Sanjay R. Hegde, Vikrant Yadav for the Respondent.

The Judgment of the Court was delivered by

**H.L. DATTU, J.** 1. This criminal appeal arises out of common judgment and order passed by the Karnataka High Court in Criminal Appeal No. 1755 of 2003 and Criminal Appeal No. 665 of 2004, whereby and whereunder the court has partly allowed the appeal, and in so far as the appellant is concerned, while maintaining the conviction for offences punishable under Section 4 of Dowry Prohibition Act, 1961 and Sections 498-A and 304-B of the Indian Penal Code, 1860, has modified the sentence for the offence punishable under Section 3 of the Dowry Prohibition Act, 1961 from 5 years and a fine of Rs. 2,50,000/- to 2 years and a fine of Rs. 1,25,000/- and, in default, to undergo simple imprisonment for 6 months. C

2. The learned Additional Sessions Judge had sentenced the appellant under the following heads : - D

(i) To undergo R.I for 5 years and a fine of Rs. 2,50,000/- and in default, to undergo R.I for two years for the offence punishable under Section 3 of the Dowry Prohibition Act. E

(ii) To undergo S.I for two years and to pay a fine of Rs. 10,000, in default, to undergo S.I for one month for an offence punishable under Section 4 of the Dowry Prohibition Act. F

(iii) To undergo S.I for 3 years and to pay a fine of Rs. 10,000/-, in default, to undergo S.I for one month for an offence punishable under Section 498-A of the Indian Penal Code. G

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(iv) To undergo imprisonment for life for an offence punishable under section 304-B of IPC. A

3. On appeal, the High Court has allowed the appeal in part and has modified the sentence as stated earlier. The appellant has preferred this appeal against his conviction and sentence of imprisonment for life under Section 304-B of the Indian Penal Code. B

4. The facts of the case in brief are, that the complainant K.G Lingappa's daughter Usha (deceased) had been married to Siddaramesh (appellant) on 13.12.1997. The deceased went to her matrimonial home on 15.1.1998. On 17.1.1998, the deceased committed suicide by hanging herself. In order to prove its case, the prosecution has examined as many as twenty eight witnesses. The case of the prosecution in brief is that, at the time when there were talks of the marriage in November 1996, the appellant and his family demanded 20 tolas of gold, Rs. 2 lakhs in cash and a motorcycle as dowry. Ultimately as negotiations progressed, the money was settled at Rs. 1,65,000 in cash, 18 tolas of gold, and a motorcycle. D

These demands were met with by the complainant and in furtherance the marriage took place on 13.12.1997. The case of the prosecution further is that, the deceased Usha was taken to her matrimonial home on 15.1.1998, despite protests by the family of the complainant that it was pushyamasa which was inauspicious for the bride's entry into her matrimonial home. On 17.1.1998, the elder sister of the deceased, Karibasamma PW-3, went to the matrimonial home of the deceased along with sweets and other eatables. The deceased confided to her elder sister that she was being treated cruelly by the accused. E

The deceased further confided that there were fresh demands on her to get Rs. 50,000/- more as dowry. On her reluctance, she was being beaten by her husband and the husband was not keen on maintaining a physical relationship with her. Karibasamma later returned home and confided to her father the torture and harassment meted out to her sister (deceased) F

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by the appellant on account of non-fulfilment of dowry demand. The complainant sent his son Karibasappa, the brother of the deceased PW-2 to enquire into the matter. The brother of the deceased also found out from her sister that she was being ill-treated and was unhappy. On the same night, the complainant received the news that her daughter had committed suicide by hanging herself. After reaching the matrimonial home of their daughter and seeing that their daughter had committed suicide, they informed the police. A complaint was lodged by the complainant to the police alleging that it was the dowry harassment on the part of the family of the appellant that led to the suicide of her daughter. A case was registered in Cr. No. 18/1998, against the appellant and his father under Section 498-A and 304 B of the IPC and Sections 3,4 and 6 of the Dowry Prohibition Act. The Learned Chief Judicial Magistrate committed the case to the Court of Sessions, as it involved offences exclusively triable by the Sessions Court. When the matter was pending before the Sessions Judge, the case was transferred to Fast Track Court, Devangere in accordance with a notification issued by the High Court.

5. The case of the appellant is that giving money or taking money is not dowry and further, money demanded after marriage is not dowry. The appellant further submits that the facts of the case do not disclose commission of an offence punishable under Section 498-A and 304-B of the IPC. The appellant contended that most of the witnesses examined by the prosecution were interested witnesses who were closely related to the deceased. The appellant further contended that the police officer had no power to charge-sheet as per the provisions of Section 7 of the Dowry Prohibition Act. Another important contention of the appellant was that, it was he who first made a complaint to the police about the mishap after he brought his father, and therefore he cannot be guilty of any wrongdoing.

6. The learned Additional Sessions Judge has taken into

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A consideration the testimony of the complainant PW-1 and that of Karibasappa and Karibasamma (PW-2 and PW-3 respectively), the brother and the sister of the deceased. It has also relied upon the testimony of other witnesses to conclude that there was a demand for dowry and there was acceptance of dowry on the part of the appellant and his father. The trial court also took into consideration, the suspicious conduct of the appellant. The appellant had alleged that the deceased had committed suicide because she was in love with another person before marriage and was frustrated when she could not marry him. Again in his statement under Section 313 of Cr.PC, the appellant stated that since coming to her matrimonial home, she compared the house of the appellant to that of a "railway bogie", which, according to her, did not satisfactorily compare to her father's house and her sister's house. The trial court however observed that the appellant produced nothing on record to prove that the deceased had an affair before the marriage with another person. Further the trial court refused to believe the version of the appellant contained in Ex. D-3. The time of writing this letter, which was addressed to the Sub-Inspector of the Devangere Police Station, was shown as 12.30 in the midnight of 17.1.98. However, by his own admission, he had left his shop at 10.30 PM. He had stated that after reaching home, he noticed that his wife has committed suicide by hanging, and thereafter went and informed the sister of the deceased and then went to Kogganooru to inform his father and after his return went to the police station. The trial court has inferred that it was not possible for the appellant to reach the Police Station before 1 AM or 2 AM. Also according to the trial court, the natural reaction of anyone seeing a dead body would be that of shock or disbelief. This according to the trial court was indicative of the suspicious conduct of the appellant who wanted to hush up the matter. Further this document was never called for from the Police Station and only a photocopy of the same was produced. The trial court also relied upon the post mortem report which revealed that death was caused due to asphyxiation due to hanging and there were also some

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unexplained scratches in the body which, according to the trial court was evidence of the harassment of the deceased by the appellant and, hence, concluded that the cruel treatment and harassment of the deceased by the appellant led her to commit suicide. Section 113B of the Evidence Act raises a presumption against the accused. The onus lies on the accused against whom the presumption lies to discharge it. The appellant has failed to discharge the burden satisfactorily. Based on these findings, the trial court has convicted and sentenced the accused to undergo R.I for 5 years and a fine of Rs. 2,50,000/- and in default, to undergo R.I for two years for the offence punishable under Section 3 of the Dowry Prohibition Act; to undergo S.I for two years and to pay a fine of Rs. 10,000/-, in default, to undergo S.I for one month for an offence punishable under Section 4 of the Dowry Prohibition Act; to undergo S.I for 3 years and to pay a fine of Rs. 10,000/-, in default, to undergo S.I for one month for an offence punishable under Section 498-A of the Indian Penal Code; to undergo imprisonment for life for an offence punishable under Section 304-B of IPC. The trial court however went on to acquit the accused no.2 (father of the appellant) of all the charges.

7. The appellant (accused No. 1) preferred appeal before the High Court of Karnataka challenging his conviction and sentence and the State has preferred appeal challenging the acquittal of the appellant for the offence punishable under Section 6 of the Dowry Prohibition Act and accused No. 2 (father of the appellant) for all the offences. As stated earlier, the High Court has partly allowed the appeals.

8. This court while entertaining the special leave petition has issued notice confining to the offence under Section 304-B of IPC. We have heard learned counsel for the parties regarding the same.

9. Section 304-B of the IPC reads:-

(1) Where the death of a woman is caused by any

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burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death" and such husband or relative shall be deemed to have caused her death.

Explanation:-For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

10. The essential ingredients which need to be proved in order to attract the offence of dowry death is as follows:-

- (i) Death is caused in unnatural circumstances.
- (ii) Death must have occurred within seven years of the marriage of the deceased.
- (iii) It needs to be shown that soon before her death, the deceased was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry.

11. Coming to the first ingredient, the post mortem report suggests that the body of the deceased was bearing the mark of hanging and there is the indication of an injury mark 8 inches long around the neck. The cause of death was shock and asphyxia as a result of hanging. There are also unexplained traces of scratches around the neck region. This raises serious

doubts about the possibility of strangulation of the deceased, as opined by Dr. T. Parashuramappa PW-24. Therefore, it is beyond doubt that the death was an unnatural death. The second ingredient is also proved as the marriage between the deceased took place on 13.12.1997 and the death of the deceased took place on 17.1.1998, which is within the 7 year timeframe.

12. To prove the third ingredient, we need to peruse the testimony of the witnesses. The complainant PW-1 asserts that the appellant and his family demanded 20 tolas of gold, Rs. 2 lakhs in cash and a motorcycle as dowry. Ultimately as negotiations progressed, the money was settled at Rs. 1,65,000 in cash, 18 tolas of gold and a motorcycle. These demands were met by the complainant. Also against the will of the family of the deceased, the deceased was taken to her matrimonial home on 15.1.1998, which coincided with Pushyamasa, which is considered as an inauspicious time by the family of the deceased. There is no reason to disbelieve the statement of the complainant, as the appellant himself in his statement under Section 313 of Cr.PC has stated, that, there were negotiations taking place as to the amount of money and gold, which will change hands during the course of the marriage, but he is unclear as to the place where the negotiations took place. The brother and sister of the deceased also testify this fact. In addition to this, Umapathy, a friend of the family of the deceased PW-10, M.G Shankarappa PW-15, Maheshwaraiiah PW-16 also testified that there were indeed serious negotiations which took place as to the amount of dowry prior to the marriage. The prosecution also brought on record the testimony of Narayan PW-6, the goldsmith who testified that 18 tolas of gold were given to him by the complainant to prepare various ornaments like bangles, mangalya chain, ear hangings, nose rings etc for the bride. Some of these ornaments were recovered during the investigation and some were found on the body of the deceased. The prosecution has also established

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A through Karibasappa PW-2 that he was instrumental in arranging a loan of Rs. 50,000/- from his friend Shivakumar who in turn had withdrawn money from Andhra Bank and in this regard, the receipt has also been produced. Umapathy PW-10, Maheshwaraiiah PW-16 and Shivakumar PW-9 have also stated being present at the medical store of the appellant, where the money to the tune of Rs. 1,65,000/- changed hands. Therefore, there is no doubt that there was a demand for dowry prior to the death of the deceased, which was met by the family of the deceased.

C 13. Karibasamma PW-3, the elder sister of the deceased has also stated in her evidence that when she went to the matrimonial house of the deceased on 17.1.1998, the deceased confided in her that there is further demand of Rs. 50,000/- by way of dowry by the appellant, and on account of the failure to meet the demand, she is being treated with cruelty and is harassed physically and mentally. She has also stated that the deceased also requested her elder sister not to disclose these developments to their father as he had health problems related to high blood pressure. When the brother of the deceased Karibasappa PW-2, went to the house of the deceased, he also came back with the same version. The testimony of these two witnesses is consistent and very clear that the deceased was indeed mentally disturbed, the day she committed suicide by hanging herself. Cruelty can either be mental or physical. It is difficult to straightjacket the term cruelty by means of a definition, because cruelty is a relative term. What constitutes cruelty for one person may not constitute cruelty for another person. This court in the case of *V. Bhagat v. D. Bhagat*, (AIR 1994 SC 710), has observed that mental cruelty is such that if the wronged party continues to stay with his/her spouse there is reasonable apprehension of injury to the wronged party. The circumstances surrounding the present case, where there was pressure on the deceased to arrange a further sum of Rs. 50,000/- and the consequent misdemeanor on the part of the appellant no doubt puts serious apprehension

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on the mind of the deceased, that, if she continues to stay with the appellant, she might be assaulted physically and mentally. It is difficult how different people react to different situations. The threats by the husband of the deceased over the course of two days, when the deceased was in her matrimonial home might have been enough for the deceased who was in a fragile state of mind to reach breaking point and end her life. Therefore all the ingredients of Section 304-B have been satisfied, pointing towards the guilt of the appellant.

14. Section 113-B of the Evidence Act raises a presumption against the accused and reads :-

“When the question is whether a person has committed the dowry death of a women and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry; the court shall presume that such person had caused the dowry death.

Explanation - For the purposes of this section, “dowry death” shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860).”

15. A reading of Section 113-B of the Evidence Act shows that there must be material to show that soon before the death of woman, such woman was subjected to cruelty or harassment for or in connection with demand of dowry, then only a presumption can be drawn that a person has committed the dowry death of a women. It is then up to the appellant to discharge this presumption. The appellant however has not brought on record anything substantial to dispel the theory of the prosecution. In fact, while filing application for grant of bail, the appellant had stated that the deceased was having an affair with another person before her marriage and since she could not marry him, she was in distress and, therefore, committed suicide. However there was no evidence brought on record to prove this theory. Further in his statement under Section 313

A of Cr.P.C. he has stated that the deceased was not happy with the house of the appellant and stated that the house of her sister and father were bigger and better. Further his theory of intimating the police and lodging a complaint before the Sub-Inspector of the Police Station at 12.30 AM fails as he had closed his shop at around 10.30 PM. After that by his own admission, he went and informed the sister of the deceased and then went outside the town to bring his father before lodging the complaint. Therefore, it is very much likely that the accused after witnessing the dead body of the deceased tried to hush up the matter and went to the Police Station much later. If this theory is to be true, this brings the suspicious behaviour of the appellant more to light, as the natural reaction to seeing the dead body of a wife who had come to her matrimonial home only 2 days earlier would be that of disbelief or shock. Instead by his own admission, he went and informed the sister of the deceased. The prosecution witnesses have also testified that the appellant came to the paternal house of the deceased and made a statement to the effect that it would be detrimental to both the families if a complaint was to be lodged and to bury the past. The appellant has also not produced anything on record to dispel the theory of the prosecution that there was a further demand of Rs. 50,000/- on his part. He has also failed to prove that there were demands for dowry immediately before the marriage and there were negotiations which took place involving both the families. All these circumstances point to the fact that the appellant has not rebutted or discharged the presumption. Therefore we have no doubt in holding that the appellant is guilty for the offence punishable under Section 304-B of the IPC, for being responsible for the death of his wife.

G 16. On the point of sentence, learned counsel for the appellant pointed out that the appellant is in jail for more than six years. The appellant was young at the time of incident and therefore, the sentence awarded by the trial court and confirmed by the High Court may be modified. In so far as sentencing under the section is concerned, a three Judge Bench of this

A court in the case of Hemchand v. State of Haryana, has observed that “Section 304-B merely raises a presumption of dowry death and lays down that the minimum sentence should be 7 years, but it may extend to imprisonment for life. Therefore, awarding the extreme punishment of imprisonment for life should be used in rare cases and not in every case.” Keeping in view the facts and circumstances of the case, this court reduced the sentence from life imprisonment awarded by the High Court to 10 years R.I on the above principle.

C 17. In conclusion, we are satisfied that in the facts and circumstances of the case, the appellant was rightly convicted under Section 304-B IPC. However, his sentence of life imprisonment imposed by the courts below appears to us to be excessive. The appellant is a young man and has already undergone 6 years of imprisonment after being convicted by the Additional Sessions Judge and the High Court. We are of the view, in the facts and circumstances of the case, that a sentence of 10 years rigorous imprisonment would meet the ends of justice. We, accordingly while confirming the conviction of the appellant under Section 304-B IPC, reduce the sentence of imprisonment for life to 10 years rigorous imprisonment. The other conviction and sentence passed against the appellant are confirmed. In the result, the appeal is dismissed subject to the above modification of sentence.

N.J. Appeal partly dismissed. F

A TUKARAM S. DIGHOLE  
v.  
MANIKRAO SHIVAJI KOKATE  
(Civil Appeal No. 2928 of 2008)

B FEBRUARY 5, 2010

**[D.K. JAIN AND P. SATHASIVAM, JJ.]**

*Election Laws:*

C *Representation of the People Act, 1951:*

D ss.101(b), 101(d)(ii), 101(d)(iv) and 123(3) – Lok Sabha Elections – Corrupt practice – Proof – Election of returned candidate challenged on the ground of communal appeal to electorate – VHS cassette stated to have contained the speeches produced – HELD: A charge of corrupt practice envisaged by the Act is equated with a criminal charge and, therefore, standard of proof therefor is proof beyond reasonable doubt as in a criminal case – A heavy onus lies on election petitioner to prove the charge of corrupt practice in the same way as a criminal charge – In the instant case, election petitioner did not lead any evidence to prove that the cassette produced on record containing communal appeal to electorate was a true reproduction of original speeches by the returned candidate or his agent – It has, therefore, not been proved that the returned candidate was guilty of indulging in corrupt practices – Evidence Act, 1872 – s.74.

*Evidence Act, 1872:*

G ss. 3 and 74 – “Public document” – Cassettes – HELD: Tape records of speeches are ‘documents’ as defined in s.3 and stand on no different footing than photographs – Court must be satisfied beyond reasonable doubt that the record has not been tampered with – In the instant case, the Tribunal

*has rightly held that in the absence of a cogent evidence regarding authenticity of the cassette, the source and the manner of its acquisition, the cassette could not be read in evidence – Representation of the People Act, 1951 – ss.101(b) and (d).*

The appellant who, lost the Lok Sabha election, filed an election petition challenging the election of the respondent-turned candidate, primarily on the allegations that the respondent had made communal appeals to the electorate, and prayed that the election of the respondent be declared as void u/ss. 101(b), 101(d)(ii) and 101(d)(iv) of the Representation of the People Act, 1951 and the petitioner be declared as elected in terms of s.101(b) of the Act. In support of his allegations, he filed a VHS cassette said to have contained the speeches made by the respondent. The Election Tribunal dismissed the election petition holding that the election petitioner had failed to prove the allegations, as he did not produce any evidence to show that the VHS cassette filed by him was the true reproduction of the original speeches made by the respondent. The Tribunal also did not accept the plea of the election petitioner that the cassette was obtained from the Election Commission and was a public document, and its mere production was sufficient and no further evidence was required to be adduced to prove as to how the said cassette was obtained by him. Aggrieved, the petitioner filed the appeal.

The questions for consideration before the Court were: (i) whether the finding by the Tribunal that in the absence of any evidence to show that the VHS Cassette was obtained by the appellant from the Election Commission, the cassette placed on record by the appellant could not be treated as a public document is perverse and (ii) whether a mere production of an audio cassette, assuming that the same is a certified copy

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**A issued by the Election Commission, is per se conclusive of the fact that what is contained in the cassette is the true and correct recording of the speech allegedly delivered by the respondent or his agent?**

**B Dismissing the appeal, the Court**

**HELD: 1.1. The Tribunal has rightly held that in the absence of any cogent evidence regarding the source and the manner of its acquisition, the authenticity of the cassette was not proved and it could not be read in evidence despite the fact that the cassette is a public document. No relevant material was brought to notice of the Court which would impel it to hold that the finding by the Tribunal is perverse, warranting interference. [Para 19] [411-B-D]**

**D 1.2. A charge of corrupt practice, envisaged by the Representation of the People Act, 1951 is equated with a criminal charge and, therefore, standard of proof therefor would not be preponderance of probabilities as in a civil action but proof beyond reasonable doubt as in a criminal trial. If a stringent test of proof is not applied, a serious prejudice is likely to be caused to the successful candidate whose election would not only be set aside, but he may also incur disqualification to contest an election for a certain period, adversely affecting his political career. Thus, a heavy onus lies on the election petitioner to prove the charge of corrupt practice in the same way as a criminal charge is proved. [Para 11] [405-D-E]**

**G Amar Nath Agarwalla vs. Dhillon Transport Agency (2007) 4 SCC 306; Razik Ram vs. Jaswant Singh Chouhan (1975) 4 SCC 769; Jeet Mohinder Singh vs. Harminder Singh Jassi (1999) 9 SCC 386, relied on.**

**H 2.1. There is no dispute that certified copy of a**

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A document issued by the Election Commission would be a public document u/s 74 of the Evidence Act, 1872. It is well settled that tape-records of speeches are “documents” as defined in s.3 of the Evidence Act and stand on no different footing than photographs. There is also no doubt that the new techniques and devices are the order of the day. Audio and video tape technology has emerged as a powerful medium through which first hand information about an event can be gathered and in a given situation may prove to be a crucial piece of evidence. At the same time, with fast development in the electronic techniques, the tapes/cassettes are more susceptible to tampering and alterations by transposition, excision, etc. which may be difficult to detect and, therefore, such evidence has to be received with caution. The Court must be satisfied, beyond reasonable doubt that the record has not been tampered with. Though it would neither be feasible nor advisable to lay down any exhaustive set of rules by which the admissibility of such evidence may be judged but it needs to be emphasised that to rule out the possibility of any kind of tampering with the tape, the standard of proof about its authenticity and accuracy has to be more stringent as compared to other documentary evidence. [Para 16-17 and 20-21] [408-F-H; 409-A-E; 411-E-G; 412-A-C]

*Ziyauddin Burhanuddin Bukhari vs. Brijmohan Ramdass Mehra & Ors.* (1976) 2 SCC 17; *Yusufalli Esmail Nagree vs. State of Maharashtra* (1967) 3 SCR 720; *R. vs. Maqsd Ali* (1965) 2 ALL E.R. 464; *Ram Singh & Ors. vs. Col. Ram Singh* 1985 (Supp) SCC 611; and *R.K. Anand vs. Registrar, Delhi High Court* (2009) 8 SCC 106, relied on.

2.2. Tested on the touchstone of the tests and safeguards, in the instant case, the appellant has miserably failed to prove the authenticity of the cassette as well as the accuracy of the speeches purportedly

A made by the respondent. Admittedly, the appellant did not lead any evidence to prove that the cassette produced on record was a true reproduction of the original speeches by the respondent or his agent. On a careful consideration of the evidence and circumstances of the case, the appellant has failed to prove his case that the respondent was guilty of indulging in corrupt practices. [Para 25] [413-C-E]

Case Law Reference:

C	C	(2007) 4 SCC 306	relied on	para 9
		(1975) 4 SCC 769	relied on	para 12
		(1999) 9 SCC 386	relied on	para 13
D	D	(1976) 2 SCC 17	relied on	para 20
		(1967) 3 SCR 720	relied on	para 21
		(1965) 2 ALL E.R. 464	relied on	para 22
		1985 (Supp) SCC 611	relied on	para 24
E	E	(2009) 8 SCC 106	relied on	para 24

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2928 of 2008.

F From the Judgment & Order dated 25.1.2008 of the High Court of Judicature of Bombay in Election Petition No. 13 of 2004.

G Krishna Venugopal, S. Udaya Kumar Sagar, Bina Madhawan, Shwetank Sailakwal (for Lawyer’s Knit & Co.) for the Appellant.

H K.V. Vishwanathan, Sudhanshu S. Chaudhari, Naresh Kumar, Abhishek for the Respondent.

The Judgment of the Court was delivered by

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**D.K. JAIN, J.** 1. This appeal under Section 116-A of the Representation of the People Act, 1951 (for short “the Act”) is directed against the final judgment and order dated 25th January, 2008, rendered by the High Court of Judicature at Bombay in Election Petition No.13 of 2004, whereby the election petition preferred by the appellant, challenging the election of the respondent to the House of People (Lok Sabha) from 69, Sinnar Parliamentary Constituency in the State of Maharashtra has been dismissed.

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2. Briefly stated, the material facts giving rise to the present appeal are as under:

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Election to the said parliamentary constituency was held on 13th October, 2004 and the results were declared on 16th October, 2004. The appellant contested the elections as a candidate of NCP-Congress — R.P.I. alliance, whereas the respondent contested the election as a Shiv Sena — Bharatiya Janta Party alliance candidate. Out of a total of 1,35,063 votes cast in the election, while the respondent secured 67,556 votes, the appellant could manage 47,593 votes. Resultantly, the respondent was declared elected.

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3. Not being satisfied with the election result, the appellant preferred an election petition, challenging the election on several grounds and for declaring the said election to be void in terms of Sections 100(1)(b), 100(1)(d)(ii) and 100(1)(d)(iv) of the Act, with consequential relief of declaring the appellant as elected in terms of Section 101(b) of the Act.

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4. The election petition was contested by the respondent denying all the allegations. It was pleaded that the election petition was not maintainable inasmuch as it was not in the prescribed format; no details of the communal appeals allegedly made by respondent and his agents were mentioned in the

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A petition; certified copies of the VHS Cassette and its transcript, containing the speeches delivered by the respondent, had not been furnished and even the provisions of Section 86 of the Act had not been complied with.

B 5. Upon consideration of the pleadings, the High Court (hereinafter referred to as “the Tribunal”) framed the following issues:

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“(1) Whether the petitioner proves that the election of the respondent is liable to be quashed and set aside for having made communal appeals in his speeches recorded on the VHS Cassette produced by the petitioner in Court?

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(2) Whether the petitioner proves that the election of the respondent is liable to be quashed and set aside under Sections 100(1)(d)(ii) and 100(1)(d)(iv) of the Representation of People Act, 1951 for the reasons set out in paragraphs 9 to 18 of the Election Petition?

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(3) Whether the petitioner proves that the respondent had deliberately issued the letter at Exhibit E page 42 dated 28.9.2004 in the name of the petitioner with a view to misguide the voters?

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(4) Whether the respondent proves that he has not addressed communal and racial speeches as alleged in VHS Cassette filed by the petitioner?”

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6. In support of the case, one of the documents placed on record by the appellant was a VHS Cassette which, according to him, was obtained from the Election Commission of India and contained a true reproduction of the speeches delivered by the respondent and his supporters during the election campaign. Out of the 20 documents produced, only 3 documents viz. FIR dated 12th October, 2004 (Ex. P2), complaint dated

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29th October, 2004 (Ex.P3) and a special supplement issued in the newspaper "Gavkari" on 3rd September, 2004 (Ex.P4) were exhibited. No other documents, including the VHS Cassette, were exhibited. The appellant and the respondent examined themselves as witnesses in support of their respective stands. No other witness was examined.

7. Analysing the evidence adduced by the parties on the Issues, the Tribunal answered Issues No.1 to 3 in the negative and in view of answer to Issue No.1, Issue No.4 was not answered. On Issue No.1 the Tribunal observed that though the appellant had placed on record the VHS Cassette but had failed to produce any evidence to show that the said cassette was a true reproduction of the original speeches. The Tribunal did not accept the plea of the appellant that since the cassette is a "public document", as defined in Section 74 of the Indian Evidence Act, 1872 (for short "the Evidence Act), its mere production was sufficient and no further evidence was required to be adduced to prove as to how the said cassette was obtained by the appellant. It has been observed that even in the affidavit filed by the appellant, in lieu of examination-in-chief, there is no mention of the said cassette and that it had been obtained from the office of the Election Commission on payment of requisite charges for the same. The Tribunal has also found that the transcripts produced by the appellant have not been proved to be those of the original audio recordings. The Tribunal finally held that since the contents of the cassette and the transcripts had not been proved, the allegation of the appellant that the respondent had indulged in corrupt practices by appealing to the Maratha community to vote on the basis of community, could not be accepted. On Issue No.2, the Tribunal has observed that apart from the fact that there are no specific pleadings in the election petition with regard to the claim of the respondent about the work done by him and the alleged threats by him in publication "Deshdhoot", the appellant had failed to adduce any evidence to prove that the claims made by the respondent in the special supplement of the local newspaper

(Ex.P4) were false or that the said threats amounted to corrupt practices under Section 123(2)(a)(i) of the Act. The Tribunal has, accordingly, held that the appellant has failed to prove that the respondent had indulged in any corrupt practices. As regards Issue No.3, the Tribunal has held that the letter/pamphlet purportedly written by the appellant and allegedly circulated by the respondent in order to defame the appellant had not been proved by the appellant. The election petition having been dismissed with costs, the appellant is before us in this appeal.

8. Mr. Krishnan Venugopal, learned senior counsel, appearing on behalf of the appellant, confined his challenge to the finding of the Tribunal on Issue No.1. He submitted that besides being a public document, the contents of VHS Cassette were not specifically denied by the respondent and, therefore, no further evidence was required to be produced to prove the authenticity of the cassette. According to the learned counsel, the Tribunal has committed a serious error of law in rejecting the evidence adduced by the appellant, in the form of the said cassette. It was strenuously urged that the finding of the Tribunal to the effect that the appellant had failed to prove the factum of communal speeches being made by the respondent and/or his agents, is palpably erroneous and, therefore, deserves to be set aside.

9. Mr. K.V. Vishwanathan, learned senior counsel, appearing on behalf of the respondent, on the other hand, supported the decision of the Tribunal and submitted that apart from the fact that there was no specific pleading in the election petition with regard to the mode of acquisition of the cassette in question, even if it was assumed that the said cassette was a public document yet in order to attract the provisions of Section 123 of the Act, the appellant was required to prove with cogent evidence that the speeches recorded therein were, in fact, made by the respondent and his agents. In support of the proposition that unless a document is exhibited at the trial and is put in evidence it cannot be looked into, reliance was placed

on a decision of this Court in *Amar Nath Agarwalla vs. Dhillon Transport Agency*<sup>1</sup>. Learned counsel asserted that the finding recorded by the Tribunal on the issue, being a pure finding of fact, no interference is called for.

10. The short question for consideration is whether the Tribunal was justified in discarding the cassette placed on record by the appellant to prove the allegation of appeal by the respondent to the voters to vote on communal ground, amounting to a corrupt practice within the meaning of Section 123(3) of the Act?

11. Before we proceed to examine the controversy at hand, we deem it necessary to reiterate that a charge of corrupt practice, envisaged by the Act, is equated with a criminal charge and therefore, standard of proof therefor would not be preponderance of probabilities as in a civil action but proof beyond reasonable doubt as in a criminal trial. If a stringent test of proof is not applied, a serious prejudice is likely to be caused to the successful candidate whose election would not only be set aside, he may also incur disqualification to contest an election for a certain period, adversely affecting his political career. Thus, a heavy onus lies on the election petitioner to prove the charge of corrupt practice in the same way as a criminal charge is proved.

12. Explaining the nature and extent of burden of proof in an election trial involving a charge of corrupt practice, in *Razik Ram vs. Jaswant Singh Chouhan*<sup>2</sup>, speaking for the Bench, Sarkaria, J. observed as under:

...It is well settled that a charge of corrupt practice is substantially akin to a criminal charge. The commission of a corrupt practice entails serious penal consequences. It not only vitiates the election of the candidate concerned but also disqualifies him from taking part in elections for

1. (2007) 4 SCC 306.

2. (1975) 4 SCC 769.

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A a considerably long time. Thus, the trial of an election petition being in the nature of an accusation, bearing the indelible stamp of quasi-criminal action, the standard of proof is the same as in a criminal trial. Just as in a criminal case, so in an election petition, the respondent against whom the charge of corrupt practice is levelled, is presumed to be innocent unless proved guilty. *A grave and heavy onus, therefore, rests on the accuser to establish each and every ingredient of the charge by clear, unequivocal and unimpeachable evidence beyond reasonable doubt.*"

(emphasis supplied)

D 13. In *Jeet Mohinder Singh vs. Harminder Singh Jassi*<sup>3</sup>, a Bench of three judges of this Court, summarising the principles laid down by this Court from time to time in the field of election jurisprudence; adumbrated the following legal principles, relevant for our purpose: to be kept in view by the Election Tribunals and the Appellate Courts while dealing with election petitions and appeals arising therefrom:

E "(i) The success of a candidate who has won at an election should not be lightly interfered with. Any petition seeking such interference must strictly conform to the requirements of the law. Though the purity of the election process has to be safeguarded and the Court shall be vigilant to see that people do not get elected by flagrant breaches of law or by committing corrupt practices, the setting aside of an election involves serious consequences not only for the returned candidate and the constituency, but also for the public at large inasmuch as re-election involves an enormous load on the public funds and administration.

H 3. (ii) Charge of corrupt practice is quasi-criminal in

H 3. (1999) 9 SCC 386.

character. If substantiated, it leads not only to the setting aside of the election of the successful candidate, but also of his being disqualified to contest an election for a certain period. It may entail extinction of a person's public life and political career. A trial of an election petition though within the realm of civil law is akin to trial on a criminal charge. Two consequences follow. Firstly, the allegations relating to commission of a corrupt practice should be sufficiently clear and stated precisely so as to afford the person charged a full opportunity of meeting the same. Secondly, the charges when put to issue should be proved by clear, cogent and credible evidence. To prove charge of corrupt practice a mere preponderance of probabilities would not be enough. There would be a presumption of innocence available to the person charged. The charge shall have to be proved to the hilt, the standard of proof being the same as in a criminal trial.

(iii) The Appellate Court attaches great value to the opinion formed by the trial Judge more so when the trial Judge recording findings of fact is the same who had recorded the evidence. The Appellate Court shall remember that the jurisdiction to try an election petition has been vested in a Judge of the High Court. Secondly, the trial Judge may have had the benefit of watching the demeanour of witnesses and forming first-hand opinion of them in the process of evaluation of evidence. The Supreme Court may re-assess the evidence and come to its own conclusions on feeling satisfied that in recording findings of fact the High Court has disregarded settled principles governing the approach to evidence or committed grave or palpable errors."

A 14. In the backdrop of the afore-stated principles, we may now advert to the facts at hand to examine if the finding recorded by the Tribunal in the judgment in appeal, holding that the appellant has failed to prove that the respondent had committed corrupt practice, falling within the ambit of sub-Section (3) of Section 123 of the Act, is justified or not.

B 15. Section 123 of the Act defines corrupt practices. In the instant case, Issue No.1 is based on the alleged violation of sub-Section (3) of Section 123, which reads as follows:

C "(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate:

E [Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause.]"

F 16. The vital ingredients of the sub-Section, relevant for this appeal, are - (i) appeal by a candidate or his agent or by any person with the consent of a candidate or his election agent; (ii) to vote or refrain from voting for any person and (iii) on the ground of religion, race, caste, community or language. As stated above, the case of the appellant is that the respondent had appealed to the electorate to vote on communal lines. In support of the allegation, a cassette, allegedly containing speeches made by him and his agents, along with its transcript was produced. According to the appellant, the cassette contained speeches, which were recorded at the instance of the Election Commission and that the cassette having been obtained from the Election Commission, it was a public



document and therefore, the burden of proof which lay on him to prove the allegation stood discharged. A

17. Chapter V of the Evidence Act deals with documentary evidence. Section 61 thereof lays down that the contents of documents may be proved either by primary or by secondary evidence. As per Section 62 of the Evidence Act, primary evidence means the document itself produced for the inspection of the Court. Section 63 categorises five kinds of secondary evidence. Section 64 lays down that documents must be proved by primary evidence except in the cases mentioned in the following Sections. To put the matter briefly, the general rule is that secondary evidence is not admissible until the non-production of primary evidence is satisfactorily proved. However, clause (e) of Section 65, which enumerates the cases in which secondary evidence relating to documents may be given, carves out an exception to the extent that when the original document is a “public document” secondary evidence is admissible even though the original document is still in existence and available. Section 74 of the Evidence Act defines what are known as “public documents”. As per Section 75 of the Evidence Act, all documents other than those stated in Section 74 are private documents. There is no dispute that certified copy of a document issued by the Election Commission would be a public document. B C D E

18. However, in the present case, the dispute is not whether a cassette is a public document but the issues are whether: (i) the finding by the Tribunal that in the absence of any evidence to show that the VHS Cassette was obtained by the appellant from the Election Commission, the cassette placed on record by the appellant could not be treated as a public document is perverse and (ii) a mere production of an audio cassette, assuming that the same is a certified copy issued by the Election Commission, is *per se* conclusive of the fact that what is contained in the cassette is the true and correct recording of the speech allegedly delivered by the respondent H

A or his agent?

19. Insofar as the first question, formulated above, is concerned, it would be profitable to extract the observations of the Tribunal on the issue. The Tribunal observed thus:

B “14. It is no doubt true that the Petitioner has produced the VHS Cassette on record. This cassette was produced on 30.11.2004. However, the Petitioner has produced no evidence on record to indicate that this VHS cassette was a true reproduction of the original speeches. The submissions of the learned counsel for the Petitioner, that the VHS Cassette is a public document as defined u/s. 76 of the Indian Evidence Act, cannot be accepted. There is no evidence to indicate that the VHS cassette was obtained from the election commission. The Petitioner who examined himself has not adverted to this video recording in his examination in chief. There is no averment in the affidavit filed in lieu of examination in chief to the effect that he had obtained the cassette from the office of the election commission and that he had paid the requisite charges for the same. At the time of the arguments, the learned counsel for the Petitioner pointed out that this Cassette was in fact issued to the Petitioner by the election commission’s office. But this is not sufficient. A public document need not be proved under the Indian Evidence Act. However, it must be brought on record as evidence. It must be admitted in evidence as a certified copy of the original before any presumption can be drawn regarding its genuineness. I am fortified in my view by the decision of the Supreme Court in the case of *Amarnath Agarwal* (supra) where the Supreme Court has held that the mere production of the documents along with the written submissions without exhibiting them at the trial would be sufficient for the Court to look into those documents as they were not in evidence and the defendant had no opportunity to reply to those C D E F G

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documents. The Petitioner has not proved the receipt issued by the election commission's office and has thus failed to prove that the VHS Cassette was a public document. That being the position, it is not possible to rely on the contents of the VHS cassette."

Thus, observing that the appellant had failed to produce even the receipt stated to have been issued by the Election Commission's office, the Tribunal held that mere production of the cassette with the Election Petition would not lead to the inference that it had been produced in evidence and being a public document, it was not required to be proved. Having perused the material on record, we are in complete agreement with the Tribunal that in the absence of any cogent evidence regarding the source and the manner of its acquisition, the authenticity of the cassette was not proved and it could not be read in evidence despite the fact that the cassette is a public document. No relevant material was brought to our notice which would impel us to hold that the finding by the Tribunal is perverse, warranting our interference.

20. The second issue, in our opinion, is of greater importance than the first one. It is well settled that tape-records of speeches are "documents" as defined in Section 3 of the Evidence Act and stand on no different footing than photographs. (See: *Ziyauddin Burhanuddin Bukhari vs. Brijmohan Ramdass Mehra & Ors.*<sup>4</sup>). There is also no doubt that the new techniques and devices are the order of the day. Audio and video tape technology has emerged as a powerful medium through which a first hand information about an event can be gathered and in a given situation may prove to be a crucial piece of evidence. At the same time, with fast development in the electronic techniques, the tapes/cassettes are more susceptible to tampering and alterations by transposition, excision, etc. which may be difficult to detect and, therefore, such evidence has to be received with caution.

4. (1976) 2 SCC 17.

A Though it would neither be feasible nor advisable to lay down any exhaustive set of rules by which the admissibility of such evidence may be judged but it needs to be emphasised that to rule out the possibility of any kind of tampering with the tape, the standard of proof about its authenticity and accuracy has to be more stringent as compared to other documentary evidence.

C 21. In *Yusufalli Esmail Nagree vs. State of Maharashtra*<sup>5</sup>, this Court observed that since the tape-records are prone to tampering, the time, place and accuracy of the recording must be proved by a competent witness. It is necessary that such evidence must be received with caution. The Court must be satisfied, beyond reasonable doubt that the record has not been tampered with.

D 22. In *R. vs. Maqsood Ali*<sup>6</sup>, it was said that it would be wrong to deny to the law of evidence advantages to be gained by new techniques and new devices, provided the accuracy of the recording can be proved and the voices recorded are properly identified. Such evidence should always be regarded with some caution and assessed in the light of all the circumstances of each case.

F 23. In *Ziyauddin Burhanuddin Bukhari* (supra), relying on *R. vs. Maqsood Ali* (supra), a Bench of three judges of this Court held that the tape-records of speeches were admissible in evidence on satisfying the following conditions:

G (a) The voice of the person alleged to be speaking must be duly identified by the maker of the record or by others who know it.

G (b) Accuracy of what was actually recorded had to be proved by the maker of the record and satisfactory

5. (1967) 3 SCR 720.

H 6. (1975) 2 ALL E.R. 464.

evidence, direct or circumstantial, had to be there so as to rule out possibilities of tampering with the record. A

(c) The subject-matter recorded had to be shown to be relevant according to rules of relevancy found in the Evidence Act.” B

24. Similar conditions for admissibility of a tape-recorded statement were reiterated in *Ram Singh & Ors. vs. Col. Ram Singh*<sup>7</sup> and recently in *R.K. Anand vs. Registrar, Delhi High Court*<sup>8</sup>. C

25. Tested on the touchstone of the tests and safeguards, enumerated above, we are of the opinion that in the instant case the appellant has miserably failed to prove the authenticity of the cassette as well as the accuracy of the speeches purportedly made by the respondent. Admittedly, the appellant did not lead any evidence to prove that the cassette produced on record was a true reproduction of the original speeches by the respondent or his agent. On a careful consideration of the evidence and circumstances of the case, we are convinced that the appellant has failed to prove his case that the respondent was guilty of indulging in corrupt practices. D E

26. For the afore-going reasons, we see no merit in this appeal. We, therefore, affirm the decision of the Tribunal and dismiss the appeal with costs, quantified at Rs.20,000/-.

R.P. Petition dismissed. F

A MANISH GOEL  
v.  
ROHINI GOEL  
(Special Leave Petition (C) No. 2954 of 2010)

FEBRUARY 5, 2010

[AFTAB ALAM AND DR. B.S. CHAUHAN, JJ.]

*Constitution of India, 1950:*

C Article 136 – Scope of – Application u/s 13-B(1) of Hindu Marriage Act for divorce by mutual consent pending before Family Court – Application to waive statutory period of six months rejected – Petition under Article 136 primarily on the ground that since relief could not be granted by any other Court, there was no occasion for petitioner to approach High Court – HELD: The power under Article 136 cannot be used to short circuit the legal procedure prescribed in overriding power – The Supreme Court generally does not permit a party to by-pass the normal procedure of appeal or reference to High Court unless a question of principle of great importance arises – It has to be exercised exceptionally and with caution and only in an extra-ordinary situations – More so, such power is to be exercised taking into consideration the well established principles which govern the exercise of overriding constitutional powers – In the instant case, there has been no obstruction to the stream of justice nor has there been injustice to the parties, which is required to be eradicated by Supreme Court by grant of equitable relief – Petition does not raise any question of general public importance – Petition dismissed. D E F

G *Anil Kumar Jain v. Maya Jain (2009) 10 SCC 415; Dhakeswari Cotton Mills Ltd. v. Commissioner of Income Tax, West Bengal AIR 1955 SC 65; The Union of India v. Kishorilal Gupta & Bros. AIR 1959 SC 1362; Murtaza & Sons*

7. 1985 (Supp) SCC 611.

8. (2009) 8 SCC 106.

& Anr. v. Nazir Mohd. Khan & Ors. **AIR 1970 SC 668**; *Sirpur Paper Mills Ltd. v. Commissioner of Wealth Tax, Hyderabad* **AIR 1970 SC 1520**; *The Municipal Corporation, Bhopal v. Misbahul Hasan & Ors.* **AIR 1972 SC 892**; *Delhi Judicial Service Association, Tis Hazari Court, Delhi v. State of Gujarat and Ors.* **AIR 1991 SC 2176**; *Tirupati Balaji Developers Pvt. Ltd. & Ors. v. State of Bihar & Ors.* **AIR 2004 SC 2351**; and *F.G.P. Ltd. v. Saleh Hooseini Doctor* **(2009) 10 SCC 223**; *Union of India & Ors. v. Karnail Singh* **(1995) 2 SCC 728, relied on.**

*Article 142 – Scope of – Petitions for divorce and divorce by mutual consent pending before Family Courts – Application to waive statutory period of six months rejected – In the petition under Article 136, prayer for exercise of jurisdiction under Article 142 made to grant divorce – HELD: Generally, no Court has competence to issue a direction contrary to law nor the Court can direct an authority to act in contravention of the statutory provisions – The courts are meant to enforce the rule of law and not to pass the orders or directions which are contrary to what has been injected by law – In exercise of the power under Article 142, Supreme Court generally does not pass an order in contravention of or ignoring the statutory provisions nor the power is exercised merely on sympathy – In the instant case, none of contingencies, which may require the Court to exercise its extraordinary jurisdiction under Article 142, has been brought out – Hindu Marriage Act, 1955 – ss. 12 and 13-B(1).*

*Romesh Chander v. Savitri* **AIR 1995 SC 851**; *Kanchan Devi v. Promod Kumar Mittal* **AIR 1996 SC 3192**; *Anita Sabharwal v. Anil Sabharwal* **(1997) 11 SCC 490**; *Ashok Hurra v. Rupa Bipin Zaveri* **AIR 1997 SC 1266**; *Kiran v. Sharad Dutt* **(2000) 10 SCC 243**; *Swati Verma v. Rajan Verma* **AIR 2004 SC 161**; *Harpit Singh Anand v. State of West Bengal* **(2004) 10 SCC 505**; *Jimmy Sudarshan Purohit*

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*v. Sudarshan Sharad Purohit* **(2005) 13 SCC 410**; *Durga P. Tripathy v. Arundhati Tripathy* **AIR 2005 SC 3297**; *Naveen Kohli v. Neelu Kohli* **AIR 2006 SC 1675**; *Sanghamitra Ghosh v. Kajal Kumar Ghosh* **(2007) 2 SCC 220**; *Rishikesh Sharma v. Saroj Sharma* **(2007) 2 SCC 263**; *Samar Ghosh v. Jaya Ghosh* **(2007) 4 SCC 511**; and *Satish Sitole v. Ganga* **AIR 2008 SC 3093**; and *Laxmidas Morarji (dead) by L.Rs. v. Behrose Darab Madan* **(2009) 10 SCC 425, referred to.**

*Anjana Kishore v. Puneet Kishore* **(2002) 10 SCC 194**; *Chetan Dass v. Kamla Devi* **AIR 2001 SC 1709**; and *Vishnu Dutt Sharma v. Manju Sharma* **(2009) 6 SCC 379**; *State of Punjab & Ors. v. Renuka Singla & Ors* **(1994) 1 SCC 175**; *State of U.P. & Ors. v. Harish Chandra & Ors.* **AIR 1996 SC 2173**; *Union of India & Anr. v. Kirloskar Pneumatic Co. Ltd.* **AIR 1996 SC 3285**; *Vice Chancellor, University of Allahabad & Ors. v. Dr. Anand Prakash Mishra & Ors.* **(1997) 10 SCC 264**; and *Karnataka State Road Transport Corporation v. Ashrafulla Khan & Ors.* **AIR 2002 SC 629**; *Prem Chand Garg & Anr. v. Excise Commissioner, U.P. & Ors.* **AIR 1963 SC 996**; *Supreme Court Bar Association v. Union of India & Anr.* **AIR 1998 SC 1895**; and *E.S.P. Rajaram & Ors. v. Union of India & Ors.* **AIR 2001 SC 581**; *A.R. Antulay v. R.S. Nayak & Anr.* **(1988) 2 SCC 602**; *Bonkya alias Bharat Shivaji Mane & Ors. v. State of Maharashtra* **(1995) 6 SCC 447**; *Common Cause, a Registered Society v. Union of India & Ors.* **AIR 1999 SC 2979**; *M.S. Ahlawat v. State of Haryana* **AIR 2000 SC 168**; *M.C. Mehta v. Kamal Nath & Ors.* **AIR 2000 SC 1997**; *State of Punjab & Anr. v. Rajesh Syal* **(2002) 8 SCC 158**; *Government of West Bengal v. Tarun K. Roy & Ors.* **(2004) 1 SCC 347**; *Textile Labour Association v. Official Liquidator* **AIR 2004 SC 2336**; *State of Karnataka & Ors. v. Ameerbi & Ors.* **(2007) 11 SCC 681**; *Union of India & Anr. v. Shardindu* **AIR 2007 SC 2204**; and *Bharat Sewa Sansthan v. U.P. Electronic Corporation Ltd.* **AIR 2007 SC 2961**; *Teri Oat Estates (P) Ltd. v. UT. Chandigarh* **(2004) 2 SCC 130, relied on.**

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*Administration of Justice:*

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AIR 1972 SC 892

relied on

para 4

*Abuse of process of Court – Petition for divorce pending before competent court at Gurgaon in Haryana – Meanwhile, another petition for divorce by mutual consent filed in Family Court in Delhi – Application for waiving statutory period of six months having been rejected, petition under Article 136 filed – HELD: Petitioner could not explain as to how the case for divorce could be filed before the Family Court, Delhi during the pendency of the case for divorce before the Gurgaon Court – Such a procedure adopted by the petitioner amounts to abuse of process of the court – Petitioner has approached the different forums for the same relief merely because he is very much eager and keen to get the marriage dissolved immediately even by abusing the process of the Court – Petition dismissed – Practice and Procedure – Hindu Marriage Act, 1955 – ss. 12 and 13-B(1) – Constitution of India, 1950 – Articles 136 and 142.*

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AIR 1991 SC 2176

relied on

para 4

AIR 2004 SC 2351

relied on

para 4

(2009) 10 SCC 223

relied on

para 4

(1995) 2 SCC 728

relied on

para 4

AIR 1995 SC 851

referred to

para 6

AIR 1996 SC 3192

referred to

para 6

(1997) 11 SCC 490

referred to

para 6

AIR 1997 SC 1266

referred to

para 6

(2000) 10 SCC 243

referred to

para 6

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AIR 2004 SC 161

referred to

para 6

(2004) 10 SCC 505

referred to

para 6

(2005) 13 SCC 410

referred to

para 6

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AIR 2005 SC 3297

referred to

para 6

AIR 2006 SC 1675

referred to

para 6

(2007) 2 SCC 220

referred to

para 6

(2007) 2 SCC 263

referred to

para 6

(2007) 4 SCC 511

referred to

para 6

AIR 2008 SC 3093

referred to

para 6

(2002) 10 SCC 194

relied on

para 7

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AIR 2001 SC 1709

relied on

para 8

(2009) 6 SCC 379

relied on

para 9

(1994) 1 SCC 175

relied on

para 10

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**Case Law Reference:**

(2009) 10 SCC 415      relied on      para 2

AIR 1955 SC 65      relied on      para 4

AIR 1959 SC 1362      relied on      para 4

AIR 1970 SC 668      relied on      para 4

AIR 1970 SC 1520      relied on      para 4

AIR 1996 SC 2173 relied on para 10 A  
 AIR 1996 SC 3285 relied on para 10  
 (1997) 10 SCC 264 relied on para 10  
 AIR 2002 SC 629 relied on para 10 B  
 AIR 1963 SC 996 relied on para 10  
 AIR 1998 SC 1895 relied on para 11  
 AIR 2001 SC 581 relied on para 11  
 (1988) 2 SCC 602 relied on para 12 C  
 1995) 6 SCC 447 relied on para 12  
 AIR 1999 SC 2979 relied on para 12  
 AIR 2000 SC 168 relied on para 12 D  
 AIR 2000 SC 1997 relied on para 12  
 (2002) 8 SCC 158 relied on para 12  
 (2004) 1 SCC 347 relied on para 12 E  
 AIR 2004 SC 2336 relied on para 12  
 (2007) 11 SCC 681 relied on para 12  
 AIR 2007 SC 2204 relied on para 12 F  
 AIR 2007 SC 2961 relied on para 12  
 (2004) 2 SCC 130 relied on para 13  
 (2009) 10 SCC 425 referred to para 14  
 1977 SC 898 relied on para 16 G  
 AIR 1996 SC 122 referred to para 16  
 (2007) 6 SCC 120 referred to para 16

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A AIR 1996 SC relied on para 17  
 CIVIL APPELLATE JURISDICTION : SLP Civil No. 2954  
 of 2010.  
 B From the Judgment & Order dated 1.12.2009 of the  
 Hemani Malhotra Addl. District Judge, 04 (West), Tis Hazari  
 Courts, Delhi in HMA No. 457 of 2009.  
 C Pradeep Kr. Arya, Dushyant Swaroop, Sanjay Kumar  
 Visen for the Petitioner.  
 C The Order of the Court was delivered by

### O R D E R

D **DR. B.S. CHAUHAN, J.** 1. This case reveals a very sorry  
 state of affairs that the parties, merely being highly qualified,  
 have claimed even to be higher and above the law, and have  
 a vested right to use, misuse and abuse the process of the  
 Court. Petitioner, the husband, possesses the qualifications of  
 CA, CS and ICWA, while the proforma respondent-wife is a  
 Doctor (M.D., Radio-Diagnosis) by profession. The parties got  
 married on 23rd July, 2008 in Delhi. Their marriage ran into  
 rough weather and relations between them became strained  
 immediately after the marriage and they are living separately  
 since 24.10.2008. Petitioner-husband filed a Matrimonial Case  
 under Section 12 of the Hindu Marriage Act, 1955 (hereinafter  
 called as "the Act") for annulment of marriage before a  
 competent Court at Gurgaon. The respondent-wife, Smt. Rohini  
 Goel filed a petition under Section 12 r/w Section 23 of the  
 Domestic Violence Act, 2005 before the competent Court at  
 Delhi. An FIR was also lodged by her against petitioner-  
 husband and his family members under Sections 498-A, 406  
 and 34 of Indian Penal Code, 1860 at PS Janakpuri, New Delhi.

2. It is stated at the Bar that by persuasion of the family  
 members and friends, the parties entered into a compromise

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A and prepared a Memorandum of Understanding dated 13.11.2009 in the proceedings pending before the Mediation Centre, Delhi by which they agreed on terms and conditions incorporated therein, to settle all their disputes and also for dissolution of their marriage. The parties filed an application under Section 13-B(1) of the Act before the Family Court, i.e. B ADJ-04 (West) Delhi seeking divorce by mutual consent. The said HMA No.456 of 2009 came before the Court and it recorded the statement of parties on 16.11.2009. The parties moved another HMA No. 457 of 2009 to waive the statutory period of six months in filing the second petition. However, the C Court rejected the said application vide order dated 1.12.2009 observing that the Court was not competent to waive the required statutory period of six months under the Act and such a waiver was permissible only under the directions of this Court as held by this Court in *Anil Kumar Jain v. Maya Jain* (2009) D 10 SCC 415. Hence, this petition.

E 3. The learned counsel for the petitioner submits that there is no prohibition in law in entertaining the petition under Article 136 of the Constitution against the order of the Family Court and in such an eventuality, there was no occasion for the petitioner to approach the High Court as the relief sought herein cannot be granted by any court other than this Court. Thus, the petitioner has a right to approach this Court against the order of the Family Court and the petitioner cannot be non-suited on this ground alone. F

G 4. Article 136 of the Constitution enables this Court, in its discretion to grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

H Undoubtedly, under Article 136 in the widest possible terms, a plenary jurisdiction exercisable on assuming appellate jurisdiction has been conferred upon this Court. However, it is an extra-ordinary jurisdiction vested by the Constitution in the

A Court with implicit trust and faith and thus, extra ordinary care and caution has to be observed while exercising this jurisdiction. There is no vested right of a party to approach this Court for the exercise of such a vast discretion, however, such a course can be resorted to when this court feels that it is so warranted to eradicate injustice. Such a jurisdiction is to be exercised by the consideration of justice and call of duty. The power has to be exercised with great care and due consideration but while exercising the power, the order should be passed taking into consideration all binding precedents otherwise such an order would create problems in the future. C The object of keeping such a wide power with this Court has been to see that injustice is not perpetuated or perpetrated by decisions of courts below. More so, there should be a question of law of general public importance or a decision which shocks the conscience of the court are some of the prime requisites for grant of special leave. Thus, unless it is shown that D exceptional and special circumstances exist that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity warranting review of the decision appealed against, such exercise should not be done. E The power under Article 136 cannot be used to short circuit the legal procedure prescribed in overriding power. This Court generally does not permit a party to by-pass the normal procedure of appeal or reference to the High Court unless a question of principle of great importance arises. It has to be F exercised exceptionally and with caution and only in such an extra-ordinary situations. More so, such power is to be exercised taking into consideration the well established principles which govern the exercise of overriding constitutional powers (vide *Dhakeswari Cotton Mills Ltd. v. Commissioner of Income Tax, West Bengal* AIR 1955 SC 65; *The Union of India v. Kishorilal Gupta & Bros.* AIR 1959 SC 1362; *Murtaza & Sons & Anr. v. Nazir Mohd. Khan & Ors.* AIR 1970 SC 668; *Sirpur Paper Mills Ltd. v. Commissioner of Wealth Tax, Hyderabad* AIR 1970 SC 1520; *The Municipal Corporation, Bhopal v. Misbahul Hasan & Ors.* AIR 1972 SC 892; *Delhi*

*Judicial Service Association, Tis Hazari Court, Delhi v. State of Gujarat and Ors.* AIR 1991 SC 2176; *Tirupati Balaji Developers Pvt. Ltd. & Ors. v. State of Bihar & Ors.* AIR 2004 SC 2351; and *F.G.P. Ltd. v. Saleh Hooseini Doctor* (2009) 10 SCC 223).

5. In *Union of India & Ors. v. Karnail Singh* (1995) 2 SCC 728, this court while dealing with the similar issue held as under:

“It is true that this Court when exercises its discretionary power under Article 136 or passes any order under Article 142, it does so with great care and due circumspection. But, when we are settling the law in exercise of this court’s discretion, such law, so settled, should be clear and become operational instead of being kept vague, so that it could become a binding precedent in all similar cases to arise in future.”

6. It has been canvassed before us that under Article 142 of the Constitution, this Court is competent to pass any order to do complete justice between the parties and grant decree of divorce even if the case may not meet the requirement of statutory provisions. The instant case presents special features warranting exercise of such power.

We are fully alive of the fact that this court has been exercising the power under Article 142 of the Constitution for dissolution of marriage where the Court finds that marriage is totally unworkable, emotionally dead, beyond salvage and has broken down irretrievably, even if the facts of the case do not provide a ground in law on which the divorce could be granted. Decree of divorce has been granted to put quietus to all litigations between the parties and to save them from further agony, as it is evident from the judgments in *Romesh Chander v. Savitri* AIR 1995 SC 851; *Kanchan Devi v. Promod Kumar Mittal* AIR 1996 SC 3192; *Anita Sabharwal v. Anil Sabharwal* (1997) 11 SCC 490; *Ashok Hurra v. Rupa Bipin Zaveri* AIR

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A 1997 SC 1266; *Kiran v. Sharad Dutt* (2000) 10 SCC 243; *Swati Verma v. Rajan Verma* AIR 2004 SC 161; *Harpit Singh Anand v. State of West Bengal* (2004) 10 SCC 505; *Jimmy Sudarshan Purohit v. Sudarshan Sharad Purohit* (2005) 13 SCC 410; *Durga P. Tripathy v. Arundhati Tripathy* AIR 2005 SC 3297;; *Naveen Kohli v. Neelu Kohli* AIR 2006 SC 1675; *Sanghamitra Ghosh v. Kajal Kumar Ghosh* (2007) 2 SCC 220; *Rishikesh Sharma v. Saroj Sharma* (2007) 2 SCC 263; *Samar Ghosh v. Jaya Ghosh* (2007) 4 SCC 511; and *Satish Sitole v. Ganga* AIR 2008 SC 3093.

C However, these are the cases, where this Court came to rescue the parties on the ground for divorce not provided for by the legislature in the statute.

D 7. In *Anjana Kishore v. Puneet Kishore* (2002) 10 SCC 194, this Court while allowing a transfer petition directed the court concerned to decide the case of divorce by mutual consent, ignoring the statutory requirement of moving the motion after expiry of the period of six months under Section 13-B(2) of the Act.

E 8. In *Anil Kumar Jain* (supra), this Court held that an order of waiving the statutory requirements can be passed only by this Court in exercise of its powers under Article 142 of the Constitution. The said power is not vested with any other court.

F 9. However, we have also noticed various judgments of this Court taking a contrary view to the effect that in case the legal ground for grant of divorce is missing, exercising such power tantamounts to legislation and thus transgression of the powers of the legislature, which is not permissible in law (*vide Chetan Dass v. Kamla Devi* AIR 2001 SC 1709; and *Vishnu Dutt Sharma v. Manju Sharma* (2009) 6 SCC 379).

H 10. Generally, no Court has competence to issue a direction contrary to law nor the Court can direct an authority to act in contravention of the statutory provisions. The courts



are meant to enforce the rule of law and not to pass the orders or directions which are contrary to what has been injected by law. (Vide *State of Punjab & Ors. v. Renuka Singla & Ors* (1994) 1 SCC 175; *State of U.P. & Ors. v. Harish Chandra & Ors.* AIR 1996 SC 2173; *Union of India & Anr. v. Kirloskar Pneumatic Co. Ltd.* AIR 1996 SC 3285; *Vice Chancellor, University of Allahabad & Ors. v. Dr. Anand Prakash Mishra & Ors.* (1997) 10 SCC 264; and *Karnataka State Road Transport Corporation v. Ashrafulla Khan & Ors.* AIR 2002 SC 629).

11. A Constitution Bench of this Court in *Prem Chand Garg & Anr. v. Excise Commissioner, U.P. & Ors.* AIR 1963 SC 996 held as under:

“An order which this Court can make in order to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed by the Constitution, but *it cannot even be inconsistent with the substantive provisions of the relevant statutory laws.*”

The Constitution Benches of this Court in *Supreme Court Bar Association v. Union of India & Anr.* AIR 1998 SC 1895; and *E.S.P. Rajaram & Ors. v. Union of India & Ors.* AIR 2001 SC 581 held that under Article 142 of the Constitution, this Court cannot altogether ignore the substantive provisions of a statute and pass orders concerning an issue which can be settled only through a mechanism prescribed in another statute. It is not to be exercised in a case where there is no basis in law which can form an edifice for building up a superstructure.

12. Similar view has been reiterated in *A.R. Antulay v. R.S. Nayak & Anr.* (1988) 2 SCC 602; *Bonkya alias Bharat Shivaji Mane & Ors. v. State of Maharashtra* (1995) 6 SCC 447; *Common Cause, a Registered Society v. Union of India & Ors.* AIR 1999 SC 2979; *M.S. Ahlawat v. State of Haryana* AIR 2000 SC 168; *M.C. Mehta v. Kamal Nath & Ors.* AIR 2000 SC 1997; *State of Punjab & Anr. v. Rajesh Syal* (2002) 8

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A SCC 158; *Government of West Bengal v. Tarun K. Roy & Ors.* (2004) 1 SCC 347; *Textile Labour Association v. Official Liquidator* AIR 2004 SC 2336; *State of Karnataka & Ors. v. Ameerbi & Ors.* (2007) 11 SCC 681; *Union of India & Anr. v. Shardinu* AIR 2007 SC 2204; and *Bharat Sewa Sansthan v. U.P. Electronic Corporation Ltd.* AIR 2007 SC 2961.

13. In *Teri Oat Estates (P) Ltd. v. UT. Chandigarh* (2004) 2 SCC 130, this Court held as under:

“36..... sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right. ... despite an extraordinary constitutional jurisdiction contained in Article 142 of the Constitution of India, this Court ordinarily would not pass an order which would be in contravention of a statutory provision.”

14. In *Laxmidas Morarji (dead) by L.Rs. v. Behrose Darab Madan* (2009) 10 SCC 425, while dealing with the provisions of Article 142 of the Constitution, this Court has held as under:

“ ....The power under Article 142 of the Constitution is a constitutional power and hence, not restricted by statutory enactments. Though the Supreme Court would not pass any order under Article 142 of the Constitution which would amount to supplanting substantive law applicable or ignoring express statutory provisions dealing with the subject, at the same time these constitutional powers cannot in any way, be controlled by any statutory provisions. However, it is to be made clear that this power cannot be used to supplant the law applicable to the case. This means that *acting under Article 142, the Supreme Court cannot pass an order or grant relief which is totally inconsistent or goes against the substantive or statutory enactments pertaining to the case.* The power is to be used sparingly in cases which cannot be effectively and

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appropriately tackled by the existing provisions of law or when the existing provisions of law cannot bring about complete justice between the parties.” (Emphasis added)

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15. Therefore, the law in this regard can be summarised to the effect that in exercise of the power under Article 142 of the Constitution, this Court generally does not pass an order in contravention of or ignoring the statutory provisions nor the power is exercised merely on sympathy.

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16. The instant case requires to be examined in the light of aforesaid settled legal propositions. Parties got married on 23.7.2008 and as they could not bear each other, started living separately from 24.10.2008. There had been claims and counter claims, allegations and criminal prosecution between them. Petitioner approached the Competent Court at Gurgaon for dissolution of marriage. Admittedly, that case is still pending consideration. Parties filed the petition for divorce by mutual consent only in November 2009 before the Family Court, Delhi. Learned counsel for the petitioner could not explain as to how the case for divorce could be filed before the Family Court, Delhi during the pendency of the case for divorce before the Gurgaon Court. Such a procedure adopted by the petitioner amounts to abuse of process of the court. Petitioner has approached the different forums for the same relief merely because he is very much eager and keen to get the marriage dissolved immediately even by abusing the process of the Court. In *Jai Singh v. Union of India* AIR 1977 SC 898, this Court while dealing with a similar issue held that a litigant cannot pursue two parallel remedies in respect of the same matter at the same time. This judgment has subsequently been approved by this Court in principle but distinguished on facts in *Awadh Bihari Yadav v. State of Bihar* AIR 1996 SC 122; and *Arunima Baruah v. Union of India* (2007) 6 SCC 120.

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17. In *Dr. Buddhi Kota Subbarao v. K. Parasaran & Ors.* AIR 1996 SC 2687, this Court has observed as under:-

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“No litigant has a right to unlimited drought on the Court time and public money in order to get his affairs settled in the manner he wishes. However, access to justice should not be misused as a licence to file misconceived and frivolous petitions.”

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18. Even otherwise, the statutory period of six months for filing the second petition under Section 13-B(2) of the Act has been prescribed for providing an opportunity to parties to reconcile and withdraw petition for dissolution of marriage. Learned counsel for the petitioner is not able to advance arguments on the issue as to whether, statutory period prescribed under Section 13-B(1) of the Act is mandatory or directory and if directory, whether could be dispensed with even by the High Court in exercise of its writ/appellate jurisdiction.

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Thus, this is not a case where there has been any obstruction to the stream of justice or there has been injustice to the parties, which is required to be eradicated, and this Court may grant equitable relief. Petition does not raise any question of general public importance. None of contingencies, which may require this Court to exercise its extraordinary jurisdiction under Article 142 of the Constitution, has been brought to our notice in the case at hand.

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19. Thus, in view of the above, we do not find any justification to entertain this petition. It is accordingly dismissed.

R.P.

Petition dismissed.

SANTOSH  
v.  
JAGAT RAM & ANR.  
(Civil Appeal No. 1881 of 2008)

FEBRUARY 8, 2010

[V.S. SIRPURKAR AND SURINDER SINGH NIJJAR,  
JJ.]

*Suit – By widow, for declaration of her ownership in possession, of suit land, left behind by her deceased husband – Plaintiff alleging that her earlier consent decree in favour of the defendants was the result of a fraud – Defendants denying the allegation and taking the plea that the suit was time-barred – Suit decreed – Decree set aside by first appellate court – Second appeal dismissed in limine – On appeal, Held: Facts of the case prove that the consent decree was result of fraud, hence a nullity – The suit is also not barred by time – Limitation.*

Appellant filed the present suit in the year 1990, for declaration to the effect that she was the owner in possession of the land, left behind by her deceased husband; and that the decree dated 26.3.1985 shown to have been suffered by her in favour of the respondents-defendants was illegal, bad and was a result of fraud. Respondents-defendants contested the suit stating that there was no question of fraud; and that the said decree was passed as per the family settlement. They also pleaded that the suit was barred by limitation. The Trial Court while decreeing the suit, returned a finding that the decree dated 26.3.1985 was a result of a fraud. The first appellate court allowed the appeal holding that there was no fraud and the consent decree dated 26.3.1985 was a good and a valid decree. The first appellate court also held that the suit was barred by time. Second Appeal was

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A dismissed in limine by the High Court.

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The questions for consideration in this appeal were whether a fraud was played against the appellant for obtaining the decree dated 26.3.1985; and whether the second suit filed by the appellant was within limitation.

Allowing the appeal, the Court

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HELD: 1.1. The Trial Court, after correctly framing the issues, took the stock of all the four witnesses, namely, Record Keeper (DW-1), Bailiff (DW-2), Advocate (DW-3) and father of the respondents-defendants (DW-4). The Court answered the issues in favour of the appellant, as regards (i) Ownership and joint possession of the suit land of the plaintiff. (ii) The decree dated 26.3.1985 being nullity. (iii) Recording the mutation being illegal and not binding on the rights of the plaintiff. [Para 9] [438-C-E]

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1.2. Taking stock of the evidence, the trial court took note of the improved version on the part of DW-4 that the father of the appellant had demanded Rs.20,000/- and had then agreed to give share of the deceased to the respondents-defendants and that the said amount was paid through cousin of DW-4. The trial court rightly noted that this was not only an improvement, but the person, through whom the amount was given, was never examined. The trial court also referred to the admission by DW-4 that no money was ever given to the appellant for household expenses and that she had no source to maintain herself. From this, the trial court correctly deduced that the person who is not having any source to maintain himself/herself, could not part with his/her landed property as well in the manner that the appellant did. [Para 9] [438-F-H; 439-A]

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1.3. The trial court noted the admissions by Advocate (DW-3) to the effect that he and the appellant's advocate,

in the earlier suit and for the respondents-defendants in the present suit before the trial court, used to sit on the same seat and were the partners in the same profession having a common clerk. The trial court also noted the arguments on the side of the respondents to the effect that DW-4 was looking after the appellant and that the appellant had filed a Written Statement in the first case, the contents of which were well known to her and that she admitted the same as correct, as asserted by DW-3, in his evidence. [Para 9] [439-A-C]

1.4. The trial court also noted the facts about the Caveat having been filed by the respondents, the reply to which was filed by the appellant-plaintiff, wherein she had averred that she had voluntarily suffered the impugned judgment and decree and that she did not challenge the same. The trial court rightly found the story of payment of Rs.20,000/- to be a myth, since it was nowhere stated in the pleadings also. Further, the trial court also noted that the appellant, who was an issueless widow and an illiterate lady, was not at all being supported by DW-4 and DW-4 being her elder brother-in-law, was in a position to dominate and take advantage of her ignorance and illiteracy. The trial court also inferred correctly from the fact that a Caveat was filed in the year 1985 itself and the appellant was again paraded to make a statement that she did not intend to challenge the decree. [Para 9] [439-D-F]

1.5. There are number of material facts in the evidence, which have been ignored by the appellate court. The basic fact which has been ignored by the appellate court is that in the earlier Civil Suit No. 253 of 1985, the plaint was filed on that day, Written Statement was also filed on the same day, the evidence of the plaintiffs and the defendant was also recorded on the same day and the judgment was also made ready

alongwith a decree on the same day. This, by itself, was sufficient to raise serious doubts in the mind of the courts. Instead, the appellate court went on to believe the evidence of DW-1, the Record Keeper, who produced the files of the summons. [Para10] [440-A-C]

1.6. An impossible inference was drawn by the appellate court that the appellant was telling a blatant lie when she asserted that she did not voluntarily suffer a decree. The appellate court has also mentioned about the File No. 5 dated 30.9.1985, which would be hardly about six months after the decree passed on 26.3.1985, which pertain to the Caveat filed u/s. 148-A CPC. Appellant was again brought to the court in pursuance of the so-called summons served on her through Bailiff in the proceedings u/s. 148-A CPC and her statement was also got recorded. It is not known as to how a Caveat application was got registered and a summons was sent on the basis of a Caveat application, treating it to be an independent proceedings. Such is not the scope of a Caveat u/s. 148-A CPC. [Para 10] [440-E-H; 441-A]

1.7. This was nothing, but a very poor attempt to get the fate of the appellant sealed by getting her statement recorded. Instead of drawing the correct inferences, the appellate court went on to record the impossible findings. The High Court passed a very casual judgment without being bothered about these glaring facts. [Paras10 and 11] [411-C-D-A]

2.1. As regards the question of limitation, the trial court noted that the cause of action arose when respondents started interfering with ownership and possession of the appellant-plaintiff over the suit land about two and half months before filing of the second suit and started asserting about having a decree in their favour in respect of the suit land. [Para 9] [439-G-H]

**2.2. A fraud puts an end to everything. Such decree is nothing, but a nullity. It has come in the evidence that when the respondents started disturbing the possession of the appellant and also started bragging about a decree having been obtained by them, the appellant chose to file a suit. In that view, her suit filed in 1990 would be absolutely within time. The casual observation made by the High Court that her suit would be barred by limitation, is also wholly incorrect. [Para 12] [442-D]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1881 of 2008.

From the Judgment & Order dated 21.2.2006 of the High Court of Punjab and Haryana at Chandigarh in R.S.A.No. 3837 of 2001.

V.C. Mahajan, C.V. Subba Rao for the Appellant.

T.S. Ahuja and Ajit Kumar Pande for the Respondents.

The Judgment of the Court was delivered by

**V.S. SIRPURKAR, J.** 1. This is an appeal by a helpless widow, who has become a prey of the greed of her own elder brother in law and is deprived of her properties in a fraudulent manner. As per the pleadings, Smt. Santosh (appellant herein), the original plaintiff, lost her husband Chander Pal in the year 1985. She is issueless. Chander Pal, at the time of his death, owned a land to the extent of 36 kanals 7 marlas out of the total land measuring 80 kanals 1 marla comprised in khewat No. 64 khatoni No. 96 and 97 as per Jamabandi for the year 1975-76 situated at Village Kotia, Tehsil and District Mahendragarh. After losing her husband in the prime of youth, she had nobody to look forward to. Respondents are the sons of one Daya Ram, who was the real brother of Chander Pal. Appellant was approached by Daya Ram (DW-4), who convinced her to accompany him to Courts of Mahendragarh, so that the mutation

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A of the properties inherited by her from her husband could be made and the properties could be recorded in her name. Believing him, she accompanied him to Mahendragarh, where her thumb impressions were obtained on 3-4 papers. She was also asked to say 'yes' if she was asked any question by the authorities. She believed in good faith that the mutation will be done and the properties would be recorded in her name. All this happened on 26.3.1985. About two and half months, before filing of second suit the respondents (original defendants) and her brother in law Daya Ram (DW-4) started interfering with her possession and insisted that there was a decree passed in their favour in respect of her lands. She, therefore, filed the present suit for declaration to the effect that she was owner in possession of the land in respect of the properties mentioned above and the so-called decree dated 26.3.1985 shown to have been suffered by her in favour of the respondents-defendants is illegal, bad and was a result of fraud and, therefore, not binding upon her at all.

2. The suit was contested by the respondents-defendants. They claimed that the decree in question was legal and there was no question of fraud and that in fact, the said decree was as per the family settlement. They also pleaded that the suit was barred by limitation and as such, the suit was liable to be dismissed. The evidence was led on behalf of the appellant-plaintiff in support of her plea, wherein she examined herself, while on behalf of the respondents-defendants, four witnesses were examined including one Dharam Singh (DW-1), Record Keeper, one Ram Singh (DW-2), Bailiff, one S.K. Joshi (DW-3), Advocate and Daya Ram (DW-4) himself. The Trial Court accepted the evidence of the appellant-plaintiff and disbelieved the witnesses examined on behalf of the respondents-defendants and while decreeing the suit, returned a finding that the decree dated 26.3.1985 was a result of a fraud.

3. An appeal came to be filed by the respondents-

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defendants against the above order, which was allowed. The Appellate Court came to the conclusion that there was no fraud played and the consent decree dated 26.3.1985 was a good and a valid decree. The Appellate Court also held that the suit filed by the appellant-plaintiff was barred by time.

4. The appellant-plaintiff filed a Second Appeal before the High Court, which was dismissed in limine. This is how the appeal has come before us.

5. Shri V.C. Mahajan, Learned Senior Counsel appearing on behalf of the appellant, firstly pointed out that the judgment by the High Court in the Second Appeal was a classic example of non-application of mind. He pointed out that the consent decree dated 26.3.1985 was a classic example of fraud. The Learned Senior Counsel, in support of his plea, pointed out that the plaint is dated 26.3.1985; It is filed on 26.3.1985; The Written Statement filed by the appellant is also dated 26.3.1985; The appellant was examined on 26.3.1985 and the decree was also passed on 26.3.1985. The Learned Senior Counsel wondered as to how all this could have happened on one and the same day. He pointed out that there was no question of the appellant being summoned by the Court or she remaining present in pursuance of those summons. The Learned Senior Counsel took us through the plaint in that suit, which was registered as Civil Suit No. 253 of 1985. According to the Learned Senior Counsel, as if all this was not sufficient, later on, an application was filed, purporting to be an application under Section 148-A of the Code of Civil Procedure (CPC) on 30.9.1985. This application was filed with the signatures of the same Advocate S.K. Joshi, who had appeared on behalf of the appellant in the earlier proceedings and had filed a Written Statement of consent. It is then pointed out by the Learned Senior Counsel that a notice was issued by the Court of Sub-Judge, First Class to the appellant and was served through a bailiff and in pursuance of that notice, she came and gave a statement before the Court on 23.11.1985

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A that she did not intend to file a suit, challenging the consent decree. The Learned Senior Counsel then pointed out that there was no question of any proceedings being instituted on the basis of a so-called caveat under Section 148-A of the CPC nor was there any question of the Court issuing any notice on the basis of a caveat. He also pointed out further that all this was nothing but a towering fraud played upon the appellant. He pointed out that it is throughout the case of the appellant that she never appeared before any Court nor did she depose before the Court and that she is an illiterate lady knowing nothing about the intricacies of law and the procedures of the Court. The Learned Senior Counsel further argued that though the suit was rightly decreed by the Trial Court holding that the earlier decree obtained in the year 1985 was a fraud upon the appellant, the Appellate Court has, in a most casual manner, allowed the appeal filed by the respondents-defendants and chose to believe the evidence of the lawyer, which also was a classic example of non-application of mind on the part of the Appellate Court. Learned Senior Counsel further argued that as if all this was not sufficient, the High Court, in a most casual manner, has chosen to dismiss such Second Appeal, involving the substantial questions of law, in limine without even considering the same. From this, the Learned Senior Counsel argued that the respondents herein have succeeded in perpetrating their fraud against the appellant.

F 6. The argument was opposed by Shri T.S. Ahuja, Learned Counsel, appearing on behalf of the respondents on the ground that the case of the respondents was well supported by the fact that the lawyer Shri S.K. Joshi had stepped into the witness box in the subsequent suit and had reiterated that the appellant had consented and instructed him and it was only as per the instructions of the appellant that he had prepared her Written Statement in the first suit. The Learned Counsel also pointed out that Shri Joshi (DW-3) also reiterated about the appellant's statement made in the caveat proceedings. The Learned Counsel further argued that even Shri R.S. Yadav,

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Advocate, who appeared in the Trial Court for the appellant herein, offered himself as a witness by way of additional evidence and he had stated that the Criminal Petition No. 7-4 dated 28.9.1994 under Section 125 of the Criminal Procedure Code (Cr.P.C.), which was decided on 12.8.2000 was drafted as per the instructions given by the appellant Santosh and that the appellant had put her thumb impression on this petition which was Exhibit AX. From this, the Learned Senior Counsel claimed that even on 28.9.1994, the land was not in possession of the appellant Santosh and, therefore, the story of the appellant that she came to the Court when her possession was being disturbed, is a myth and as such, the second suit was obviously barred by time. The Learned Counsel further reiterated that this was correctly appreciated by the Appellate Court and the High Court and they were correct in dismissing the suit as barred by time. He also pointed out that during the pendency of the appeal before the Appellate Court, the respondent No. 1 had filed an application under Order 6 Rule 17 CPC for amendment, pointing out that after the first decree in Civil Suit No. 253 of 1985, the respondents-defendants had constructed a pucca well and also installed a pumping set and obtained electric connection from the Electricity Board and the appellant Santosh did not object to the same. The Learned Counsel fairly admitted that this application was, however, dismissed by the Additional District Judge.

7. The basic questions in this appeal would be as follows:-

- (i) Whether a fraud was played against the appellant herein for obtaining the decree in Civil Suit No. 253 of 1985?
- (ii) Whether the second suit filed by the appellant was within limitation?

8. We have very carefully perused the records of the Courts below since the judgment of the High Court is laconic. Beyond mentioning the facts on the basis of the pleadings, there is nothing in the judgment. It seems to have been passed on the

incorrect basis of the absence of substantial question of law. Again the High Court has given a one-line finding that the suit filed by the appellant was beyond the period of limitation, since it was filed in the year 1990, seeking to set aside the decree passed in the year 1985. Ordinarily, we would have remanded this matter back to the High Court. However, considering the time taken so far in finalizing the rights of the parties, we proceed to decide this appeal on merits.

9. The Trial Court, after correctly framing the issues, took the stock of all the four witnesses, namely, Dharam Singh (DW-1), Record Keeper, Ram Singh (DW-2), Bailiff, S.K. Joshi (DW-3), Advocate and Daya Ram, the father of the respondents-defendants. The Court answered the first three issues in favour of the present appellant. Those issues pertain to:-

- (i) Ownership and joint possession of the suit land of the plaintiff?
- (ii) The decree passed on 26.3.1985 in Civil Suit No. 253 of 1985 being nullity.
- (iii) Recording the mutation No. 1093 dated 6.11.1985 being illegal and not binding on the rights of the plaintiff?

Taking stock of the evidence, the Trial Court took note of the improved version on the part of Daya Ram (DW-4) that the father of the appellant had demanded Rs.20,000/- and had then agreed to give share of Chander Pal to the respondents-defendants and that the said amount was paid through one Mam Chand, cousin brother of Daya Ram (DW-4). The Trial Court rightly noted that this was not only an improvement, but said Mam Chand, through whom the amount was given, was never examined. The Trial Court also referred to the admission by Daya Ram (DW-4) that no money was ever given to the appellant for household expenses and that she had no source to maintain herself. From this, the Trial Court correctly deduced

A that the person who is not having any source to maintain  
himself/herself, could not part with his/her landed property as  
well in the manner that the appellant did. The admissions by  
S.K. Joshi (DW-3), Advocate to the effect that he and Shri K.L.  
Yadav, Advocate, who appeared for the appellant in the earlier  
suit and for the respondents-defendants in the present suit  
before the Trial Court, used to sit on the same seat and were  
the partners in the same profession having a common Clerk.  
B The Trial Court also noted the arguments on the side of the  
respondents to the effect that Daya Ram (DW-4) was looking  
after the appellant and that the appellant had filed a Written  
Statement in the first case, the contents of which were well  
C known to her and that she admitted the same as correct, as  
asserted by S.K. Joshi (DW-3), Advocate, in his evidence.  
Furthermore, the Trial Court also noted the facts about the  
D Caveat having been filed by the respondents herein, the reply  
to which was filed by the appellant-plaintiff vide Exhibit DW3/  
D, wherein she had averred that she had voluntarily suffered  
the impugned judgment and decree and that she did not  
challenge the same. The Trial Court rightly found the story of  
E payment of Rs.20,000/- to be a myth, since it was nowhere  
stated in the pleadings also. Further, the Trial Court also noted  
that the appellant, who was an issueless widow and an illiterate  
lady, was not at all being supported by Daya Ram and Daya  
Ram being her elder brother in law, was in a position to  
dominate and take advantage of her ignorance and illiteracy.  
F The Trial Court also inferred correctly from the fact that a Caveat  
was filed in the year 1985 itself and the appellant was again  
paraded to make a statement that she did not intend to  
challenge the decree. As regards the question of limitation, the  
G Trial Court noted that the cause of action arose when  
respondents started interfering with ownership and possession  
of the appellant-plaintiff over the suit land about two and half  
months before filing of the second suit and started asserting  
about there having a decree in their favour in respect of the suit  
land.

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A 10. As against this, when we see the judgment of the  
Appellate Court, there are number of material facts in the  
evidence, which have been ignored by the Appellate Court. The  
basic fact which has been ignored by the Appellate Court is  
that in the earlier Civil Suit No. 253 of 1985, the plaint was filed  
B on that day, Written Statement was also filed on the same day,  
the evidence of the plaintiffs and the defendant (appellant  
herein) was also recorded on the same day and the judgment  
was also made ready alongwith a decree on the same day. This,  
by itself, was sufficient to raise serious doubts in the mind of  
C the Courts. Instead, the Appellate Court went on to believe the  
evidence of Dharam Singh (DW-1), Record Keeper, who  
produced the files of the summons. One wonders as to when  
was the suit filed and when did the Court issue a summons and  
how is it that on the same day, the Written Statement was also  
D ready, duly drafted by the other side lawyer S.K. Joshi (DW-  
3). Significantly enough, the Appellate Court has also relied on  
the evidence of S.K. Joshi (DW-3), who deposed about the  
appellant having come to him and instructed him to prepare the  
Written Statement (Exhibit DW3/A). In his evidence, S.K. Joshi  
E (DW-3) has admitted specifically that there was a common  
clerk between him and the counsel for the plaintiff in the earlier  
suit and they used to sit on the same Takhat (seat). An  
impossible inference was drawn by the Appellate Court that the  
appellant was telling a blatant lie when she asserted that she  
did not voluntarily suffer a decree. The Appellate Court has also  
F mentioned about the File No. 5 dated 30.9.1985, which would  
be hardly about six months after the said decree passed on  
26.3.1985, which pertain to the Caveat filed under Section 148-  
A of the CPC. We put a specific question Shri Ahuja, Learned  
G Counsel, appearing on behalf of the respondents, as to whether  
in Haryana, on the basis of Caveats, could summons be issued  
by the Civil Courts, so as to be served on the other side  
through a Bailiff of the Court. The Learned Counsel was unable  
to support any such proceeding. As if all that was not sufficient,  
appellant was again brought to the Court in pursuance of the  
H so-called summons served on her through Bailiff in the



A proceedings under Section 148-A of the CPC and her statement was also got recorded. It is not known as to how a Caveat application was got registered and a summons was sent on the basis of a Caveat application, treating it to be an independent proceedings. Such is not the scope of a Caveat under Section 148-A of the CPC. At least Shri Ahuja, Learned Counsel, appearing on behalf of the respondents could not support such a finding and he fairly stated that he was unaware of any such procedure. Nothing has been shown to us in the nature of an order passed by the Court on the basis of the so-called Caveat. We are convinced that this was nothing, but a very poor attempt to get the fate of the appellant sealed by getting her statement recorded. Instead of drawing the correct inferences, the Appellate Court went on to record the impossible findings. The Appellate Court seems to have been more disturbed by the fact that the appellant had challenged the integrity of the counsel for the parties and asked a question as to why should the counsel for the respondent prepare a Written Statement against the wishes of the respondent. The Appellate Court went on to say:-

E “Merely because both the counsel sit on the same bench and have a common clerk and that the suit was decided on the same day when it was present in the Court, it would not, by itself, prove that the judgment and decree were obtained by fraud and misrepresentation.”

F To say that ‘we are surprised’, would be an understatement. To support this perverse finding, the Appellate Court went on to record the findings regarding the Caveat and the statement of the appellant recorded in those proceedings (?). We are fully convinced that this was nothing, but a towering fraud played upon an illiterate and helpless widow, whose whole inherited property was tried to be grabbed by Daya Ram and/or the respondents herein.

11. Very unfortunately, all this has escaped the notice of

A the High Court, who passed a very casual judgment without being bothered about these glaring facts. We are of the firm opinion that a whole suit No. 253 of 1985, decree passed thereupon on 26.3.1985 and the subsequent Caveat proceedings were nothing but a systematic fraud. There cannot be a better example of a fraudulent decree. We are anguished to see the attitude of the Court, who passed the decree on the basis of a plaint and a Written Statement, which were filed on the same day. We are also surprised at the observations made by the Appellate Court that such circumstance could not, by itself, prove the fraudulent nature of the decree.

D 12. A fraud puts an end to everything. It is a settled position in law that such decree is nothing, but a nullity. It has come in the evidence that when the respondents herein started disturbing the possession of the appellant and also started bragging about a decree having been obtained by them, the appellant chose to file a suit. In that view, her suit filed in 1990 would be absolutely within time. The casual observation made by the High Court that her suit would be barred by limitation, is also wholly incorrect.

F 13. On the basis of the conclusions that we have reached above, we proceed to set aside the judgment of the High Court, as well as of the Appellate Court and restore the judgment of the Trial Court. The appeal is allowed with the costs estimated at Rs.25,000/-.

K.K.T.

Appeal allowed.

RASHIDA HAROON KUPURADE  
v.  
DIV. MANAGER, ORIENTAL INSURANCE CO. LTD. &  
ORS.  
(Civil Appeal No. 1638 of 2010)

FEBRUARY 8, 2010

**[ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.]**

*Workmen's Compensation Act, 1923:*

*s. 3 – Vehicular accident – Death of victim after six months – Compensation award passed by Commissioner for Workmen's Compensation holding the insurer liable set aside by High Court holding that the employer was liable and not the insurer – HELD: High Court has committed an error in holding that notwithstanding the fact that there was no connection with the accident and the death of the workman, the owner of the vehicle in question was still liable to pay compensation under the provisions of the Act – In view of s.3, compensation would be payable by employer only if the injury is caused to a workman by accident arising out of and in the course of his employment – There has to be an accident in order to attract the provisions of s. 3 and such accident must have occurred in the course of the workman's employment – In the instant case, there is no nexus between the accident and the death of the workman since the accident had occurred six months prior to his death. In such circumstances, the order of the High Court is set aside as far as the observations relating to the employer are concerned – Insurance – Liability of insurer.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1638 of 2010.

From the Judgment & Order dated 4.8.2005 of the High

A Court of Karnataka at Bangalore in MFA No. 3340 of 2004 (WC).

R.S. Hedge, Chandra Prakash, Rahul Tyagi, J.K. Nayyar, Ashwani Garg, Komal Kishore R. Joshi, P.P. Singh for the Appellant.

B Ramesh Chandra Mishra, Dr. Meera Agarwal for the Respondents.

The Order of the Court was delivered

### ORDER

- C 1. Delay condoned.
2. Leave granted.
- D 3. Despite notice having been served on the respondent Nos. 2 to 5, none of them have chosen to appear to oppose the appeal, when it is taken up for consideration. Learned counsel has, however, entered appearance on behalf of the respondent No.1/insurance company.
- E 4. The appeal is directed against an order passed by the Karnataka High Court in Misc.First Appeal No.3340 of 2004, under Section 30(1) of the Workmen's Compensation Act, 1923, (hereinafter referred to as 'the Act') for setting aside the order dated 31st December, 2003, passed by the Commissioner for Workmen's Compensation, Sub-Division-I, Belgaum, in Case No.WCA/FSR/1/03. By the said judgment, the appeal of the insurance company challenging the compensation awarded by the Commissioner for Workmen's Compensation was partly allowed, upon the finding that since the deceased workman had died of natural causes, namely, a heart attack, the insurance company could not be fastened with the liability of making payment of the said award since there was no nexus between the death of the workman and the accident, which had occurred about six months prior to his death. However, while disposing of the appeal, the High Court observed that at best, the relationship of employer and employee as between the deceased and the insured not being

A in dispute and the death having occurred during and in the  
course of employment, liability could be fastened on the  
employer and not the insurance company. Leave was,  
therefore, given to the claimants to recover the compensation  
amount from the owner of the vehicle. This appeal has been  
filed by the owner of the vehicle against the said observations  
and directions given by the High Court. B

5. It has been submitted on behalf of the appellant/owner  
of the vehicle that the provisions of Section 3 of the Act had  
been wrongly interpreted by the High Court in observing that  
the liability for the death of the workman, even if it had no  
connection with the accident in question, was with the owner  
of the vehicle. It has been submitted by Mr. Hegde that Section  
3, which sets out the employer's liability for compensation  
indicates in Sub-Section (1) that if personal injuries are caused  
to a workman by accident arising out of and in the course of  
his employment, his employer shall be liable to pay  
compensation in accordance with the provisions of Chapter II,  
which deals with workmen's compensation. Certain exceptions  
have been carved out in the proviso to the effect that there had  
to be some link between the accident and the death of the  
employee in order to attract the provisions of Section 3 as far  
as the owner of the vehicle is concerned. C D E

6. On behalf of the respondent/insurance company, it has  
been sought to be reiterated that since there was no nexus  
between the accident and the death of the employee, the High  
Court had correctly held that the liability of making payment  
under the Award was not with the insurance company. F

7. Having considered the submissions made on behalf of  
the respective parties, we are inclined to agree with the  
submissions made on behalf of the appellant that the High Court  
has committed an error in holding that notwithstanding the fact  
that there was no connection with the accident and the death  
of the workman, the owner of the vehicle in question was still  
liable to pay compensation under the provisions of the Act. G H

A 8. In order to better appreciate the submissions made on  
behalf of the parties, Section 3(1) of the above Act is extracted  
hereinbelow:-

B "3. Employer's liability for compensation.-(1)....If  
personal injury is caused to a workman by accident arising  
out of and in the course of his employment, his employer  
shall be liable to pay compensation in accordance with the  
provisions of this Chapter:....."

C 9. It will be clear from the wording of the above Section  
that compensation would be payable only if the injury is caused  
to a workman by accident arising out of and in the course of  
his employment. There has to be an accident in order to attract  
the provisions of Section 3 and such accident must have  
occurred in the course of the workman's employment. As  
indicated hereinabove, in the instant case, there is no nexus  
between the accident and the death of the workman since the  
accident had occurred six months prior to his death. D

E 10. In such circumstances, we are unable to sustain the  
order of the High Court and we have no option but to set aside  
the same as far as the observations relating to the appellant  
herein are concerned.

F 11. The appeal, therefore, succeeds. The observations  
made in the impugned judgment regarding the liability of the  
appellant herein to make payment in respect of the Award  
passed by the Commissioner, Workmen's Compensation are  
set aside. The other parts of the judgment are upheld. The  
appeal is allowed.

G 12. There will be no orders as to costs.

G 13. This order will not prevent the heirs of the deceased  
workman from taking recourse to any other legal remedy, if  
available to them.

R.P. Appeal allowed.

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OM PARKASH  
v.  
UNION OF INDIA AND ORS.  
(Civil Appeal No. 1514 of 2010)

FEBRUARY 8, 2010

[V.S. SIRPURKAR AND DEEPAK VERMA, JJ.]

**Land Acquisition Act, 1894:** s.6, First proviso, Explanation 1 – Limitation for issuance of s.6 declaration – Computation of – Issuance of s.4 Notification – Order of stay in favour of land owners who preferred writ petitions before High Court – On vacation of interim stay by virtue of dismissal of writ petitions, authorities proceeded further and issued notification under s.6 – In case of some land owners, s.6 declaration quashed – Appellants had not challenged the s.4 notification – They filed writ petitions challenging s.6 declaration which were dismissed – On appeal, held: Where any order of stay is granted in favour of land owners, actual period covered by order of stay should be excluded while computing period of limitation for issuance of s.6 notification – Thereafter, if declaration is quashed by any Court, it would only enure to the benefit of those who had approached the Court – The benefit would certainly not extend to them who had not approached the Court – Thus the appellants cannot be rewarded on account of their own lapse – After a long lapse of time, it would not only be harsh but inequitable also to quash the notifications so as to grant liberty to the appellants to challenge same in accordance with law – Delay and laches - Equity.

On 5.11.1980 and 25.11.1980, notifications were issued under Section 4 of Land Acquisition Act, 1894 for acquisition of more than 50,000 bighas of land situated in 13 different villages. Aggrieved land owners filed writ

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A petitions before High Court challenging the same. Interim order of stay was granted. High court ultimately dismissed the writ petitions. The dismissal of writ petition was not challenged and it attained finality. Pursuant to the Section 4 Notification, Section 6 Notification was issued. B The appellants had not challenged the Section 4 Notification and so there was no order of stay passed by any court in their favour i.e. there was no order of restraint from issuance of declaration under Section 6 of the Act. C In case of some of the land-owners, writ petitions challenging the Section 6 declaration/notification before the High Court were allowed on 14.8.1988.

Appellants filed writ petitions before High Court challenging the Section 6 declaration/notifications on the ground that the Section 6 declaration was not issued D within the period of three years from the date of issuance of Section 4 notifications which rendered the acquisition illegal and void qua appellants' lands; that the stay order granted in favour of other land owners, who had challenged either the Section 4 notifications or the E Section 6 declaration would not be applicable or operative to the appellants' lands; and that appellant claimed parity with those land-owners who successfully challenged the Section 6 declaration/notification before the High Court. The writ petitions were dismissed by F different orders passed by High Court. Hence these appeals.

Dismissing the appeals, the Court

G HELD: 1. Explanation 1 appended to first proviso of Section 6 of the Land Acquisition Act, 1894 makes it crystal clear that where any order of stay has been granted in favour of land owner, while computing the period of limitation of three years for issuance of Section 6 notification, the actual period covered by such order of

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stay should be excluded. On account of omission of the appellants, they cannot be granted dividend for their own defaults. The appellants ought to have been more careful, cautious and vigilant to get the matters listed along with those 73 petitions, which were ultimately allowed by the High Court. Not having done so, they have to suffer the consequence of issuance of notifications under Section 4 and further declaration under Section 6 of the Act. The use of the word “any” in the explanation considerably amplifies its scope and shows clearly that the explanation can be invoked in any case if some action or proceeding is stayed. It may be complete stay of the operation of the entire notification or may even be a partial stay – partial in degree or in regard to persons or lands in respect of whom it will operate. [Paras 76, 77, 86, 87] [479-D; 485-G-H; 486-A-B]

*Balak Ram Gupta v. Union of India* AIR 1987 Delhi 239, approved.

*Balak Ram Gupta v. Union of India & Others* 37 (1989) DLT 150, referred to.

2. Each of the notifications issued under Section 4 of the Act was composite in nature. The interim order of stay was granted in many petitions. Thus, in the teeth of such interim orders of stay during the period of stay, respondents could not proceed further to issue declaration/notification under Section 6 of the Act. The language employed in the interim orders of stay was also such that it had completely restrained the respondents from proceeding further in the matter by issuing declaration/notification under Section 6 of the Act. As soon as the interim stay came to be vacated by virtue of the main order having been passed in the writ petition, respondents, taking advantage of the period of stay during which they were restrained from issuance of declaration under Section 6 of the Act, proceeded further

A and issued notification under Section 6 of the Act. [Paras 88 and 89] [486-E-H; 487-A-B]

3.1. It is true that language of Section 6 of the Act implies that declarations can be issued piecemeal and it is not necessary to issue one single declaration for whole of the area which is covered under notification issued under Section 4 of the Act. Parliament was aware of such type of situation and that is why such a right has been carved out in favour of respondent-State. In many cases, urgency clause may be invoked, therefore, the right of filing objections under Section 5A of the Act would not arise. In some cases, even though objections might be preferred under Section 5A of the Act, but, may not be pressed in spite of knowledge of acquisition of land. Some of the land owners may not prefer to file any objections at all. In order to meet such type of exigencies as may arise in the case, power has been given by the Parliament to the Executive to issue declarations in piecemeal under Section 6 of the Act, wherever it may be feasible to implement the scheme. [Paras 90] [487-C-E]

3.2. In the case in hand, as many as four declarations under Section 6 of the Act were issued from time to time. Finally when declaration is quashed by any Court, it would only enure to the benefit of those who had approached the Court. It would certainly not extend the benefit to those who had not approached the Court or who might have gone into slumber. At this long distance of time, it would neither be proper nor legally justified to grant that benefit to the appellants. If it is granted to even those who had not approached the court, then it would frustrate the very purpose and scope of the Act. Final quashment of the declaration under Section 6 of the Act by any Court, in some other matter, cannot be extended to the benefit of the present appellants. In any case, there is no ground to rise to the occasion to do so, much less

to the benefits of the appellants. It is not a fit case to grant such inequitable reliefs to the appellants, after such a long delay. [Paras 91 and 93] [487-F-G; 488-B-C]

*Munni Lal & Ors. v. Lt. Governor of Delhi & Ors.* ILR (1984) I Delhi 469, referred to.

3.3. Obviously, the appellants cannot be rewarded on account of their own lapse as they should have been vigilant enough to get their matters also listed along with those in whose favour ultimately judgment was pronounced. Looking to the scheme of the Act, it is obvious that the appellants would certainly suffer the consequence of the interim order passed in some other matters preferred by other land owners challenging the notifications but finally benefit thereof cannot be accrued to the appellants as the same would obviously be confined to those petitioners only in whose favour orders were passed. [Paras 94 and 95] [488-D-F]

4. First proviso appended to section 6 clearly indicates that all actions which have taken place between the period, after commencement of Land Acquisition (Amendment & Validation) Ordinance 1967 but before the commencement of Land Acquisition (Amendment) Act 1984, would be saved. There is no dispute in these matters that notifications under Section 4 of the Act were issued on 05.11.1980 and 25.11.1980, the period which is covered by the first proviso to Section 6 of the Act. The exclusion envisaged is available in respect of notifications issued between the period commencing from 29.1.1967 and 24.9.1984. [Paras 96 and 98] [488-G-H; 489-A-B; 490-G]

*Chatro Devi v. Union of India & Ors.* 137 (2007) DLT 14, referred to.

5. Impugned orders passed by High Court from time

A to time would reveal that some have been dismissed primarily on the ground of delay and laches. If the appellants were under some *bonafide* mistake and had not challenged the issuance of notifications or declaration under Section 6 of the Act within a reasonable time then on the ground that there was an eclipse period during which they were not supposed to take any legal action, would be of no help to them. Some of the petitions have been filed either in the year 2000 or subsequent thereto. Thus, the High Court was justified in not entertaining such petitions on the ground of delay and laches. Even though, they have tried to attempt to explain the delay but such a long delay cannot be condoned more so, when proceeding of acquisition was initiated in the year 1980. Almost 30 years have already passed by, but, no steps could be taken to formally complete the scheme so far. Thus, after such a long lapse of time, it will not only be harsh but inequitable also to quash the notifications so as to grant liberty to the appellants to challenge same in accordance with law. [Paras 109 and 110] [494-G-H]

E 6. Notification under Section 4(1) of the Act being composite one it would not be proper and legally justifiable to quash the same more so when most of the appellants had not filed any objections under Section 5A of the Act. Thus, the declarations issued under Section 6 of the Act cannot be quashed. [Para 112] [495-D]

G 7. Unless the declarations issued by respondents on as many as four dates, in the year 1985, are quashed in toto, it cannot be said that respondents could not have proceeded further with regard to acquisition of those lands for which the same has not been quashed earlier. In other words, it has been held that for all remaining lands for which neither the notifications under Section 4

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nor declarations under Section 6 have been quashed, acquisition proceedings, notification/declaration issued for remaining lands would continue to hold good and respondents can proceed further. [Paras 113 and 114] [495-E-G]

*Abhey Ram (Dead by LRs) and Ors. v. Union of India & Ors. (1997) 5 SCC 421 – relied on.*

*Delhi Administration v. Gurdip Singh Uban and Ors. (1990) 7 SCC 44; Oxford English School v. Government of Tamil Nadu and Others (1995) 5 SCC 206; Chatro Devi v. Union of India & Ors. 137 (2007) DLT 14; Vishwas Nagar Evacuees Plot Purchasers Association v. Under Secretary, Delhi Administration (1990) 2 SCC 268; Star Wire (India) Ltd. v. State of Haryana (1996) 11 SCC 698; Swaika Properties (P) Ltd. v. State of Rajasthan (2008) 4 SCC 695; Meera Sahnii v. Lt. Governor of Delhi (2008) 9 SCC 177; Delhi Administration v. Gurdip Singh Uban & Ors. (2000) 7 SCC 296; Smith v. East Elloe Rural District Council and Others 1956 AC 376; F. Hoffmann- LA Roche and Co. A.G. and Others v. Secretary of State for Trade and Industry 1975 AC 295, referred to.*

**Case Law Reference:**

ILR (1984) I Delhi 469	referred to	Paras 5,54, 56, 88	F
AIR 1987 Delhi 239	approved	Paras 20,	
(1997) 5 SCC 421	relied on	Paras 20, 30, 32, 43, 61, 81, 83, 84, 105, 107, 108, 111, 112	G
(1990) 7 SCC 44	referred to	Paras 21, 30, 36	
(1995) 5 SCC 206	referred to	Para 30	H

A	37 (1989) DLT 150	referred to	Para 34
	(1999) 7 SCC 44	referred to	Para 36
	137 (2007) DLT 14	referred to	Paras 42, 102
B	(1990) 2 SCC 268	referred to	Para 64
	(1996) 11 SCC 698	referred to	Para 64
	(2008) 4 SCC 695	referred to	Para 64
C	(2008) 9 SCC 177	referred to	Para 65
	(2000) 7 SCC 296	referred to	Para 68
	1956 AC 376	referred to	Para 69
	1975 AC 295	referred to	Para 69
D	137 (2007) DLT 14	referred to	Para 101

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1514 of 2010

From the Judgment & Order dated 25.11.2004 of the High Court of Delhi at New Delhi in Writ Petition No. 346 of 1987.

WITH

F	C. A. Nos. 1515, 1516, 1517, 1518, 1519, 1520, 1521, 1522, 1523, 1524, 1525, 1526, 1527, 1528, 1529, 1530, 1531, 1532, 1533, 1534, 1535, 1536-38, 1539, 1540, 1541, 1542, 1543, 1544, 1545, 1546, 1547, 1548, 1549, 1550, 1551, 1552, 1553, 1554, 1555, 1556, 1557, 1558, 1559, 1560, 1561, 1562, 1563, 1564, 1565, 1566, 1567, 1568, 1569, 1570, 1571, 1572, 1573, 1574, 1575, 1576, 1577, 1578, 1579, 1580, 1581, 1582, 1583, 1584, 1585, 1586, 1587, 1588, 1589, 1590, 1591, 1592, 1593, 1594, 1595, 1596, 1597, 1598, 1599, 1600, 1601, 1602, 1603, 1604, 1605, 1606, 1607, 1608, 1609, 1610, 1611, 1612, 1613, 1614, 1615, 1616, 1617, 1618, 1619, 1620 and 1621 of 2010.
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A P.P. Rao, Dr. Rajiv Dhavan, T. R. Andhyarjuna, P. S. Patwalia, M. R. Calla, P. N. Lekhi, Ravinder Sethi, Mukul Rohtagi, S.B. Upadhya, Ms. Geeta Luthra, Dr. K.S. Sidhu, K. N. Bhat, Mariarputham, Hiren Rawal, ASG.Ms. India Jaising, ASG; M.K. Garg, Sumit Bansal, P.Tripathi, Ms. J. Mishra, Jagdeep Kishore, Ms. Pallavi Mohan (for Ms. Manjula Gupta), B Ms. Meenakshi Lekhi, Lokesh Kumar, Vikas Mehta, Rohit Bhat, Rishi Malhotra, Prem Malhotra, Pradeep Misra, Ms. Daleep Kr. Dhyani, Ms. Suruchii Aggarwal, Anish K.V., Dhruv Mehta, Yashraj Singh Deora, Mohit Abraham (for M/s. K.L. Mehta & Co.), Ms. S. Janani, Deepak Goel, Jagjit Singh Chhabra, Vinay C Bhasin, N.S. Vashisht, Anurag Chawla, Arun k. Sinha, Rakesh Singh, Sumit Sinha, Dhruv Mehta, Om Prakash, T.S. Sabarish, Ms. Tanushree Mukherjee (for M/s. K.L. Mehta & Co.), M.K. Garg, Siddhartha Choudhary, Rahul Gupta, Ms. Reema D Sharma, Bhargava V. Desai, M. Vashisht, Sameer Vashisht, D M.R. Shamshed, Amit Sibal, Zaki Ahmad Khan, Parmanand Gaur, Mukesh Verma, Vivek Vishnoi, Arunabh Choudhary, Anupam Lal Das, Kashi Vishveshwar, Raktim Gogoi, Arun K. Sinha, Anandeshwar Gautum, A.K.Sinha, Mukul Kumar, P.D. Sharma, Mukul Gupta, M. A. Chinnasamy, Jai Prakash, B.S. E Mann, Preetam Shah, Harbir Singh, K. Krishna Kumar, Amarjeet Singh Bedi, Maldeep Sidhu, Samar Bansal, Ms. Aparna Rohatgi Baldev Atreya, Ms. Meenakshi Lekhi, A.V. Rangam, Buddy A. Rangadhan, Puneet Sharma, S.B. Sharma, Dharmendra Kumar Sinha, N.S. Vashisht, Vishal Singh, Arun F K. Sinha, Rakesh Singh, Sumit Sinha, Ms. Kanchan Kaur Dhodi, Anandeshwar Gautram, Arun K. Sinha, Rakesh Singh, Sumit Sinha, Vishal Singh, R.R. Jamwal, Balaji Srinivasa, Dr. K.P.S. Dalal, Anil Karanwal, Krishna Pal Singh, Ms. Sadhna G Sandhu, Ms.Gargi Khanna, Ms. Anil Katiyar, Ms. Gunwant Dara, Y.P. Mahajan, T.V. Ratnam, R.N. Keshwami, Ram Lal Roy, Rajiv G Garg, Ashish Garg, Annam D.N. Rao, Abhay Kumar, Rajesh Anand, Saurabh Mehra, Ms. Maldeep Sidhu, Sanjay Poddar, Ms. Rekha Pandey, N.S. Benipal, Sushma Suri, D.N. Goburdhan, Ms. Asha G. Nair, Prabal Bagchi, Ms. Rekha H Pandey, Ms. Gargi Khanna, Mrs. Kiran Bhardwaj, Ms. Gurmeet

A Bawa, D.S. Mahra, Sanjeev Sahay, Balendu Shekhar, V.B. Saharya (for M/s Saharya & Co.), V.K. Verma, Ms. Rachana Srivastava, Sanjiv Sen, Praveen Swarup, Rajiv Kr. Pathak for the appearing parties.

B The following judgment of the Court was delivered:

**DEEPAK VERMA, J.** 1. Permission to file Special Leave Petitions is granted.

2. Delay condoned. Substitution allowed.

C 3. Leave granted.

D 4. For planned development of Delhi, Lt. Governor issued notifications under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') on 05.11.1980 and 25.11.1980 to acquire more than 50,000 bighas of land situated in 13 different villages falling within Delhi.

E 5. The land owners, feeling aggrieved by the issuance of the said notifications under Section 4 of the Act, filed writ petitions in the High Court of Delhi challenging the same on variety of grounds. The said judgment rendered on 15.11.1983 in the case of *Munni Lal & Ors. v. Lt. Governor of Delhi & Ors.* is reported in ILR (1984) I Delhi 469. After considering the arguments advanced by learned counsel for the petitioners – Munni Lal & Ors., the Division Bench of the Delhi High Court came to the conclusion that the writ petitions challenging the validity of the notifications dated 05.11.1980 and 25.11.1980 issued under Section 4 of the Act, deserve to be dismissed and accordingly were dismissed. We have been given to understand that against this judgment and order, no appeal was filed and this judgment thus attained finality.

H 6. These appeals arise out of Judgment and Order passed by Delhi High Court in Writ Petitions preferred by appellant and other similarly situated appellants under Article 226 of the



Constitution of India, wherein challenge was primarily and basically to the declaration/notifications issued by Delhi Administration under Section 6 of the Act. A

7. The said petitions having been dismissed by different Orders passed by Division Benches of Delhi High Court, these appellants are before us challenging the same on variety of grounds. B

8. The cases have a long and chequered history. For the sake of convenience, we are taking the facts of the civil appeal arising out of SLP (C) No. 9389 of 2005, *Om Prakash Vs. Union of India and Others* as issue involved in these cases is almost identical and common. C

9. Shorn of unnecessary details, the brief facts of the case are mentioned hereinbelow. D

10. Notifications under Section 4 of the Act were issued on two different dates, viz., 5.11.1980 and 25.11.1980.

11. Pursuant thereto, further declarations/notifications as contemplated under Section 6 of the Act were issued on 20.5.1985, 6.6.1985, 7.6.1985 and 26.2.1986. E

12. Admittedly, appellant and several such other appellants are in possession as owners of different parcels of land situated in 13 villages, within Delhi. F

13. Notifications issued under Section 4 for planned development of Delhi had a caveat that three types of land were exempted from the purview of these notifications i.e government land, land already notified under Section 4 or 6 of the Act or land in respect of which lay-out plans/building plans were sanctioned by Municipal Corporation of Delhi before 05.11.1980. G

14. It is not in dispute that initially appellants had not challenged the notifications issued under Section 4 of the Act, H

A by filing writ petitions or resorting to any other remedy in accordance with law.

15. Obviously, there could not have been any order of stay passed by any court in their favour. In other words, there was no order of restraint from issuance of declaration under Section 6 of the Act. B

16. According to the appellants, the Act provides that the said declaration should have been issued within a period of three years from the date of issuance of notifications under Section 4 of the Act, that is to say, positively on or before 24.11.1983. But no such declaration having been issued on or before 24.11.1983, i.e., within the statutory period of three years, it is contended that acquisition is illegal and void *qua* appellants' lands. In the aforesaid appeal, last declaration under Section 6 of the Act was finally issued on 07.06.1985, which according to the appellant, was clearly beyond statutory period of three years. Thus, whole proceedings of acquisition should be rendered illegal and void *ab initio*. However, the last declaration was still issued on 26.2.1986. C

17. It has also been appellants' case that the stay order granted in favour of the other land-owners, who had challenged either the notification issued under Section 4 of the Act or the declaration under Section 6 of the Act, would not be applicable or operative to the appellants' land as obviously it would be confined only to those who had approached the Court and were granted stay. D

18. Like appellant, there were many such land-owners who had challenged the said declaration/notification issued under Section 6 of the Act before the High Court of Delhi and their petitions having been allowed on 14.8.1988, appellant claimed parity on the ground that due to some bona-fide mistake, the appellant's petition which was filed in the year 1987 could not be listed along with batch matters but subsequently, appellant's petition came to be dismissed. Thus, for this reason he should E

not be put to an irreparable loss of losing his land.

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19. Appellant's petition came up for hearing before Division Bench of High Court of Delhi on 25.11.2004 and on the said date following order of dismissal came to be passed:

"We find that the issue raised in the petition with regard to validity of the Declaration issued under Section 6 of the said Act, stands concluded against the petitioner by the decision of the Apex Court in *Abhey Ram and Ors. Vs. Union of India & Ors.* (1997) 5 SCC 421 (which approved the full Bench decision of this court in B.R. Gupta's case. AIR 1987 Delhi 239 on the issue that the declaration under Section 6 was not beyond time) and *Delhi Administration Vs. Gurdip Singh Uban and Ors.* (1990) 7 SCC 44, wherein their Lordships were pleased to observe that those who had not filed objections under Section 5(A) of the said Act could not be allowed to contend either that Section 5 enquiry was bad, or that Section 6 Declaration must be struck down and that the Section 4 notification would lapse. Admittedly, in the present case, no objections have been filed by the petitioner under Section 5 (A) of the Act.

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Consequently, the writ petition and application for interim relief are dismissed and interim order dated 9.2.1987 stands vacated."

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20. Perusal of the aforesaid order would make it abundantly clear that while considering the appellant's petition, High Court was of the opinion that in the light of the opinion expressed by Full Bench in *Balak Ram Gupta Vs. Union of India* reported in AIR 1987 Delhi 239 (referred to as B.R.Gupta-I), affirmed by this Court in *Abhey Ram (Dead by LRs) and Ors. Vs. Union of India & Ors.* (1997) 5 SCC 421 decided on 22.04.1997, holding therein that declaration issued under Section 6 was not beyond time.

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21. Impugned order further shows that it placed reliance on another judgment of this Court reported in (1990) 7 SCC 44, *Delhi Administration Vs. Gurdip Singh Uban and Ors.* wherein it has been held that all those land-owners who had not preferred objections under Section 5A of the Act, could not be allowed to contend that either enquiry under Section 5A of the Act was bad or the declaration issued under Section 6 must be struck down on the ground of limitation or consequently, notification issued under Section 4 of the Act would stand lapsed. Thus, the appellant's petition was not entertained and ultimately came to be dismissed.

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22. It has neither been disputed here nor before the High Court that some of the appellants herein and many similarly situated land-owners had not preferred objections under Section 5A of the Act. There are other appeals, in which objections were preferred but have been decided against them or even though objections were preferred but were not pressed, on account of subsequent developments that have taken place. We would deal with those type of matters little later.

23. Mr. P.P. Rao, learned senior counsel for appellant contended that in this batch of appeals, broadly three categories can be formulated :

*Category No. 1* - where land-owners had admittedly not filed objections under Section 5A of the Act, but essentially, the challenge was only to declaration issued under Section 6 of the Act, being time-barred.

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*Category No. 2* – even though land-owners had preferred objections under Section 5A of the Act, wherein an enquiry was held, but the same were rejected.

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*Category No. 3* – during the pendency of the objections under Section 5A of the Act, some of the land-owners had sold their lands. Pursuant to the execution of said sale-deeds in favour of the vendees, they continued to press objections

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preferred by their vendors but the same were also rejected. A

24. It has been fairly conceded by learned senior counsel for appellants that he had neither challenged the notification issued under Section 4 of the Act nor had preferred any objection under Section 5A of the Act independently. Thus, obviously there could not have been any stay order granted in his favour by any court. Therefore, ordinarily, the period of limitation would be three years as contemplated under Section 6 of the Act (first proviso read with Explanation 1 appended thereto). B

25. To appreciate the aforesaid arguments, it is necessary to understand the true and correct import of Section 6 of the Act, reproduced hereinbelow : C

“6. Declaration that land is required for a public purpose.-  
(1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied, after considering the report, if any, made under Section 5A, sub-section (2), that any particular land is needed for public purpose or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under section 4, sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) under Section 5A, sub-section (2): D E

Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1),- F

(i) published after the commencement of the

Land Acquisition (Amendment and Validation) Ordinance, H

A 1967 but before the commencement of the Land Acquisition (Amendment) Act, 1984 shall be made after the expiry of three years from the date of the publication of the notification; or

B (ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification:

C Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

D [Explanation 1. - In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under Section 4, sub-section (1), is stayed by an order of a Court shall be excluded.

E [Explanation 2. - Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues.] F

F (2) Every declaration shall be published in the Official Gazette, [and in two daily newspapers circulating in the locality in which the land is situated of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice being hereinafter referred to as the date of publication of the declaration), and such declaration shall state] the district or other territorial division in which the G H

land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be; and, after making such declaration the appropriate Government may acquire the land in manner hereinafter appearing.”

26. It has strenuously been contended by learned senior counsel Shri P.P. Rao that even if appellant had not preferred any objection under Section 5A of the Act, his right to challenge issuance of declaration under Section 6 of the Act after the stipulated period of limitation, cannot be taken away, especially in the light of the provisions contained in Article 300A of the Constitution of India. It was also submitted by him that both rights are independent and accordingly can be invoked separately. He also submitted that language of Articles 21 and 300A of the Constitution is almost identical, thus, no person should be deprived of his property save by authority of law.

27. We were also taken through Article 17 of Universal Declaration of Human Rights, which safeguards the interest of persons in properties. He, therefore, submitted that if the property of the appellant is sought to be acquired in this fashion then it would tantamount to violation of human rights as guaranteed under Article 17 of the Universal Declaration.

28. A further point has also been tried to be hammered before us that Land Acquisition Act being expropriatory in nature, its provisions deserve to be construed strictly and each and every step required to be taken by the respondents must be strictly adhered to.

29. Lastly, it was submitted by him that in any case, Government is not likely to suffer any loss, much less an

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A irreparable loss, even if the land owned, possessed and occupied by the appellant is exempted from acquisition whereas the appellant would suffer a greater loss and injury as with long passage of time he has constructed his house, is residing therein for long number of years and acquisition thereof would lead to serious consequences and would be disastrous to him and other similarly situated land owners. In other words, it has been contended that equitable justice is required to be meted out to the appellant and this Court shall ensure that no injustice is rendered to this appellant and other such hundreds of appellants.

30. In the light of the aforesaid contentions, learned senior counsel for the appellant submitted that following questions of law would arise in this and the connected appeals:

D (i) Whether proposition of law propounded in *Delhi Administration Vs. Gurdip Singh Uban and Ors.* (Supra), (referred to as No.1) has correctly been understood by the Division Bench in the impugned order?

E (ii) Whether the judgment in the case of *Abhey Ram and Ors. Vs. Union of India & Ors.* (Supra) which approved the Full Bench opinion of Delhi High Court in *B.R. Gupta-I*, (Supra) has indirectly been over-ruled in the case of *Oxford English School Vs. Government of Tamil Nadu and Others* (1995) 5 SCC 206?

F (iii) If, that being the legal position, even though *Abhey Ram's* case (supra) rendered by three learned Judges of this Court, can still be interpreted to grant benefit to the appellant as otherwise great injustice would be caused to appellant.

G 31. Shri P.N. Lekhi, learned senior counsel appearing for some of the appellants has taken us through the history of the Act and the various amendments which have been incorporated from time to time. He has also advanced the same arguments

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as have been put forth by Mr. P.P. Rao, that the effect of stay order granted in other matter should not be logically and legally made applicable to those who had not even approached the Court, as it would always be an order of stay *in personam* and not an order *in rem*.

32. It is brought to our notice that he appears for all those appellants, who are subsequent purchasers, after issuance of declaration under Section 6 of the Act. Sale Deeds in favour of these appellants have been executed between the period from 18.11.1988 to 22.4.1997, i.e., the period between the date of judgment of the Full Bench of the High Court in the case of *B.R. Gupta-I* and the date of judgment of this Court in the case of *Abhey Ram* (supra). According to him, this was the eclipse period as in some of the matters, notifications under Section 4 were quashed on account of failure of Delhi Administration to issue further declarations under Section 6 of the Act, within a period of three years from the date of issuance of notifications under Section 4 of the Act. Since even thereafter, no steps were taken by Delhi Administration to issue a fresh notification under Section 4 of the Act, the subsequent purchasers were fully justified in purchasing the lands from previous owners. Thus, all purchases by them between the aforesaid period would be said to have been made during the eclipse period and therefore, they should be called owners rather than subsequent purchasers.

33. He has also put forth an argument that prior to coming into force of Amendment Act of 1984, there was no exclusion clause appended to Section 6, by way of an explanation and therefore, exactly three years' period has to be computed between the date of publication of notification under Section 4 of the Act and further declaration under Section 6 of the Act for determining as to whether the same had been issued within the aforesaid period or not. In other words, he has contended that irrespective of the fact that there was any stay or there was no stay, in either case, the period of three years should be

A calculated from the actual date of publication of notification issued under Section 4 of the Act till the date of publication of notification under Section 6 of the Act.

B 34. Dr. Rajeev Dhawan, learned senior counsel appearing in some appeals contended that primarily petitions of these appellants have been dismissed on the ground of laches. He has contended that in *Balak Ram Gupta Vs. Union of India & Others* reported in 37 (1989) DLT 150 [hereinafter referred to as '*B.R. Gupta-II*'], notification with regard to acquisition of lands situated in 11 villages was quashed and in subsequent judgment, notification with regard to two more villages was quashed. Therefore, there was no occasion on the part of these appellants to have continued to prosecute their objections preferred under Section 5A of the Act.

D 35. According to him, from the year 1989 to 1997, there was an absolute silence with regard to the acquisition, which had initially commenced in the year 1980. Therefore, no prudent man would have taken legal action during the aforesaid period. He, therefore, contended that appellants were justified in not taking any action during the aforesaid period. Only when fresh proceedings commenced with regard to acquisition, appellants were prompt enough to file writ petitions either in the year 2000 or 2002. Thus, delay having been explained properly, the Division Bench has grossly erred in dismissing the same on the ground of laches.

G 36. Our attention has been drawn to the letter of Mrs. Gita Sagar, Joint Secretary, (L & B) dated 31.3.1989 mentioning therein that in the light of the Division Bench Judgment of Delhi High Court in *B.R. Gupta-II* quashing the notifications issued under Section 4 of the Act, nothing more was required to be done and acquisition proceedings be dropped. This further stood fortified vide subsequent circular issued by Delhi Administration on 07.12.1999. According to him, thus the appellants were entirely justified in not taking any action. In other words, he contended that from the year 1990 to 1997, the

judgment in the case of *Delhi Administration Vs Gurdip Singh Uban* reported in (1999) 7 SCC 44 held the field whereby notification issued under Section 4 of the Act was quashed and no further action was taken by Delhi Administration.

37. Thus, any prudent man would be given to understand that nothing more was required to be done and therefore they sat quiet over the matters. He, therefore, contended that dismissal of appellants' writ petitions on the ground of laches was wholly unjustified and uncalled for, more so, when the reasons for the delay were fully assigned satisfactorily.

38. Arguments were advanced by him on the Doctrine of 'Legitimate Expectation'. He also contended that the right to hold property as envisaged under the Constitution being constitutional right conferred under Article 300A, cannot be permitted to be taken away without authority of law. Even though, it is not a Fundamental Right nevertheless, it continues to be a constitutional right, and such right was never taken away from Article 14 of the Constitution.

39. It is further submitted by him that Sections 5A and 6 of the Act cannot be separated as the right envisaged under Section 5A is a collective right and cannot be equated with Section 6. It has also been argued on the "Doctrine of Public Law" to contend that there was no case for dismissal of the petitions of these appellants on the ground of laches. According to him, it would amount to discrimination to these appellants vis-a-vis the other land-owners who have been extended the benefit of quashment of notifications, thereby exempting their lands from being acquired, therefore, the same cannot be allowed to stand.

40. Mr. Mukul Rohtagi, learned Senior Counsel appearing for some other appellants contended that he is appearing for those land-owners, who had actually filed their objections under Section 5A of the Act and belong to village Shayoorpur. The said petitions were filed in the year 1985.

A 41. However, unfortunately, when the said petitions were heard on 3.3.2005, learned counsel for the appellants was absent as a result whereof, the petitions came to be dismissed. Thus, they were constrained to file review petitions but same also came to be dismissed on 27.4.2006.

B 42. It has further been contended that on account of difference of opinion between Hon'ble Mr. Justice Swatanter Kumar (as he then was) and Hon'ble Mr. Justice Madan B. Lokur on the question of import and interpretation of Section 5A of the Act, the matter was referred to Hon'ble Mr. Justice T.S. Thakur (as he then was). Hon'ble Mr. Justice Thakur agreed with the views expressed by Hon'ble Mr. Justice Madan B. Lokur. While concurring, he held that hearing as contemplated under Section 5A of the Act would mean an effective hearing and it is not an empty formality and the provision thereof has to be strictly adhered to and principles of natural justice have to be followed. The said judgment titled *Chatro Devi Vs Union of India & Ors.* is reported in 137 (2007) DLT 14.

E 43. Mr. Mukul Rohtagi, strenuously contended before us that in *B.R. Gupta-II*, it was specifically held with regard to land-owners of Shayoorpur that the enquiry was bad and invalid. The report as sent by Collector to the Lt. Governor and his satisfaction thereon was also bad. If this was already held so by Division Bench of the said Court then in subsequent orders passed by Division Bench, it could not have been over-ruled by the said Bench, it being a coordinate Bench. It was also contended by learned counsel that certain observations made in *B.R. Gupta* (supra) and *Abhey Ram* (supra) would not constitute *ratio decidendi* as they could, at best, be treated as obiter which is not binding on this Court.

G 44. It was reiterated by learned Senior Counsel that the declaration under Section 6 of the Act, having not been issued within a period of three years from the date of issuance of notification under Section 4 of the Act, the whole process has

been rendered redundant and has become *non est*. A

45. Shri P.S. Patwalia, learned Senior Counsel appearing for some other appellants submitted that he represents those land-owners, whose lands are situated in village Chhatarpur but their petitions have been dismissed solely on the ground of laches. According to him, they purchased the lands from original owners some time in the month of April, 1985 but had filed the petitions in the High Court in the year 2004. B

46. It has also been submitted by him that original owners, that is the vendors of these appellants had already filed their objections under Section 5A of the Act but the present appellants did not prosecute the same any further. Thus, obviously, they came to be dismissed. He further informed that appellants still continue to be in possession of the lands, and have already constructed houses over the same, without any permission or sanction, since at that time no permission/sanction was required to be obtained either from Panchayat or Municipal Corporation. C

47. As regards laches, it has been tried to be explained by contending that First Master Plan was published on 1.9.1962 but it lapsed in 1981. The second Master Plan was in force upto 2001. On account of serious confusion due to variety of reasons, the land-owners were in a lurch as to what legal steps are required to be taken due to the fact that Delhi Administration itself had dropped further acquisition proceedings. He, therefore, contended that when there was such a massive confusion, not only amongst the litigating public but also amongst the advocates representing them, thus, they were fully justified in not taking up the issue earlier and their petitions could not have been dismissed solely on the ground of delay or laches when the same were sufficiently explained to the Bench. D

48. Mr. T.R. Andhyarujina, learned senior counsel appeared for Springdales Educational Society, whose land is E

A also situated in village Chhatarpur. According to him, appellant is the original owner of the land having purchased it in the year 1966-1967. On coming to know about the acquisition proceedings, appellant had filed objections under Section 5A of the Act within 30 days and had specifically sought an opportunity of hearing to it, which was not granted. B

49. He contended that appellant is imparting rural education to the residents of that area and the purpose for which appellant's society has been set up is public charitable purpose. Thus, when specific opportunity of hearing to support objections filed by it under Section 5A of the Act was sought, further declaration under Section 6 of the Act should not have been issued till the objections were finally decided. He, therefore, submitted that since notifications have been quashed in respect of many villages, it is a fit case where notification as far as this appellant is concerned, should also be quashed. He has also pressed into service the legal maxim "*actus curiae neminem gravabit*," meaning thereby that an act of the court shall prejudice none. He also reiterated that there was total confusion with regard to the action required to be taken by the land-owners. Thus, the petitions could not have been dismissed on the ground of laches, more so, where equitable principles are invoked, laches would not come into play and especially in such type of cases, where there was no occasion for the respondents to file counter affidavit. C

F 50. Almost identical arguments have been advanced by Mr. Vikas, Mr. Y.P. Mahajan, Mr. R.N. Keshwani, Mr. Bhargava V. Desai, Mr. Ravinder Singh, Mr. Amarjit Singh Bedi, Mr. Vikas Mehta, Mr. M.R. Shamshed, Mr. N.S. Vasisth, appearing for the other Appellants. D

51. In addition, they have also raised the ground that all the subsequent purchasers have purchased the lands after fully complying with the provisions contained in Section 5 of Delhi Land (Restrictions on Transfer) Act, 1972, which mandate upon H

the land-owners of Delhi to seek permission from the competent authority that the said land is not under orders of acquisition. They also contended that since permission was granted by the competent authority for sale and transfer of their land, it would automatically mean that the land was free from clutches of acquisition, otherwise no permission in this regard would have been granted to them.

52. Learned counsel appearing for respondents Shri Hiren Rawal, ASG, Ms. Indira Jaising, ASG, Mr. D.N. Goburdhan and Ms. Gita Luthra opposed the prayer of the appellants and contended that matters have now been settled by long catena of cases either by High Court or by this Court, ever since the notifications were issued in the year 1980. Thus, it is too late in the day for the appellants to challenge the same on any other grounds.

53. Learned ASG for respondent No.1, Union of India, Mr. H.S. Rawal has taken us through the aims and objects of Amending Act No. 13 of 1967 and Amending Act No. 68 of 1984, primarily to bring to our notice the purpose and reasons for bringing various amendments in the original Land Acquisition Act 1894. He submitted that vide Amending Act No. 13 of 1967, amending provisions thereof came into operation with effect from 12.4.1967.

54. It has been submitted that the challenge by land owners to the issuance of notifications under Section 4 of the Act stood concluded in favour of the respondents by a Division Bench Judgment in the matter of *Munni Lal* (supra). Argument was, therefore, advanced that the said judgment has already attained finality as the aggrieved party had not challenged the same by filing any further appeal in the Supreme Court. Thus, it should be deemed that the notifications issued under Section 4 of the Act by respondents were legal, valid and beyond the pale of judicial review as the lands are acquired for public purpose.

55. It has been contended by him that generally the

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A objections preferred under Section 5A of the Act were on a cyclostat format raising the same grounds against acquisition, still, full and complete hearing on the said objections was afforded to them by Land Acquisition Collector as contemplated under the Act.

B 56. He has brought to our notice that in *Munni Lal* (supra), the Division Bench of Delhi High Court had passed an interim order of stay on 18.3.1981, reproduced herein below:-

C “Case for 27.4.1981 in the meanwhile, respondent Nos. 1 and 2 are restrained from issuing any declaration under Section 6 of the Act.”

D 57. In the light of the aforesaid interim blanket order of stay passed by Delhi High Court, learned counsel for respondents contended that the hands of the respondents were tied by the said order and they could not have proceeded further to issue any declaration under Section 6 of the Act. The words used in the interim order were “any declaration” which completely restrained them from proceeding further in this direction. It was also contended that the aforesaid order came to be confirmed on 4.5.1981. Similar interim orders thereafter came to be passed in various other writ petitions preferred by land-owners. In the light of the various interim orders passed by Delhi High Court from time to time, the respondents could not have issued further declaration under Section 6 of the Act, otherwise they would have exposed themselves for committing contempt of the Court.

G 58. It was then contended that all objections preferred by land-owners under Section 5A of the Act were considered between the period from 8.5.1985 to 13.6.1985. After hearing arguments on the objections, along with the report of the Land Acquisition Collector, the same were forwarded to Lt. Governor of Delhi between the period from 13.5.1985 to 22.6.1985. Lt. Governor then examined the objections together with reports enclosed therewith prepared by Land Acquisition Collector and

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gave his approval for acquisition of the land. In other words, it has been contended that the provisions of the Act have fully been complied with and there has not been any violation thereof.

59. He has further brought to our notice that W.P.(C)No.2850 of 1985 was filed in the High Court of Delhi challenging the same issue with regard to period of limitation prescribed between issuance of notification under Section 4 and further declaration under Section 6 of the Act, which came to be dismissed by Division Bench on 25.11.1985. Pursuant to the said order, respondents had taken possession of part of the land sought to be acquired vide order dated 14.7.1987.

60. It has not been disputed before us that Mrs. Gita Sagar had written a letter on 31.3.1989 mentioning therein that on account of several developments and judgment of the High Court of Delhi in *B.R.Gupta-II* the acquisition proceedings are being dropped. It was followed by another circular issued by respondent on 07.12.1999 but it has been contended before us that they were not addressed to any of the appellants or land owners whose lands were sought to be acquired and by no stretch of imagination it could be said that all further proceedings of acquisition of land were dropped. However, in our opinion, critical reading thereof makes it abundantly clear the proceedings were dropped pursuant to the judgment in the case of the *B.R. Gupta-II*. Consequently, the benefit of the said communication can be extended qua the petitioners who had approached the High Court and not to all other land owners.

61. Coming to the question of delay and laches in filing the petitions by various petitioners in the High Court, it has been contended that as a matter of fact, cause of action for filing the petitions had accrued to them in the year 1985, when on four different dates, declaration under Section 6 of the Act was issued. Therefore, it was necessary on the part of the appellants to have explained the delay from 1985 onwards. He thus,

A contended that it is to be explained in three stages viz:  
(i) from 1985 till *B.R. Gupta-II* came to be decided on 18.11.1988;  
(ii) from the period from 18.11.1988 to 22.4.1997 when *Abhey Ram* (supra) came to be decided and finally,  
(iii) post *Abhey Ram's* case, till the filing of the petitions.

C 62. It has been contended that unless the appellants are able to successfully overcome the first hurdle from the year 1985 till 1988, the question of their explaining delay and laches for the second or third stage would not arise.

D 63. Apart from the above, it has also been strenuously contended before us that perusal of each and every petition filed by the appellants would show that there has been no concrete foundation in the pleadings explaining delay and laches. According to respondents, it was incumbent on the part of the appellants to have specifically pleaded as to why they could not approach the Court earlier and to have explained the laches. Since this onus, which lay heavily on the appellants was not discharged and their petitions having been dismissed on this ground, the question of meeting the same by the respondents by way of their counter did not arise.

F 64. It was thereafter contended that in all the matters, awards have been passed between the period from 19.5.1987 to 17.6.1987 pertaining to all the 13 villages and money had also been deposited. Once awards have been passed, in the light of various judgments of this Court, it was neither justified nor legally competent on the part of the appellants to have challenged the declaration issued under the Act on the ground of limitation or on any other ground. To buttress this ground, learned counsel for respondents have placed reliance on the following judgments :

H (1) *Vishwas Nagar Evacuees Plot Purchasers*

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*Association Vs. Under Secretary, Delhi Administration* reported in (1990) 2 SCC 268; A

(2) *Star Wire (India) Ltd. Vs. State of Haryana* (1996) 11 SCC 698; and

(3) *Swaika Properties (P) Ltd. Vs. State of Rajasthan* (2008) 4 SCC 695. B

65. It was then submitted that as regards grant of permission was concerned, the same has not been issued by the competent authority as prescribed under the Delhi Land (Restrictions on Transfer) Act, 1972. Therefore, advantage thereof cannot be taken by the appellants. To put forth further arguments in this regard, reliance has been placed on a recent judgment of this Court reported in (2008) 9 SCC 177 *Meera Sahni Vs. Lt. Governor of Delhi*. It has been brought to our notice that NOCs produced before this Court for perusal, would show that the same have been issued under the seal and signature of Tehsildar and not by the competent authority as defined under Delhi Land (Restrictions on Transfer) Act, 1972. Therefore, no advantage thereof could be claimed by the appellants, who are subsequent purchasers from original owners. C  
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66. To contend further in this regard, we have been taken through the affidavit of Shri U.P. Singh, OSD (Litigation), Building Department of Government of NCT, Delhi, in which it has categorically been mentioned with regard to the alleged NOC that the same is of no consequence as it has not been issued by the competent authority as contemplated under the said Act. It has been contended that the said NOC cannot be construed as a valid permission to the subsequent purchasers in the light of provisions of the Delhi Land (Restrictions on Transfer) Act, 1972. F  
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67. Additionally, it has been argued that in any case, the said NOC issued by Tehsildar is of no consequence because H

A Tehsildar was not the competent authority at the relevant point of time. In the wake of this categorical denial of valid NOC possessed by subsequent purchasers, it has been contended that even grant of alleged NOC would not carry the appellants' case further to their advantage.

B 68. It is emphasised by him that in the light of judgment of this Court in *Delhi Administration v. Gurdip Singh Uban & Ors.* (2000) 7 SCC 296 known as *Gurdip Singh Uban-II*, all points having already been considered, no fresh look is required by this Court. More so, when each and every point argued, C  
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hammered and contended by the appellants has already been decided against them. It was also submitted by him that in the name of unfair treatment, matters which stood closed either by several judgments of this Court or of Delhi High Court and also keeping in mind that land acquisition proceedings were initiated in the year 1980, nothing more is required to be done and the appeals deserve to be dismissed.

69. Learned ASG, Ms. Indira Jaising, appearing for Delhi Development Authority argued on the similar lines, which have already been advanced by Mr. H.S Rawal. In addition, she has contended that once notification under Section 4 of the Act is issued, the same never dies or becomes ineffective unless it is specifically revoked as required under the Act in accordance with law. To substantiate this contention, learned Counsel has placed reliance on Section 21 of the General Clauses Act. She has also placed reliance on two judgments of House of Lords titled *Smith Vs. East Elloe Rural District Council and Others* reported in 1956 AC 376 and *F. Hoffmann- LA Roche and Co. A.G. and Others Vs. Secretary of State for Trade and Industry* reported in 1975 AC 295, in this regard.

70. She has further submitted that in view of three earlier judgments of this Court, it has been held that Explanation 1 appended to first proviso to Section 6 would apply squarely to the facts of the case therefore, it is neither legally permissible H

nor warranted to take a different view.

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71. Coming to the question of legitimate expectation, it was contended that no advantage of noting on the files or inter se circulars issued by Departments can be taken by the parties. It was also submitted that the letter of Mrs. Gita Sagar as also the Circular issued thereafter would show that none was addressed to any of the appellants and the same had died their own natural death, on which appellants cannot build up their cases invoking the doctrine of 'Legitimate Expectation'. She has also submitted that as the cause of action had actually accrued to the appellants in the year 1985 unless they are able to successfully show to this Court and reasonably explain the delay caused in filing the writ petitions in the High Court, the High Court was fully justified in dismissing the same on the ground of delay and laches.

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72. In the light of the aforesaid contentions, several authorities have been cited by her but in nutshell they are the same which have already been cited by the learned counsel for other side. Nevertheless, we would deal with the same in the latter part of the judgment

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73. Ms. Gita Luthra and Mr. D.N.Goburdhan, learned Counsel appearing for Govt. of NCT of Delhi reiterated the same grounds which have already been argued and advanced by Mr. Rawal and Ms. Indira Jaising. Additionally, it has been contended that in some of the matters, objections under Section 5A of the Act were not filed, yet they got the benefit, when 73 petitions came to be disposed of, in batch matters by Delhi High Court. It has also been brought to our notice that at a much later stage, appellants had sought permission to amend their petitions by raising a ground under Section 5A of the Act but the Court was constrained to reject the same. Mr. D.N. Goburdhan contended that delay in approaching the Court in filing a petition under Articles 226-227 cannot be condoned unless the same is reasonably and satisfactorily explained and

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A that the Court must be fully satisfied with regard to the plausible explanation of not being able to reach the Court earlier.

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74. In this regard, he has placed reliance on the judgment of this Court wherein it has been held that even delay of 17 months could not be condoned and was not found to be reasonable by this Court. With all these arguments having been advanced by learned Counsel for respondents, their contentions have come to an end.

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75. In the light of the aforesaid rival contentions advanced by the parties, we proceed to decide the matter as under.

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76. Explanation 1 appended to first proviso of Section 6 of the Act, as reproduced hereinabove, makes it crystal clear that where any order of stay has been granted in favour of land owner, while computing the period of limitation of three years for issuance of Section 6 notification, the actual period covered by such order of stay should be excluded. In other words, the period of three years would automatically get extended by that much of period during which stay was in operation. The question which, therefore, arises for our consideration is whether even in those cases where there has been no stay order granted or passed in favour of the land owners, the period of limitation would be three years from the date of issuance of notification under Section 4 of the Act or it would be more on account of stay order granted in other matter in which such appellants were not parties.

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77. On account of difference of opinion between two Benches of High Court of Delhi, matter was referred to a Full Bench, referred to as *B.R. Gupta-I*, the only question posed before it for opinion was with regard to effect of grant of stay, where challenge is to the issuance of notification under Section 4 of the Act vis-a-vis other land owners who had not challenged it. After considering the ambit, scope and nature of stay granted especially in land acquisition matters, Full Bench has expressed its opinion in paragraphs 26 to 31, reproduced hereinbelow :

“26. Learned counsel for the petitioners is to some extent right in his contention that broad as the above observations are, these cases are slightly different in that they all dealt with the effect of the operation of stay order only vis-a-vis one of the parties to the litigation in which the stay order is passed. But we are of opinion that these decisions are of guidance as to the proper approach to such a question. In the first place, they show that a stay of execution of a decree can be pleaded as a ground for conclusion of the period of stay even by a judgment-debtor who did not seek the stay. To that extent, the insistence by the petitioners that the exclusion can operate only against the party who obtained the stay order would not be correct. Secondly, these decisions show that the prohibition on action need not be the direct effect of a stay order of a court. Thus, in the present cases, even if in terms the court be held not to have stayed a declaration in other cases, such was the indirect effect of the stay order in these cases. Thirdly, they lay down that we should not interpret a provision of this type rigidly but should give it an interpretation that gives effect to the object of the legislature.

27. We, therefore, think that, in proceeding to interpret the scope of the explanation, we should keep in mind the nature of the proceedings under the Land Acquisition Act and the nature of the proceedings in which stay orders are obtained. So far as the first of these aspects is concerned, while it is possible for the Government to issue notifications under S. 4 in respect of each plot of land sought to be acquired, it is not feasible or practicable to do so, particularly in the context of the purpose of many of the acquisitions at the present day. It is common knowledge that in Delhi, as well as many other capital cities, vast extents are being acquired for ‘planned development’ or public projects. The acquisition is generally part of an integrated scheme or plan and, though, technically speaking, there can be no objection to

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individual plots being processed under Ss. 5A, 6, 9, 12, etc., particularly after the amendment of 1967, the purpose of acquisition demands that at least substantial blocks of land should be dealt with together at least upto the stage of the declaration under S.6. To give an example, if a large extent of land is to be acquired for the excavation of a canal, the scheme itself cannot be put into operation unless the whole land can be eventually made available. If even one of the land owners anywhere along the line applies to court and gets a stay of the operation of the notification under S. 4, in practical terms, the whole scheme of acquisition will fall through. It is of no consolation to say that there was no stay regarding other lands covered by the scheme. To compel the Government to proceed against the other lands (by refusing the benefit of the explanation in such a case on the ground that there is no stay order in respect thereof) would only result in waste of public expenditure and energy. If, ultimately, the single owner succeeds in establishing a vitiating element in the S.4 notification and in getting it quashed by the Supreme Court, the whole proceeding of acquisition will fail and the government will have to retrace the steps they may have taken in respect of other lands. (See: *Shenoy Vs. Commercial Tax Officer*, AIR 1985 SC 621 and *Gauraya Vs. Thakur*, AIR 1986 SC 1440). Assuming that where such final order is by a High Court the position is not free from difficulty, the debate as to whether, in law, the quashing of the order enures only to the benefit of the party who filed the writ petition and obtained the order is futile, for the moment the Government seeks to enforce the acquisition against the others, they would come up with similar petitions which cannot but be allowed. In other words, in many of the present day notifications, the acquisition scheme is an integral one and the stay or quashing of any part thereof is a stay or quashing of the whole. This aspect should not be lost sight of.

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28. It is true that the object of having contiguity of all plots sought to be acquired may fail for various reasons. For instance, there may be items of properties exempt from acquisition in between. Again, it may happen that a particular person may have been able to stave off acquisition of his land for one reason or other, particularly since dates of declarations under S.6, awards and taking of possession may vary from plot to plot. Moreover, it is not in all cases that the object of acquisition needs a number of contiguous plots and may be workable even without some of the intervening lands. However, in considering a question of interpretation, one should not go only by one particular situation but must consider all eventualities to the extent possible. It is only on a broad perspective of the scheme of present day acquisitions in large measure that we say that any hurdle in regard to any one plot of land can hold up an entire acquisition, all promptness and expedition on the part of the Government notwithstanding.

29. It was sought to be urged that the interpretation sought to be placed by the respondent would result in equating an interim order with a final judgment and the final judgment in a land acquisition case to a judgment in rem and in this context reference was made to S.41, Evidence Act, and to a passage in Woodroffe on Evidence (14th Edition, Vol.2) at page 1225. We do not think this analogy is correct. If the final order can operate to the benefit of all the parties, there is no reason why the interim order cannot also affect them. Moreover, we are considering the nature and effect of an injunction passed by the court against one of the parties thereto who has to act in the same capacity not only in the acquisition of the plot of land the owner of which has obtained a stay order but in all proceedings consequent on or in pursuance of the same notification that is challenged in that petition.

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30. Secondly, the nature of proceedings in which stay orders are obtained are also very different from the old pattern of suits confined to parties in their scope and effect. Section 4 notifications are challenged in writ petitions and it is now settled law that in this type of proceeding, the principle of locus standi stands considerably diluted. Any public spirited person can challenge the validity of proceedings of acquisition on general grounds and when he does this the litigation is not inter parties simpliciter: it is a public interest litigation which affects wider interests. The grounds of challenge to the notification may be nothing personal to the particular landholder but are, more often than not, grounds common to all or substantial blocks of the land owners. In fact, this group of petitions now listed before us raise practically the same contentions just as the previous batch of writ petitions challenging the notifications under S. 4 raised certain common contentions. To accept the contention that the challenges and interim orders in such petitions should be confined to the particular petitioners and their lands would virtually provide persons with common interests with a second innings. If the initial challenge succeeds, all of them benefit; and if for some reason that fails and the second challenge succeeds on a ground like the one presently raised, the first batch of petitioners also get indirectly benefited because of the impossibility of partial implementation of the scheme for which the acquisition is intended.

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31. We have, therefore, to give full effect to the language of the section and the stay orders in question, in the above context and background. The use of the word "any" in the explanation considerably amplifies its scope and shows clearly that the explanation can be invoked in any case if some action or proceeding is stayed. It may be complete stay of the operation of the entire notification or may even be a partial stay – partial in degree or in regard to persons or lands in respect of whom it will operate. The words used

in the explanation are of the widest amplitude and there is no justification whatever to confine its terms and operation only to the cases in which the stay order is actually obtained.”

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“10. The question then arises is whether the quashing of the declaration by the Division Bench in respect of the other matters would enure the benefit to the appellants also. Though, prima facie, the argument of the learned counsel is attractive, on deeper consideration, it is difficult to give acceptance, to the contention of Mr. Sachar. When the Division Bench expressly limited the controversy to the quashing of the declaration qua the writ petitioners before the Bench, necessary consequences would be that the declaration published under Section 6 should stand upheld.

78. In the light of the aforesaid opinion having been expressed by Full Bench, the original Writ Petition of the Petitioner-Balak Ram was placed before a Division Bench for its disposal in accordance with law.

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79. Division Bench of the High Court on 14.8.1988, pronounced only the operative part of the judgment, to the effect that further acquisition proceedings in all the said writ petitions stood quashed, reasons were to follow. The reasons in respect of the aforesaid operative part of the order were supplied in a judgment referred to as *B.R. Gupta-II*.

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11. It is seen that before the Division Bench judgment was rendered, the petition of the appellants stood dismissed and the appellants had filed the special leave petition in this court. If it were a case entirely relating to section 6 declaration as has been quashed by the High court, necessarily that would enure the benefit to others also, though they did not file any petition, except to those whose lands were taken possession of and were vested in the State under Sections 16 and 17 (2) of the Act free from all encumbrances. But it is seen that the Division Bench confined the controversy to the quashing of the declaration under Section 6 in respect of the persons qua the writ petitioners before the Division Bench. Therefore, the benefit of the quashing of the declaration under Section 6 by the division Bench does not ensure to the appellants.

80. The Division Bench while allowing the petitions recorded the concession made by the Senior Advocate Mr. R.K. Anand, to the effect that he was unable to support the declaration in view of the lack of opportunity of hearing granted by Land Acquisition Collector under Section 5A of the Act to the land owners. The concession so given is recorded in para 7 of the judgment. The Court also examined the matter independent of the concession and quashed the entire notification on many grounds. Thus, all the 73 Writ Petitions filed by land owners came to be allowed and the acquisition proceedings were dropped.

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81. Against the order passed in writ petitions by Delhi High Court in *B.R. Gupta-II*, the matter travelled to this Court in *Abhey Ram* (supra).

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12. It is true that a Bench of this Court has considered the effect of such a quashing in *Delhi Development Authority v. Sudan Singh* (1997) 5 SCC 430. But, unfortunately, in that case the operative part of the judgment referred to earlier has not been brought to the notice of this Court. Therefore, the ratio therein has no application to the facts in this case. It is also true that in *Yusufbhai Noormohmed Nendoliya Vs. State of Gujarat* (1991) 4 SCC 531, this Court had also observed that it would ensure the benefit

82. This Court after considering previous judgments on the controversy involved in the matter held as under in paras 10, 11 and 12 reproduced herein below :

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to those petitioners.

In view of the fact that the notification under Section 4 (1) is a composite one and equally the declaration under Section 6 is also a composite one, unless the declaration under Section 6 is quashed in toto, it does not operate as if the entire declaration requires to be quashed. It is seen that the appellants had not filed any objections to the notice issued under Section 5A.”

83. In fact, after the pronouncement of the judgment in *Abhey Ram* (supra) rendered by three learned Judges of this Court, nothing survives in these Appeals, but looking to the vehement arguments advanced by learned senior counsel Mr. P.P. Rao, we have once again examined the whole controversy in the light of his arguments.

84. Even though judicial propriety and discipline create legal hurdles and impediments, in coming to a different conclusion than what has already been arrived at by three learned Judges of this Court in *Abhey Ram* (supra), but looking to the arguments advanced, we proceed to decide it.

85. It has been submitted before us by Mr. P.P. Rao that admittedly, appellants represented by him, had not preferred any objections under Section 5A of the Act, thus, in any case, they could not have been precluded from challenging the declaration issued under Section 6 of the Act being barred by limitation. According to him, two issues being entirely different and separate they could not have been clubbed together so as to non-suit the appellants.

86. Even though the arguments advanced by learned counsel for the appellants appear to be attractive, but, on deeper scanning of the same we are of the opinion that on account of omission of the appellants, they cannot be granted dividend for their own defaults. The appellants should have been more careful, cautious and vigilant to get the matters listed

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A along with those 73 petitions, which were ultimately allowed by the High Court. Not having done so, the appellants have obviously to suffer the consequence of issuance of notifications under Section 4 and further declaration under Section 6 of the Act.

B 87. Perusal of the opinion of Full Bench in *B.R. Gupta-I* would clearly indicate with regard to interpretation of the word ‘any’ in Explanation 1 to the first proviso to Section 6 of the Act which expands the scope of stay order granted in one case of land owners to be automatically extended to all those land owners, whose lands are covered under the notifications issued under Section 4 of the Act, irrespective of the fact whether there was any separate order of stay or not as regards their lands. The logic assigned by Full Bench, the relevant portions whereof have been reproduced hereinabove, appear to be reasonable, apt, legal and proper.

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G 88. It is also worth mentioning that each of the notifications issued under Section 4 of the Act was composite in nature. The interim order of stay granted in one of the matters, i.e., *Munni Lal* (supra) and confirmed subsequently have been reproduced hereinabove. We have also been given to understand that similar orders of stay were passed in many other petitions. Thus, in the teeth of such interim orders of stay, as reproduced hereinabove, we are of the opinion that during the period of stay respondents could not have proceeded further to issue declaration/notification under Section 6 of the Act. As soon as the interim stay came to be vacated by virtue of the main order having been passed in the writ petition, respondents, taking advantage of the period of stay during which they were restrained from issuance of declaration under Section 6 of the Act, proceeded further and issued notification under Section 6 of the Act.

H 89. Thus, in other words, the interim order of stay granted in one of the matters of the land owners would put complete

restraint on the respondents to have proceeded further to issue notification under Section 6 of the Act. Had they issued the said notification during the period when the stay was operative, then obviously they may have been hauled up for committing contempt of court. The language employed in the interim orders of stay is also such that it had completely restrained the respondents from proceeding further in the matter by issuing declaration/notification under Section 6 of the Act.

90. No doubt, it is true that language of Section 6 of the Act implies that declarations can be issued piecemeal and it is not necessary to issue one single declaration for whole of the area which is covered under notification issued under Section 4 of the Act. Parliament was aware of such type of situation and that is why such a right has been carved out in favour of respondent-State. In many cases, urgency clause may be invoked, therefore, the right of filing objections under Section 5A of the Act would not arise. In some cases, even though objections might be preferred under Section 5A of the Act, but, may not be pressed in spite of knowledge of acquisition of land. Some of the land owners may not prefer to file any objections at all. In order to meet such type of exigencies as may arise in the case, power has been given by the Parliament to the Executive to issue declarations in piecemeal under Section 6 of the Act, wherever it may be feasible to implement the scheme.

91. The facts of the aforesaid cases would show that in the case in hand as many as four declarations under Section 6 of the Act were issued from time to time. Finally when declaration is quashed by any Court, it would only enure to the benefit of those who had approached the Court. It would certainly not extend the benefit to those who had not approached the Court or who might have gone into slumber.

92. To us, this appears to be the scheme of the Act and that was the intention of the Parliament. That being so, scheme

A of the Act as has been legislated, has to be given full effect to.

93. We find no ground to grant the same reliefs to those appellants to whom on earlier occasions, same relief was granted. At this long distance of time, it would neither be proper nor legally justified to grant that benefit to the appellants. If it is granted to even those who had not approached the court, then it would frustrate the very purpose and scope of the Act. In the light of the aforesaid, we are of the considered opinion that final quashment of the declaration under Section 6 of the Act by any Court, in some other matter, cannot be extended to the benefit of the present appellants. In any case, there is no ground for us, to rise to the occasion to do so, much less to the benefits of the appellants. In our considered opinion, it is not a fit case where situation or circumstances call upon us to rise to the occasion and to grant such inequitable reliefs to the appellants, after such a long delay.

94. Obviously, the appellants cannot be rewarded on account of their own lapse as they should have been vigilant enough to get their matters also listed along with those in whose favour ultimately judgment was pronounced.

95. Looking to the scheme of the Act, it is obvious that the appellants would certainly suffer the consequence of the interim order passed in some other matters preferred by other land owners challenging the notifications but finally benefit thereof cannot be accrued to the appellants as the same would obviously be confined to those petitioners only in whose favour orders were passed.

96. The arguments advanced by Mr. P.N. Lekhi appear to be attractive at the first instance, but, after going through closer and deeper scrutiny of the first proviso appended to Section 6 of the Act, we are of the considered opinion that certain period has been saved. First proviso clearly indicates that all actions which have taken place between the period, after commencement of Land Acquisition (Amendment & Validation)

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Ordinance 1967 but before the commencement of Land Acquisition (Amendment) Act 1984, would be saved. There is no dispute in these matters that notifications under Section 4 of the Act were issued on 05.11.1980 and 25.11.1980, the period which is covered by the first proviso to Section 6 of the Act. Thus, this ground sought to be advanced by Mr. Lekhi as well as Mr. Mukul Rohtagi, cannot be accepted and is decided against them.

97. In fact, this aspect of the matter has been dealt with elaborately in the opinion expressed by Full Bench in the case of *B.R. Gupta-I*. The proviso, according to Full Bench opinion, is very elaborate and made Explanation 1 applicable to the computation of any of the periods referred to in first proviso. In the said judgment, four situations have been carved out. Situation No.(ii) would cover the present case which deals with notification issued under Section 4 after 28.1.1967 but before 25.9.1981. Relevant portion of paragraph 11 thereof is reproduced hereunder :

“If the object of the legislature had been to confer the benefit of the explanation only to situations (iii) and (iv), it could have enacted the proviso as indicated earlier and added an explanation that, in computing the period of limitation, periods covered by stay orders would be excluded. The legislature need not have at all referred to situation (ii) above. But the Legislature also wanted to make it clear that the explanation would apply in respect of notifications under S.4 issued prior to 25-9-1981 as well. In doing so, the provision could well have taken into account even S.4 notifications issued prior to 29-1- 1967 for it was quite conceivable that, though the two year period for following these up with declaration under S.6 had elapsed by 28-1-1969, the failure to make a S.6 declaration may have been the consequence of a stay order from a court. But the Legislature decided to exclude this category from the provision for extension in the

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A explanation, and decided to confine itself to all notifications under S.4 made after 29-1-1967. This is very important and the manner in which cl.(a) of the proviso is worded so as to cover all notifications after 29-1-1967 and before 24-9-1984 precludes the contention urged on behalf of the petitioners seeking to limit the operation of the explanation. This contention is that the amendments of 1984 can at best only affect cases in which the three year period prescribed in 1967 had not expired by 24-9-1984. In other words, the argument is that only cases covered by notifications under S.4 issued after 25-9-1981 can be affected by the amendments and have the benefit of the extended period contemplated in the explanation. This contention is clearly unacceptable. It runs counter to the entire scheme of the proviso (which specifically takes in all the period after 29-1-1967) and the explanation (which is specifically made applicable to both the clauses of the proviso). We are, therefore, of opinion that the language and intendment of the provision are clear and unambiguous and that the period of exclusion mentioned in the explanation should be taken into account in the cases of all notifications issued after 29-1-1967 whether or not the period otherwise limited under the proviso for a follow-up declaration under S.6 in respect thereof had expired or not. We, therefore, reject the contention urged on behalf of the petitioners.”

98. Thus, considering the matter in the light of the opinion expressed by Full Bench as also with the plain reading of the first proviso and explanation (i) the following opinion can be safely deduced and the aforesaid conclusion would be inescapable that the exclusion envisaged is available in respect of notifications issued between the period commencing from 29.1.1967 and 24.9.1984.

99. As mentioned hereinabove, in *Chatro Devi-I* both the learned Judges dismissed the writ petition in respect of the

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A cases where Land Acquisition Collector was the same who had heard the arguments then prepared the report and also in respect of those who had not preferred any objections under Section 5A of the Act. The decision of Division Bench of Delhi High Court in *B.R. Gupta-II* (supra) was held to be incorrect and acquisition proceedings were upheld in respect of aforesaid cases. However, difference of opinion was confined only with regard to import and interpretation of Section 5A of the Act as to what would constitute 'hearing'.

C 100. Primarily, Hon'ble Mr. Justice Swatanter Kumar (as he then was) was of the opinion that even if matters have been heard by 'A' and decided by 'B', it would amount to sufficient compliance of Section 5A of the Act but Hon'ble Mr. Justice Madan B. Lokur was of the view that if a matter is heard by 'A' obviously it has to be decided by him only and if it has been decided by 'B' then the same would amount to miscarriage of justice and obviously would lead to violation of principles of natural justice.

E 101. Only to this limited extent, with regard to interpretation of Section 5A of the Act, matter was referred to third learned Judge Hon'ble Mr. Justice T.S. Thakur, (as he then was). In his separate judgment, Hon'ble Mr. Justice Thakur concurred with the view expressed by Hon'ble Mr. Justice Madan B. Lokur titled *Chatro Devi Vs. Union of India & Ors.* reported in 137 (2007) DLT 14 known as *Chatro Devi-II*.

G 102. We have been given to understand that, feeling aggrieved by the majority opinion as expressed by two learned Judges in the matter of *Chatro Devi II*, the Union of India had filed 39 Special Leave Petitions in this Court wherein leave has been granted and appeals are now pending disposal in accordance with law.

H 103. At the first instance, we thought of getting those matters also listed before us for hearing so that once for all, the dispute pertaining to the notifications issued in the year

A 1980 would come to an end, but we have been informed that many of the respondents have not yet been served and some matters cannot be listed on account of technical defaults. We also requested learned counsel appearing for appellants to appear for those respondents but they showed their inability in doing so as the respondents of those appeals are not the same, who are appellants before us.

C 104. Thus, in this judgment, we are not considering the ambit, scope and interpretation of Section 5A of the Act and have specifically left it open, to be decided in the said 39 appeals.

D 105. It has not been disputed before us that after the opinion was expressed by Full Bench in *B.R. Gupta-I* all the connected 73 writ petitions came to be heard by Division Bench in *B.R. Gupta-II*. All the said petitions were allowed and the reliefs as claimed by them were granted vide order dated 18.11.1988. The question whether stay granted to some of the land owners prohibiting the authorities from publication of declaration under Section 6 of the Act would be applicable to others also, who had not obtained stay in that behalf came to be considered by a three-Judge Bench of this Court in the case of *Abhey Ram* (supra). In paragraph (9) thereof it has been held as under:-

F "9. .... The words 'stay of the action or proceeding' have been widely interpreted by this Court and mean that any type of the orders passed by this Court would be an inhibitive action on the part of the authorities to proceed further. When the action of conducting an enquiry under

G Section 5A was put in issue and the declaration under Section 6 was questioned, necessarily unless the Court holds that enquiry under Section 5A was properly conducted and the declaration published under Section 6 was valid, it would not be open to the officers to proceed further into the matter. As a consequence, the stay granted

in respect of some would be applicable to others also who had not obtained stay in that behalf. We are not concerned with the correctness of the earlier direction with regard to Section 5A enquiry and consideration of objections as it was not challenged by the respondent Union. ....”

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Further in the same judgment, in paragraph 12 it has been held as under :

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“12. ... .. In view of the fact that the notification under Section 4(1) is a composite one and equally the declaration under Section 6 is also a composite one, unless the declaration under Section 6 is quashed in toto, it does not operate as if the entire declaration requires to be quashed. It is seen that the appellants had not filed any objections to the notice issued under Section 5A.”

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106. To satisfy ourselves with regard to the aforesaid arguments advanced by learned counsel for the appellants, we have gone through the record and find that Land Acquisition Collector had heard the objections and thereafter had forwarded the same to Lt. Governor for his opinion. The dates from which the objections were heard have already been given hereinabove. Similarly, the manner in which the same were dealt with by Lt. Governor has also been scrutinized. We do not find any infirmity or illegality in the procedure adopted in the same. We are of the considered opinion that there has been full, complete and strict compliance of the provisions contained in the Act by the respondents.

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107. In the light of the aforesaid discussion, it is not necessary for us to consider the judgment of this Court in the case of *Oxford English School* (supra). This was a judgment by two learned Judges of this Court whereas the judgment in the case of *Abhey Ram* (supra) is by three learned Judges of this Court. Secondly, the question as to whether an order of stay passed in one case would be applicable to other similarly situated persons who had not been granted stay was not directly

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A in issue in *Oxford School Case* (supra) decided by this Court. The question in the said case was primarily with regard to the period of limitation of three years within which a declaration under Section 6 is required to be made.

B 108. In the light of the foregoing discussion, more so, keeping in mind the ratio of which stood concluded by a judgment of Bench of three learned Judges of this Court in the case of *Abhey Ram* (supra), we are of the opinion that it is not a fit case where we are called upon to come to a different conclusion that subsequent declaration issued under Section 6 was beyond the period of limitation. Fact situation does not warrant us to do so.

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109. Impugned orders passed by High Court from time to time would reveal that some have been dismissed primarily on the ground of delay and laches. We have gone through the said orders critically and find that if the appellants were under some bonafide mistake and had not challenged the issuance of notifications or declaration under Section 6 of the Act within a reasonable time then on the ground that there was an eclipse period during which they were not supposed to take any legal action, would be of no help to them. For that they have to thank their own stars. Some of the petitions have been filed either in the year 2000 or subsequent thereto. Thus, the High Court was justified in not entertaining such petitions on the ground of delay and laches. Even though, they have tried to attempt to explain the delay but such a long delay cannot be condoned more so, when proceeding of acquisition was initiated in the year 1980.

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110. It may be recalled that notifications were issued in the year 1980. Almost 30 years have already passed by, but, no steps could be taken to formally complete the scheme so far. Thus, after such a long lapse of time, it will not only be harsh but inequitable also to quash the notifications so as to grant liberty to the appellants to challenge same in accordance with law.

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111. The contention that in the cases of Abhey Ram and Gurdip Singh Uban, admittedly, no objections were preferred under Section 5A of the Act, therefore, the appellants' cases stood on a higher pedestal than those which were considered in the aforesaid two cases also has no merits. It was also submitted that the so called satisfaction of Lt. Governor was not legally tenable as admittedly no records were sent to him by the Land Acquisition Collector after deciding the objections filed by the appellants along with his report. We have already mentioned above that there has been application of mind by the Lt. Governor to the facts of the case.

112. As has been mentioned above and held by this Court in *Abhey Ram* (supra) that notification under Section 4(1) of the Act being composite one it would not be proper and legally justifiable to quash the same more so when most of the appellants had not filed any objections under Section 5A of the Act. Thus, the declarations issued under Section 6 of the Act cannot be quashed.

113. The clear ratio of the aforesaid passage of this Court is that unless the declarations issued by respondents on as many as four dates, as mentioned hereinabove, in the year 1985, are quashed in toto, it cannot be said that respondents could not have proceeded further with regard to acquisition of those lands for which the same has not been quashed earlier.

114. In other words, it has been held that for all remaining lands for which neither the notifications under Section 4 nor declarations under Section 6 have been quashed, acquisition proceedings, notification/declaration issued for remaining lands would continue to hold good and respondents can proceed further.

115. In the light of foregoing discussion, we are of the opinion that appeals have no merit and substance. The same are hereby dismissed with costs. Counsel's fees Rs. 10,000/- in each case.

D.G. Appeals dismissed. H

A M/S. THE TOTGARS' COOPERATIVE SALE SOCIETY LIMITED  
v.  
INCOME TAX OFFICER, KARNATAKA  
(Civil Appeal No. 1622 of 2010)

B FEBRUARY 08, 2010

**[S.H. KAPADIA AND AFTAB ALAM, JJ.]**

*Income Tax Act, 1961:*

C ss. 80P(2)(a)(i) and (iii) r/w ss.56 and 2(24)(i) – Deduction in respect of income of co-operative societies – 'Profit and gains from business' – Co-operative Society providing credit facilities to its members and marketing their agricultural produce – Surplus funds invested by Society in short term deposits – Interest earned thereon – HELD: Does not fall within the meaning of expression 'profit and gains from business' – Such interest income cannot be said to be attributable to the activities of the Society – The words 'the whole of the amount of profits and gains of business' attributable to one of the activities specified in s. 80)(2)(a) emphasise that the income in respect of which deduction is sought must constitute the operational income and not the other income which accrues to the Society – Therefore, the interest earned by the Society on short-term deposits of surplus cannot be said to be 'income from business', but is 'income from other sources' liable to tax u/s 56 and not entitled to deduction u/s 80P(2)(a).

G ss.148 and 151 – Issue of notice where income has escaped assessment – Sanction for – HELD: Tribunal being the final fact finding authority under the Act, having recorded a finding of fact that approval/sanction for re-opening of assessment in terms of s.148 r/w s.151 existed even prior to 31.5.2001, though written communication of sanction was

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received by Assessing Officer on 8.6.2001, there is no reason  
to interfere with the said finding given by Tribunal. A

ss.56 and 57 – ‘Income from other sources’ – Deductions  
towards cost of funds and proportionate administrative and  
other expenses, in respect of income by way of interest on  
deposits held with Scheduled Banks, bonds and other  
securities – HELD: The question involves applicability of ss.  
56 and 57, but as it remained unanswered by authorities  
below, the question is remitted to High Court for consideration  
in accordance with law. B C

The assessee, a co-operative society, engaged in the  
business of providing credit facilities to its members and  
marketing their agricultural produce, invested the surplus  
funds in short-term deposits with the Banks and in  
Government securities, and earned interest thereon. The  
assessee showed the said interest income under the  
Head “Income from business” but the Assessing Officer  
assessed it as “income from other sources” u/s 56 and  
held that the assessee would not be entitled to deduction  
u/s 80 P(2)(a) of the Income Tax Act. D E

In the instant appeal filed by the assessee, the  
question for consideration before the Court was: Whether  
the interest income earned by the assessee-Society on  
surplus funds invested in short-term deposits would  
qualify for deduction as business income u/s 80P(2)(a) of  
the Income Tax Act, 1961? F

Dismissing the appeals, the Court

HELD: 1.1. An income which is attributable to any of  
the activities specified in s.80 P(2) of the Income Tax Act,  
1961 would be eligible for deduction. In the instant case,  
the interest held not eligible for deduction u/s 80P(2)(a)  
is not the interest received from the business of the G

A Society, namely, providing credit facilities to its members  
or marketing their agricultural produce. What is sought  
to be taxed u/s 56 of the Act is the interest income arising  
on the surplus, which surplus was not required for business  
purposes, and was invested in specified securities as  
‘investment’. Assessee(s) markets the produce of its  
members whose sale proceeds at times were retained by  
it. Since the fund created by such retention was not  
required immediately for business purposes, it was  
invested in specified securities. Such interest income  
would come in the category of “Income from other  
sources” and, therefore, would be taxable u/s 56 of the  
Act, as rightly held by the Assessing Officer. [Para 10]  
[507-E; 506-G-H; 507-A-C]

1.2. The word “income” has been defined u/s 2(24)(i)  
of the Act to include profits and gains. This sub-section  
is an inclusive provision. The Parliament has included  
specifically “business profits” into the definition of the  
word “income”. Therefore, the Court is required to give  
a precise meaning to the words “profits and gains of  
business” mentioned in s.80P (2) of the Act. In the instant  
case, assessee-Society regularly invests funds not  
immediately required for business purposes. Interest on  
such investments, therefore, cannot fall within the  
meaning of the expression “profits and gains of  
business”. [Para 10] [507-E-G] D E F

1.3. Further, assessee(s) markets the agricultural  
produce of its members. It retains the sale proceeds in  
many cases. It is this “retained amount” which was  
payable to its members, from whom produce was bought,  
which was invested in short-term deposits/securities.  
Such an amount, which was retained by the assessee-  
Society, was a liability and it was shown in the balance-  
sheet on the liability-side. Therefore, to that extent, such

interest income cannot be said to be attributable either to the activity mentioned in s. 80P(2)(a)(i) or in s.80P(2)(a)(iii) of the Act. Therefore, looking to the facts and circumstances of the case, the Assessing Officer was right in taxing the said interest income, u/s 56 of the Act. [Para 10] [508-B-E]

1.4. To say that the source of income is not relevant for deciding the applicability of s. 80P of the Act would not be correct because weightage needs be given to the words “the whole of the amount of profits and gains of business” attributable to one of the activities specified in s.80P(2)(a) of the Act. The words “the whole of the amount of profits and gains of business” emphasise that the income in respect of which deduction is sought must constitute the operational income and not the other income which accrues to the Society. [Para 11] [509-C-E]

2. As regards validity of the notice u/s148 of the Act to re-open the assessment, it essentially concerns factual aspect. The Tribunal is the final fact finding Authority under the Act. It has given a finding of fact that though the written communication of the sanction, which has no prescribed format, was received by the Assessing Officer on 8th June, 2001 but, the approval/sanction for re-opening of assessment in terms of s. 148 of the Act read with s.151 existed even prior to 31st May, 2001. There is no reason to interfere with this finding of fact given by the Tribunal. [Para 13] [510-F-G]

3. In the instant matter, the question “Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the income by way of interest on deposits held with scheduled banks, bonds and other securities was chargeable to tax u/s 56 under the head ‘Income from other sources’ without allowing

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A any deduction in respect of cost of funds and proportionate administrative and other expenses u/s 57”? advanced by the assessee(s) before the authorities below has remained un-answered. Since it involves interpretation of ss. 56 and 57 of the Act and applicability of the said sections to the facts of the instant case, the question is remitted to the High Court for consideration in accordance with law. [Para 14 and 15] [511-A-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1622 of 2010.

From the Judgment & Order dated 30.9.2008 of the High Court of Karnataka Circuit Bench at Dharwad in ITA No. 1568 of 2005.

WITH

C.A. Nos. 1623, 1624, 1625, 1625, 1626, 1627, 1628 and 1629 of 2010.

S. Ganesh, K.K. Chytanya, S. Sukumaran, Anand Sukmar and Meera Mathur for the Petitioner.

Parag P. Tripathi, ASG, Naresh Kaushik, Kunal Bahrai, Arti Gupta, Mohd. Mannan and B.V. Balaram Das for the Respondent.

F The Judgment of the Court was delivered by  
S.H. KAPADIA, J. 1. Heard learned counsel on both sides.  
2. Leave granted.  
G 3. Assessee(s) is a cooperative credit society. During the relevant assessment years in question, it had surplus funds which the assessee(s) invested in short-term deposits with the Banks and in Government securities. On such investments, interests accrued to the assessee(s). Assessee(s) provides credit facilities to its members and also markets the agricultural  
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produce of its members. The substantial question of law which arises in this batch of civil appeals is - Whether such interest income would qualify for deduction as business income under Section 80P(2)(a)(i) of the Income Tax Act, 1961? A

4. According to the impugned judgement, which affirms the decision of the Income Tax Appellate Tribunal [ 'Tribunal', for short], such interest income would fall under the Head "Income from other sources" under Section 56 and not under Section 28 of the Income Tax Act, 1961 [ `Act', for short], and, consequently, the assessee- Society would not be entitled to deduction under Section 80P(2)(a)(i) of the Act. B  
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5. The bunch of civil appeals filed by the assessee-Society concerns Assessment Years 1991-1992 to 1999-2000 [excluding Assessment Year 1995-1996]; however, the lead matter is civil appeal arising out of S.L.P. (C) No.7572 of 2009 which relates to Assessment Year 1991- 1992. D

6. The assessee-Society was assessed to tax as a cooperative society. The assessee is the appellant in all eight civil appeals. For all the above Assessment Years 1991-1992 to 1999-2000 [except Assessment Year 1995- 1996], assessee(s) filed its Returns disclosing income from business, i.e., marketing of agricultural produce of its members and providing credit facilities to them. Assessee(s) also filed its Profits and Loss Accounts and its balance-sheets along with its Returns. In respect of above-mentioned interest income, assessee(s) claimed deduction under Section 80P(2)(a)(i) of the Act. The assessment(s) for the afore-stated period stood re-opened by issue of notice(s) under Section 148 of the Act. In this case, we are only concerned with interest income on short-term Bank deposits and securities. On the basis of the balance-sheets for the relevant assessment years, under instructions from the Assessing Officer, assessee(s) submitted a chart to the Assessing Officer giving break-up of assets and liabilities. We re-produce hereinbelow the said chart [See Annexure `B' under the caption `Liabilities']: E  
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**LIABILITIES**

Asstt. Year	Capital Reserve Fund + Other Funds + Profits	Asami A/c + Purchasers A/c	Deposits, Loans, Interest Payable	Other Liabilities & Expenditure	Total (3),(4) & (5)
1	2	3	4	5	6
1991-92	79,200,553.00	39,341,647.00	45,772,398.00	3,948,442.00	89,176,115.00
1992-93	97,769,923.00	41,684,890.00	59,071,490.00	902,856.00	101,659,132.00
1993-94	116,354,655.00	37,674,924.00	68,927,247.00	2,893,519.00	109,494,694.00
1994-95	133,817,620.00	42,882,786.00	86,462,118.00	1,440,446.00	142,886,414.00
1995-96	156,948,290.00	46,898,160.00	107,201,490.00	4,189,923.00	158,289,580.00
1996-97	180,468,526.00	53,274,684.00	125,289,995.00	3,568,644.00	182,133,326.00
1997-98	211,686,266.00	52,510,175.00	142,529,130.00	46,694,814.00	241,734,125.00
1998-99	253,295,055.00	66,074,107.00	175,757,230.00	17,342,956.00	259,174,281.00
1999-00	269,520,510.00	124,571,325.00	209,202,203.00	25,199,555.00	358,973,088.00



7. The Assessing Officer held, on the facts and circumstances of these cases, that the interest income which the assessee(s) had disclosed under the Head "Income from business" was liable to be taxed under the Head "Income from other sources". In this connection, the Assessing Officer held that the assessee-Society had invested the surplus funds as, and by way of, investment by an ordinary investor, hence, interest on such investment has got to be taxed under the Head "Income from other sources". Before the Assessing officer, it was argued by the assessee(s) that it had invested the funds on short-term basis as the funds were not required immediately for business purposes and, consequently, such act of investment constituted a business activity by a prudent businessman; therefore, such interest income was liable to be taxed under Section 28 and not under Section 56 of the Act, and, consequently, the assessee(s) was entitled to deduction under Section 80P(2)(a)(i) of the Act. This argument was rejected by the Assessing Officer as also by the Tribunal and the High Court, hence, these civil appeals have been filed by the assessee(s).

8. It was the case of the assessee(s) before us that the assessee(s) is a cooperative credit society. It's business is to provide credit facilities to its members and to market the agricultural produce of its members. According to the assessee(s), it's activity constituted "eligible activity" under Section 80P(2)(a)(i) of the Act, hence, it was entitled to the benefit of deduction from its gross total income. In this connection, it was urged that, under Section 80P(2) of the Act, the whole of the amount of "business profits" attributable to any one of the enumerated activities is entitled to deduction. According to the assessee(s), one need not go by the source/head of such interest income because no sooner interest income accrued to the assessee(s) on above- mentioned specified deposits/securities, it became business income attributable to the activity carried on by the assessee(s) by

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A providing credit facilities to its members or marketing of agricultural produce of its members and no sooner such interest income falls under the head "business profits" attributable to one or more of such eligible activities, such interest income became eligible for deduction under the said section. The assessee(s) further contended, before us, that, under Regulations 23 and 28 read with Sections 57 and 58 of the Karnataka Cooperative Societies Act, 1959, a statutory obligation was imposed on cooperative credit societies to invest its surplus funds in specified securities and, in view of such statutory obligation, the above-mentioned interest income derived from short-term deposits and securities must be considered as income derived by the assessee(s) from its business activities. In the alternative, it was submitted that, even assuming for the sake of argument that such interest income is held to be covered by Section 56 of the Act under the head "Income from other sources", even then the assessee-Society was entitled to the benefit of Section 80P(2)(a)(i) of the Act. In this connection, learned counsel for the assessee(s) submitted, placing reliance on numerous judgements, that the source or head of income was irrelevant for deciding the question as to whether a given item is eligible for deduction under Section 80P of the Act. According to the assessee(s), once interest income accrues on specified investments, particularly when a local enactment makes it statutorily incumbent on the society to invest in specified investments, the interest income is automatically eligible for deduction irrespective of the source or head under which such income would fall. In this connection, learned counsel for the assessee(s) submitted that one needs to compare the language of Section 80P(2)(a)(i) and (iii) of the Act with Explanation (baa) to Section 80HHC, the language used in Section 80HHD(3) and the words used in Section 80HHE(5) of the Act. In this connection, it was urged that there is a wide contrast in the language between Section 80P(2)(a) on one hand and the language used in Section 80HHC read with Explanation (baa), Section 80HHD(3) and Section

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80HHE(5) as also the language used in Sections 72 and 32AB of the Act. According to the assessee(s), if one keeps this contrast in mind, it is clear that the concept of head of income or source of income will not apply to the provisions of Section 80P(2) of the Act because wherever Parliament intended to emphasise the applicability of such concept, it has expressly so stated in the relevant section. According to the assessee(s), by way of illustration, under Explanation (baa) to Section 80HHC or under Section 80HHD(3) or under Section 80HHE(5), etc., the words used are, "profits of the business' means the profits of the business as computed under the head "Profits and gains of business". Therefore, according to the assessee(s), when such words do not find place in Section 80P(2) of the Act, it is clear that the concept of source of income or head of income is not inbuilt in Section 80P(2) of the Act and, consequently, such a concept cannot be read into the said section. As stated above, according to the assessee(s), no sooner surplus funds are invested in specified securities, interest income from such investment is automatically eligible for deduction under Section 80P(2) of the Act.

9. In order to determine the issue involved in these civil appeals, we need to re-produce hereinbelow the relevant provision of Section 80P of the Act, as it stood at the material time. It reads thus:

"Deduction in respect of income of co- operative societies.

80P.(1) Where, in the case of an assessee being a co- operative society, the gross total income includes any income referred to in sub- section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

[2] The sums referred to in sub-section (1) shall be the following, namely:--

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- [a] in the case of a co-operative society engaged in--
  - [i] carrying on the business of banking or providing credit facilities to its members, or
  - [ii] a cottage industry, or
  - [iii] the marketing of the agricultural produce of its members, or
  - [iv] the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or
  - [v] the processing, without the aid of power, of the agricultural produce of its members, or
  - [vi] the collective disposal of the labour of its members, or
  - [vii] fishing or allied activities, that is to say, the catching, curing, processing, preserving, storing or marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to its members,
- the whole of the amount of profits and gains of business attributable to any one or more of such activities."*

10. At the outset, an important circumstance needs to be highlighted. In the present case, the interest held not eligible for deduction under Section 80P(2)(a)(i) of the Act is not the interest received from the members for providing credit facilities to them. What is sought to be taxed under Section 56 of the Act is the interest income arising on the surplus invested in short-term deposits and securities which surplus was not required for business purposes. Assessee(s) markets the produce of its members whose sale proceeds at times were

A retained by it. In this case, we are concerned with the tax  
A treatment of such amount. Since the fund created by such  
B retention was not required immediately for business purposes,  
C it was invested in specified securities. The question, before us,  
D is - whether interest on such deposits/securities, which strictly  
E speaking accrues to the members' account, could be taxed as  
F business income under Section 28 of the Act? In our view, such  
G interest income would come in the category of "Income from  
H other sources", hence, such interest income would be taxable  
under Section 56 of the Act, as rightly held by the Assessing  
Officer. In this connection, we may analyze Section 80P of the  
Act. This section comes in Chapter VI-A, which, in turn, deals  
with "Deductions in respect of certain Incomes". The Headnote  
to Section 80P indicates that the said section deals with  
deductions in respect of income of cooperative Societies.  
Section 80P(1), inter alia, states that where the gross total  
income of a cooperative Society includes any income from one  
or more specified activities, then such income shall be  
deducted from the gross total income in computing the total  
taxable income of the assessee-Society. An income, which is  
attributable to any of the specified activities in Section 80P(2)  
of the Act, would be eligible for deduction. The word "income"  
has been defined under Section 2(24)(i) of the Act to include  
profits and gains. This sub-section is an inclusive provision. The  
Parliament has included specifically "business profits" into the  
definition of the word "income". Therefore, we are required to  
give a precise meaning to the words "profits and gains of  
business" mentioned in Section 80P(2) of the Act. In the  
present case, as stated above, assessee-Society regularly  
invests funds not immediately required for business purposes.  
Interest on such investments, therefore, cannot fall within the  
meaning of the expression "profits and gains of business". Such  
interest income cannot be said also to be attributable to the  
activities of the society, namely, carrying on the business of  
providing credit facilities to its members or marketing of the  
agricultural produce of its members. When the assessee-

A Society provides credit facilities to its members, it earns  
interest income. As stated above, in this case, interest held as  
ineligible for deduction under Section 80P(2)(a)(i) is not in  
respect of interest received from members. In this case, we are  
only concerned with interest which accrues on funds not  
B required immediately by the assessee(s) for its business  
C purposes and which have been only invested in specified  
D securities as "investment". Further, as stated above,  
E assessee(s) markets the agricultural produce of its members.  
F It retains the sale proceeds in many cases. It is this "retained  
G amount" which was payable to its members, from whom  
H produce was bought, which was invested in short-term  
deposits/securities. Such an amount, which was retained by the  
assessee-Society, was a liability and it was shown in the  
balance-sheet on the liability-side. Therefore, to that extent, such  
interest income cannot be said to be attributable either to the  
activity mentioned in Section 80P(2)(a)(i) of the Act or in  
Section 80P(2)(a)(iii) of the Act. Therefore, looking to the facts  
and circumstances of this case, we are of the view that the  
Assessing Officer was right in taxing the interest income,  
indicated above, under Section 56 of the Act.

11. An alternative submission was advanced by the  
assessee(s) stating that, if interest income in question is held  
to be covered by Section 56 of the Act, even then, the  
assessee-Society is entitled to the benefit of Section  
80P(2)(a)(i) of the Act in respect of such interest income. We  
find no merit in this submission. Section 80P(2)(a)(i) of the Act  
cannot be placed at par with Explanation (baa) to Section  
80HHC, Section 80HHD(3) and Section 80HHE(5) of the Act.  
Each of the said sections has to be interpreted in the context  
of its subject-matter. For example, Section 80HHC of the Act,  
at the relevant time, dealt with deduction in respect of profits  
retained for export business. The scope of Section 80HHC is,  
therefore, different from the scope of Section 80P of the Act,  
which deals with deduction in respect of income of cooperative  
Societies. Even Explanation (baa) to Section 80HHC was

A added to restrict the deduction in respect of profits retained for  
export business. The words used in Explanation (baa) to  
Section 80HHC, therefore, cannot be compared with the words  
used in Section 80P of the Act which grants deduction in  
respect of "the whole of the amount of profits and gains of  
business". A number of judgements were cited on behalf of the  
assessee(s) in support of its contention that the source was  
irrelevant while construing the provisions of Section 80P of the  
Act. We find no merit because all the judgements cited were  
cases relating to Cooperative Banks and assessee-Society is  
not carrying on Banking business. We are confining this  
judgement to the facts of the present case. To say that the  
source of income is not relevant for deciding the applicability  
of Section 80P of the Act would not be correct because we  
need to give weightage to the words "the whole of the amount  
of profits and gains of business" attributable to one of the  
activities specified in Section 80P(2)(a) of the Act. An important  
point needs to be mentioned. The words "the whole of the  
amount of profits and gains of business" emphasise that the  
income in respect of which deduction is sought must constitute  
the operational income and not the other income which accrues  
to the Society. In this particular case, the evidence shows that  
the assessee- Society earns interest on funds which are not  
required for business purposes at the given point of time.  
Therefore, on the facts and circumstances of this case, in our  
view, such interest income falls in the category of "Other  
Income" which has been rightly taxed by the Department under  
Section 56 of the Act.

12. Apart from the substantial question of law which we  
have answered, assessee-Society has challenged the re-  
opening of assessment under Section 148 of the Act.

13. In this connection, it was urged on behalf of the  
assessee(s) that, for the relevant assessment years in question,  
the Assessing Officer was required to obtain prior approval of  
the Joint Commissioner of Income Tax before issuance of

A notice under Section 148 of the Act. According to the  
assessee(s), the proposal for re-opening was made on 31st  
May, 2001, it was not sent through fax to the office of the  
Additional Commissioner of Income Tax, Panaji, and the fax  
report indicates the time of 5.18 p.m., which establishes the fact  
that service of notice on 31st May, 2001, on the assessee(s)  
was done prior to the sending of fax for approval. According  
to the assessee(s), the approval was given by the Additional  
Commissioner of Income Tax on 8th June, 2001. The notice  
under Section 148 of the Act was served on 31st May, 2001,  
i.e., prior to the approval of the Additional Commissioner of  
Income Tax. In the circumstances, it was urged that the notice  
under Section 148 of the Act was invalid and consequential re-  
assessment under Section 147 read with Section 144A of the  
Act was bad in law. We find no merit in this argument. At the  
outset, we may state that the point raised on validity of the  
notice under Section 148 of the Act essentially concerns factual  
aspect. The Tribunal is the final fact finding Authority under the  
Income Tax Act. It has given a finding of fact that, though the  
written communication of the sanction, which has no prescribed  
format, was received by the Assessing Officer on 8th June,  
2001, yet, it cannot be said that sanction was not accorded prior  
to 31st May, 2001. The Tribunal has recorded a finding of fact  
that there was a detailed correspondence between the  
concerned officers prior to 31st May, 2001, in the context of  
re-opening of assessment. It may also be mentioned that there  
is a vital difference between grant of sanction and  
communication of such sanction. As stated by the Tribunal, no  
particular form has been prescribed in the matter of grant of  
sanction. For the afore-stated reason, the Tribunal came to the  
conclusion that approval/sanction for re-opening of assessment  
in terms of Section 148 of the Act read with Section 151 existed  
even prior to 31st May, 2001. We see no reason to interfere  
with this finding of fact given by the Tribunal.

14. In this matter, one question advanced by the  
assessee(s) before the Authorities below has remained un-

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answered. That question is as follows:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the income by way of interest on deposits held with scheduled banks, bonds and other securities was chargeable to tax under section 56 under the head 'Income from other sources' without allowing any deduction in respect of cost of funds and proportionate administrative and other expenses under section 57?"

15. The above question requires an answer. It involves interpretation of Section 56 and Section 57 of the Act. It also involves applicability of the said sections to the facts of the present case. We, accordingly, remit the said question to the High Court for consideration in accordance with law.

16. Subject to what is stated above, these civil appeals filed by the assessee(s) are dismissed with no order as to costs.

R.P. Appeals dismissed.

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SARV U.P. GRAMIN BANK

v.

MANOJ KUMAR SINHA  
(Civil Appeal No. 1639 of 2010)

FEBRUARY 09, 2010

**[B. SUDERSHAN REDDY AND SURINDER SINGH  
NIJJAR, JJ.]**

*Service Law – Misconduct – Punishment – Bank employee – Found guilty of charges of misappropriation, fraud and financial irregularities – Disciplinary Authority imposed punishment of “reduction of pay” – Order upheld by appellate authority – High Court allowed the writ petition of employee on ground that he had not been served with the enquiry report – Justification of – Held: Not justified – Order of punishment was not vitiated since no prejudice was shown to have been caused to respondent-employee by non-supply of the enquiry report – In any event, considering the gravity of the charges proved, the punishment imposed was lenient enough – Administrative Law – Natural justice.*

**Respondent, a bank employee, allegedly committed various acts of omission and commissions relating to financial irregularities, fraud and misappropriation. Departmental enquiry was held whereafter, taking into consideration the enquiry report, the Disciplinary Authority imposed the punishment of “reduction of pay” after giving an opportunity of personal hearing to the respondent.**

**Respondent challenged the order of the Disciplinary Authority, but the order was upheld by the appellate authority (i.e. the Board of Directors of the Bank). Respondent filed writ petition. The High Court held that since a copy of the enquiry report had not been served**

on the respondent, the action of the appellant-bank was violative of the principles of natural justice, and accordingly allowed the writ petition. Hence the present appeal.

Allowing the appeal, the Court

HELD:1.1. The plea of the respondent before the High Court that no proceedings had taken place in the enquiry is clearly false and belied by the contents of the enquiry report. From the perusal of the enquiry report, it become apparent that the respondent has incorrectly stated that no date was fixed by the enquiry officer and straightaway the show cause notices were issued. This apart, it is also noticed in the enquiry report that for proving the charges levelled against the respondent in the charge sheet, the presenting officer tendered management exhibits. The Branch Manager, appeared as a witness. It is also recorded that the respondent himself presented his defence and upon completion of the evidence the presenting officer and the respondent were granted time for giving their respective briefs. Thereafter there is a detailed discussion of the evidence given on behalf of the Bank as well as the respondent. Respondent did not make any protest before the enquiry officer of not being permitted to cross examine the witness. Thus the enquiry proceedings have been conducted in accordance with the principles of natural justice. In case the respondent felt genuinely aggrieved he would have raised the issue at the earliest possible stage. [Paras 25 and 26] [526-D-H; 527-A-B-E-F]

1.2. The charges which have been proved against the respondent are all pertaining to financial irregularities, fraud and misappropriation. At the personal hearing, the respondent had clearly stated that efforts have been made by him for effecting recovery. He had also offered that the amounts may be adjusted from other loan

accounts which were found to be not feasible. The issue with regard to the non-supply of the enquiry report is raised for the first time in appeal. Even at that stage the appellant does not state as to what prejudice was caused by the non-supply of the enquiry report. He also did not seek any adjournment of the personal hearing on the ground that he be supplied the enquiry report. [Para 25] [527-B-D]

1.3. At the time when the plea was raised before the High Court that the impugned orders are vitiated on account of the non-supply of enquiry report, it would have been appropriate for the High Court to examine the averments made in the writ petition. A perusal of the writ petition would show that the petitioner has failed to lay any foundation to establish that any prejudice has been caused by the non-supply of the enquiry report. No prejudice was actually caused to the respondent. There was no failure of justice in the facts and circumstances of this case by non-supply of the enquiry report to the respondent. The punishment imposed on the respondent cannot be said to be disproportionate to the gravity of the charges proved against the respondent. The charges related to the conduct of the respondent in a financial institution whereby taking advantage of the official position he attempted to procure unlawful pecuniary benefits for himself. The charges related to misappropriation, fraud and irregularities with regard to the maintenance of accounts. He had been siphoning off money belonging to the account holders. He was holding a position of trust in the Bank, which he betrayed. The Bank has already been sympathetic and lenient enough. [Paras 27, 31 and 32] [527-F-H; 528-A; 535-C-F]

*ECIL v. B.K. Arunakar*, (1993) 4 SCC 727 – followed.

*Haryana Financial Corp. and Anr. v. Kailash Chandra*

*Ahuja*, (2008) 9 SCC 31 – relied on.

*Union of India v. Mohd. Ramzan Khan*, (1991) 1 SCC 588 and *Kailash Chandra Asthana v. State of U.P.* 1988 (3) SCC 600, referred to.

**Case Law Reference:**

(1991) 1 SCC 588 Para 2 referred to

(1993) 4 SCC 727 Para 11 followed

(2008) 9 SCC 31 Para 11 relied on

1988 (3) SCC 600 Para 28 referred to

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1639 of 2010.

From the Judgment & Order dated 16.9.2008 of the High Court of Judicature at Allahabad sitting at Lucknow in Writ Petition No. 1753 (S/B) of 2002.

Dhruv Mehta, Yashraj Singh Deora, Mohit Abraham and T.S. Sabarish (for K.L. Mehta & Co.) for the Appellant.

Sunil Kumar Jain, Aneesh Mittal, A.K. Soni and Jaya Tomar for the Respondent.

The Judgment of the Court was delivered by

**SURINDER SINGH NIJJAR, J.** 1. Leave granted.

2. Sarv U.P. Gramin Bank has filed this appeal against the judgment and order dated 16.9.2008 of the High Court of U.P. (Lucknow Bench) in Writ Petition No.1753 (SB) of 2002. By the aforesaid judgment the High Court relying upon judgment of this Court in *Union of India vs. Mohd. Ramzan Khan* (1991) 1 SCC 588 quashed the impugned orders dated 3.4.2000, annexure P-4; 3.4.2002, annexure P-5 and 9.9.2002 annexure P-6 to the writ petition with consequential benefits. Liberty has been

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A granted to the Bank to serve fresh show cause notice along with copy of the enquiry report on the writ petitioner (respondent herein) and to pass fresh orders in accordance with law.

B 3. We may notice here the essential facts leading to the passing of the aforesaid judgment/order of the High Court. The writ petitioner (hereinafter referred to as the respondent) joined Devi Pattan Kshetria Gramin Bank, Gonda (now Sarva U.P. Gramin Bank) as an officer. He was served with two charge sheets dated 9.11.2000 and 8.3.2001 for various acts of omissions and commissions while working at branches Khorhansa and Mahrajganj, Trai district Gonda respectively. He was suspended by Order dated 1.3.2001. Respondent submitted reply to the chargesheet. He denied the charges mentioned therein. Thereafter two separate departmental enquiries were held, in which the respondent fully participated.

D On 19.5.2001 the Enquiry Officer submitted the enquiry report with regard to chargesheet dated 9.11.2000. Charge No.1 has been split up into Charge 1-A and Charge 1-B respectively. Charge No.1-A has been held to be proved whereas Charge 1-B has been held to be partially proved. Similarly Charges E No.2 to 3 have been split up into two parts each, i.e., Charges 2-A, 2-B; 3-A and 3-B. Here also Charge 2-A has been held to be proved, Charge 2-B is held to be partially proved; Charge 3-A is said to be proved, 3-B is held to be partially proved.

F 4. In chargesheet dated 8.3.2001, the Enquiry Officer in its report dated 13.5.2001 also found the same to be proved. The disciplinary authority examined the Enquiry reports and all the relevant documents forming part of the enquiries. Agreeing with the findings of the Enquiry Officer the Disciplinary Authority issued two show cause notices to the respondent proposing the punishment of reduction of pay by six stages permanently.

H 5. Thereafter the respondent was given an opportunity for a personal hearing by disciplinary authority on each of the Enquiry Reports. Taking into consideration the explanation given by the respondent, the disciplinary authority passed two orders

on 3.4.2001 imposing the punishment of “reduction of pay by six stages permanently” and “reduction of pay by four stages” in relation to charge sheets 9.11.2000 and 8.3.2001 respectively.

6. The appeals filed by the respondent against the aforesaid orders of punishment were dismissed by the Board of Directors of the Bank in its meeting dated 4.9.2002. The decision of the Board was communicated to the respondent vide letter dated 9.9.2002.

7. The respondent, therefore, filed writ petition challenging the orders dated 3.4.2002 and 9.9.2003. The Division Bench of the High Court allowed the writ petition only on the ground that since a copy of the enquiry report was not served on the respondent; the action of the petitioner Bank is violative of the principles of natural justice in view of the judgment of the case in *Mohd. Ramzan Khan case* (supra). It is observed by the High Court as follows:

“Sri. Virendra Misra learned counsel for the respondents Bank has not placed any material on record to show that the enquiry report was served on the petitioner. Sri Virendera Misra further argued that the regular enquiry was conducted in which the petitioner had participated. However, the copy of show cause (Annexure-2) which had been served on the petitioner, does not indicate that the enquiry report was served alongwith show cause notice. Accordingly to learned counsel for the petitioner, the enquiry officer has not fixed any date, time and place of the enquiry and the petitioner was not allowed to cross examine the witness. However learned counsel for the petitioner submits that straight way after reply to the show cause notices the punishment order was passed hence it is violative of principles of natural justice.

The submission of learned counsel for the petitioner is that non service of enquiry report is violative of principles of

A natural justice in view of judgment of Hon'ble Supreme Court in the case, reported in 1991 Vol.1 SCC 588 *Union of India Vs. Mohammad Ramzan Khan* service of show cause notice is a part and parcel of proceedings. It is settled law passed in *Ramzan Khan* case (supra).

B Accordingly, the impugned order seems to be substantially illegal. The appeal preferred by the petitioner against the order of punishment, was also dismissed by an order dated 9.9.2002 (Annexure-6).

C In view of the settled proposition of law, the writ petition deserves and is hereby allowed. A writ in the nature of certiorari is issued quashing the impugned orders dated 3.4.2002 (Annexure-4), 3.4.2002 (Annexure-5) and 9.9.2002 (Annexure-6) with consequential benefits. However, liberty is given to the respondents to serve fresh show cause notice alongwith copy of the enquiry report forthwith by giving reasonable time to the petitioner to submit the response and thereafter pass fresh orders in accordance with law.”

E 8. The Bank has questioned the legality of the aforesaid judgment of the High court on a number of grounds. Primarily it is argued that the High Court committed a serious error in not examining the issue as to whether any prejudice has been caused to the respondent by non-supply of the enquiry reports.

F It is further the submission of the learned counsel for the petitioner Bank that it was incumbent on the respondent to plead and establish before the High Court the prejudice that has been suffered by him. According to the learned counsel the respondent had substantially raised only two grounds in the writ petition. First ground is in paragraph 5 of the writ petition wherein the respondent had made an assertion as follows:

G “That separately a Chargesheet was issued to the petitioner against which the petitioner has submitted his reply, denying the charges mentioned therein, and thereafter no other proceedings took place in the said

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enquiry, but on the basis of the petitioner's reply the said enquiry was said to have been concluded & straight away the Show Cause Notices were issued to the petitioner, even without supplying a copy of any enquiry-report, if submitted in the matter."

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9. According to the learned counsel, this ground pertains to the procedural irregularities in conducting the departmental enquiries. The claim is that since the respondent has been denied opportunity to cross examine the witnesses, there is a breach of rules of natural justice. Respondent claims denial of reasonable opportunity to defend himself, in the enquiry proceedings.

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10. The second ground is with regard to the non-supply of the enquiry reports which is pleaded in paragraph 9 of the petition as follows:

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"It is also submitted that in the circumstances not only the enquiry has been conducted against the petitioner in a most illegal & arbitrary manner, but the order of the punishment has also been passed illegally and without following the norms and procedure prescribed under the law and as declared by the Apex Court through its so many decisions on the question of supplying the copy of the enquiry report to the delinquent-employee before awarding any punishment to him."

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11. According to the learned counsel, the Division Bench erred in such circumstance in quashing the orders of punishment as well as the order of the appellate authority without enquiring into the question whether any prejudice has been caused to the respondent. According to the learned counsel, the respondent was found guilty of charges of fraud and misappropriation. In normal course in such cases punishment of dismissal from service would be imposed. The Board has, however, imposed a much lesser punishment. Therefore, the writ petition ought to have been dismissed by the High Court.

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12. Learned counsel relied on judgments of this Court in *ECIL vs. B.K Arunakar* (1993) 4 SCC 727; and in *Haryana Financial Corp. and Anr. vs. Kailash Chandra Ahuja* 2008 (9) SCC 31. According to the learned counsel even if copy of the enquiry report is not given, it was necessary for the High Court to record a finding as to what prejudice had been caused to the respondent. Mere non-supply of the Enquiry Report would not justify quashing of the entire disciplinary proceedings. The writ petition is completely silent as to what prejudice has been caused to the respondent. The respondent did not raise the issue at the personal hearings. He only mentioned it in the memorandums of appeal. Even then he did not specify as to what prejudice has been caused to him. Therefore, the High Court has passed a wholly erroneous order contrary to the law laid down by this Court.

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13. Learned counsel for the respondent, however, submitted that entire amount which has been misappropriated has been recovered, therefore the punishment imposed on the respondent was wholly unjustified. Relying on the judgment of *Mohd. Ramzan Khan* (supra) learned counsel has submitted that prejudice has to be presumed as the respondent has been denied reasonable opportunity by non-supply of the enquiry report.

14. We have considered the submissions made by the learned counsel for the parties. When the matter came up for initial hearing we passed the following order:

"Learned counsel for the petitioner submits that the judgment of the High Court is contrary to the decision of this Court in *Managing Director, ECIL vs. B. Karunakar*, 1993 (4) SCC 727 and decision in *Haryana Financial Corporation and another vs. Kailash Chandra Ahuja*, 2008(9) SCC 31. Instead of sending the matter back to the High Court we are of the view that an opportunity whether there was any prejudice on account of the inquiry

report not being furnished along with the show cause notice, may be given to the respondent before us. Accordingly, we direct the respondent to show cause whether any prejudice was caused by non-receipt of inquiry report along with show cause notice issued by the Bank. Call after four weeks.”

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This course has been adopted by us to avoid the matter being remanded back to the High Court or the Disciplinary Authority.

15. Pursuant to the aforesaid order, the respondent has filed an additional counter affidavit, in which he has emphasized the desirability of remanding the matter back to the disciplinary authority for re-determination of the matter. He has emphasized that failure to supply the enquiry report to the delinquent deprives him of making a proper representation to the disciplinary authority, before that authority arrives at its own findings with regard to the guilt or otherwise of an employee. This admittedly not having been done, clearly the respondent was prejudiced in submitting his defence.

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16. Even if this Court concludes not to remand the matter back to the disciplinary authority, at least it has to be remanded back to the High Court. He has stated that a number of points were raised before the High Court which have not been considered on merits, as the High Court decided the writ petition only on the ground of non-furnishing of the enquiry report. Since the Enquiry Officer and the disciplinary authority had concluded that some of the charges have been partially proved and others completely proved it was necessary to supply the findings of the enquiry reports. Only on knowing the reasoning of the Enquiry Officer, could the respondent give an effective explanation. It is further pointed out that with regard to the charges relating to Maharajganj, the entire amount has been recovered. This fact is noticed by the disciplinary authority. But quite illegally, it still proceeded to impose punishment, on the ground of proved misconduct. Since the disciplinary authority arrived at the decision on the basis of charges which

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A were partially/completely proved it was not possible to defend, during personal hearings. According to the respondent, this was stated by him at the personal hearing, but it was ignored. In fact the disciplinary authority was adamant to punish the respondent. All these issues could have been highlighted if the High Court had decided the writ petition on merits. Therefore, matter needs to be remanded back to the High Court for a decision on merits, on all the issues raised by the respondent.

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17. In our opinion, the aforesaid grievances of the respondent are without any factual basis. The petitioner has placed on the record of this Court the translated copy of the chargesheet dated 9.11.2000 and 8.3.2001; reply of the respondent dated 13.12.2000 to the chargesheet dated 9.11.2000 and reply dated nil to chargesheet dated 8.3.2001, translated copy of the enquiry report 19.5.2001, translated copy of the personal hearing proceedings on 20.7.2001 and 1.4.2002 and translated copy of the appeal dated 17.5.2003.

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18. In the counter affidavit filed by the petitioner Bank in the High Court, the allegations made in the writ petition have been denied. It is stated that as the replies submitted by respondent were not found to be satisfactory, departmental proceedings were initiated against him. It is further stated that “the entire enquiry proceedings were attended by petitioner. He was given full opportunity of being heard and a copy of the enquiry report and show cause notice regarding proposed punishment was also proved in compliance of principles of natural justice. The entire proceedings were held fairly, properly in which the petitioner also participated.” In paragraph 7 it is also stated that “the orders were passed after taking into consideration the reply submitted and the views expressed by the petitioner. After considering overall facts, circumstances, material on record, findings of the enquiry officer as also the defence taken by the petitioner the order of punishment dated 3.4.2002 was passed.” Similarly, in paragraph 8 the Bank stated that “the petitioner had filed two appeals to the Appellate

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Authority against the final order dated 3.4.2002. It is specifically and categorically denied that the appellate authority i.e. the Board of Devi Pattan Kshetria Gramin Bank dismissed the appeal without considering the grounds taken by the petitioner. This allegation is wholly misconceived and without any basis. In fact the Board of Directors the appellate authority after taking into account overall facts and grounds taken by the petitioner in the memo of appeals dismissed the appeal.”

19. These averments are borne out by conduct of the respondent at personal hearings on 30.7.2001 and 1.4.2002. In the proceeding on 30.7.2001 the respondent was asked by the Chairman of the Bank whether he had anything to say with regard to the proposed punishment. The respondent replied as follows:

“In the charge sheet dated 9.11.2000 all out efforts were made by me to remove the deficiencies mentioned in the charge-sheet dated 9.11.2000. Efforts were made for the recovery also. I request to you that in the accounts FDR and in the Savings accounts, where money is there, those may be adjusted in the loan accounts. By me, efforts shall be made in future also for recovery in the accounts. You are requested that in case in future, accounts are regularized, then kindly reconsider on the proposed penalty.”

20. Pursuant to the aforesaid request of the respondent, the Chairman discussed the matters with the Branch Manager, Khorhansa over the telephone. The Branch Manager, however, informed that the amount could not be adjusted as “the self accounts of the debtors not being there; that of the relation, husband, wife etc. about which order was given to them for furnishing the written details.

In future not merely in the regularization of account-rather the interest of the bank may be completely safe, or complete recovery be made, on this item also in today’s date no

A assurance can be given. The personal hearing concludes with the following remark.”

B “During the course of the personal hearing no such concrete matters/documents etc. came to limelight, on the basis thereof, we propose punishment could be re-considered. Hence the punishment proposed is confirmed.”

C 21. Again in the personal hearing on 1.4.2002 in the head office at 4 p.m., the Chairman asked the respondent whether he had anything to say with regard to the proposed punishment in the chargesheet dated 8.3.2001. The respondent merely stated “you are requested that kindly lessen up the proposed punishment showing sympathy. To this the Chairman replied, that “your acts are to be observed in Vigilance view in regard to the above case/chargesheet. In our view, what other punishment than this could be lesser punishment? We have already shown you so much sympathy”. To this the respondent merely replied that “Whatever decision is taken by you, is fine.” The hearing is concluded with the observation “during the course of personal hearing, no such strong evidence and fact have been produced on the basis of which proposed punishment could be reconsidered. Thus proposed punishment is confirmed. No additional amount is to be paid for suspension period.”

F 22. The aforesaid exchange between the Chairman of the Bank and the respondent makes it abundantly clear that grievances of respondent were addressed with an open mind. He did not make any protest about being handicapped by non-supply of the Enquiry Report.

G 23. In the appeal filed by the respondent against the order dated 3.4.2002, it is stated that whatever is stated in the appeal was also stated by him during the course of enquiry proceedings. He has further stated that the presenting officer has not produced any evidence in regard to the facts in his presentation. Facts could not be deemed proved merely on

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presentation. The respondent emphasized that necessary A  
postings were made in all the registers as per rule. Entire  
amount was deposited in the branch along with interest. Thus  
any sort of financial or social loss has not been suffered by the  
banks nor it is going to occur in the future. It was emphasized  
by the respondent that the entire amount was deposited before B  
the date of suspension. Therefore, no amount has been  
misappropriated. According to the respondent, it was just  
procedural irregularity which has been rectified in time. The  
justification of procedural irregularity is reiterated by the  
respondent time and again. After concluding the appeal on C  
merits respondent also highlighted the following facts:

- . *“Report of Enquiry Officer has not been given and, D  
therefore, I have not got the opportunity to state  
everything during the course of my personal  
hearing.”*
- . No witness has been produced during the course  
of enquiry proceedings.
- . Presenting Officer has stated so many things E  
without any documentary evidence.
- . Entire amount with interest has been deposited  
before the date of suspension. Any sort of financial  
or social loss has not been suffered by the Bank F  
nor it going to occur in future.
- . I have given my full cooperation in the enquiry  
proceedings. Date of my personal hearing was  
fixed for 10.08.2001 vide letter dated 04.08.2001,  
but Disciplinary Authority without any strong reason G  
while showing only unavoidable circumstances,  
postponed the date fixed for my personal hearing  
and it was fixed for 01.04.2002 vide letter dated  
23.03.2002 which led to extension of my  
suspension period and I suffered mental and H

A financial hardships.”

24. In the appeal against the Order dated 3.4.2002 relating  
to chargesheet 9.11.2000, the respondent again stated as  
follows:

B “The punishment has been given on the complete/partly  
proved charges.

C Punishment has been given on the basis of possibility. It  
has not been intimated as to what is the grounds of the  
possibility.

D On which grounds, the Enquiry Officer has proved the  
charge completely/partly, its report has not been given to  
me, due to which I did not get the opportunity to state my  
own complete version, during the course of personal  
hearing.”

25. From the perusal of the enquiry report, it become  
apparent that following dates were fixed for the enquiry  
proceedings: 21.1.2001, 29.1.2001, 3.2.2001, 24.2.2001,  
7.3.2001, 21.3.2001, 11.4.2001 and 21.4.2001. Thus the  
petitioner has incorrectly stated that no date was fixed by the  
enquiry officer and straightaway the show cause notices were  
issued. This apart, it is also noticed in the enquiry report that  
for proving the charges levelled against the respondent in  
charge sheet dated 9.11.2000 the presenting officer tendered  
management exhibits ME-1 to ME-13. The branch Manager,  
Shri K.P. Singh, appeared as MW-1. It is also recorded that  
the respondent himself presented his defence and in the form  
of defence side evidence DE-1 and DE-2. Upon completion  
of the evidence the presenting officer and the respondent were  
granted time upto 30.4.2001 for giving their respective briefs.  
Thereafter there is a detailed discussion of the evidence given  
on behalf of the Bank as well as the respondent. Respondent  
did not make any protest before the enquiry officer of not being  
permitted to cross examine the witness. We have no hesitation  
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A in coming to the conclusion that the enquiry proceedings have been conducted in accordance with the principles of natural justice. We are of the opinion that these grievances have been subsequently aired just to influence the proceedings in Court. In case the respondent felt genuinely aggrieved he would have raised the issue at the earliest possible stage. The charges which have been proved against the respondent are all pertaining to financial irregularities fraud and misappropriation. At the personal hearing the respondent had clearly stated that efforts have been made by him for effecting recovery. He had also offered that the amounts may be adjusted from other loan accounts which were found to be not feasible. The issue with regard to the non-supply of the enquiry report is raised for the first time in appeal. Even at that stage the appellant does not state as to what prejudice was caused by the non-supply of the enquiry report. He also did not seek any adjournment of the personal hearing on the ground that he be supplied the enquiry report.

E 26. It appears that without taking into consideration the aforesaid facts and circumstances and without scrutinizing the counter affidavit filed by the petitioner Bank, the High Court accepted that non-supply of the enquiry report has rendered the orders of punishment dated 3.4.2002 and the orders and appeal *noest* and void. The plea of the respondent before the High Court that no proceedings had taken place in the enquiry is clearly false which is belied by the contents of the enquiry report.

G 27. At the time when the plea was raised before the High Court that the impugned orders are vitiated on account of the non-supply of enquiry report, it would have been appropriate for the High Court to examine the averments made in the writ petition. A perusal of the writ petition would show that the petitioner has failed to lay any foundation to establish that any prejudice has been caused by the non-supply of the enquiry report. In the case of *ECIL (supra)* a constitution bench of this

A Court reiterated the ratio of law in Mohd. Ramzan Khan case (*supra*) as follows:

B “As held by this Court in Union of India v. Mohd. Ramzan Khan, when the inquiring authority and the disciplinary authority are not one and the same and the disciplinary authority appoints an inquiring authority to inquire into charges levelled against a delinquent officer who holds inquiry, finds him guilty and submits a report to that effect to the disciplinary authority, a copy of such report is required to be supplied by the disciplinary authority to the delinquent employee before an order of punishment is imposed on him. It was also held that non-supply of report of the inquiry officer to a delinquent employee would be violative of principles of natural justice. The Court observed that after the Constitution (Forty-second Amendment) Act, 1976, second opportunity contemplated by Article 311(2) of the Constitution had been abolished, but principles of natural justice and fair play required supply of adverse material to the delinquent who was likely to be affected by such material. Non-supply of report of the inquiry officer to the delinquent would constitute infringement of the doctrine of natural justice.”

F 28. The ECIL matter was placed before the Constitution Bench as the attention of the Court was invited to a three-Judge Bench decision of this Court in *Kailash Chandra Asthana vs. State of U.P.* 1988 (3) SCC 600 wherein it was held that non-supply of the report would not *ipso facto* vitiate the order of punishment in the absence of prejudice to the delinquent. Upon a detailed consideration of the entire case law this court laid down certain principles which are as follows:

H “18. In this view of the matter, the Court dismissed the writ petition. It would thus be clear that the contention before this Court in that case was that the copy of the report of the inquiring authority was necessary to show cause at the second stage, i.e., against the penalty proposed. That was

also how the contention was understood by this Court. The contention was not and at least it was not understood to mean by this Court, that a copy of the report was necessary to prove the innocence of the employee before the disciplinary authority arrived at its conclusion with regard to the guilt or otherwise on the basis of the said report. Hence, we read nothing in this decision which has taken a view contrary to the view expressed in E. Bashyan case by a Bench of two learned Judges or to the view taken by three learned Judges in *Union of India v. Mohd. Ramzan Khan*.

19. In Mohd. Ramzan Khan case the question squarely fell for consideration before a Bench of three learned Judges of this Court, viz., that although on account of the Forty-second Amendment of the Constitution, it was no longer necessary to issue a notice to the delinquent employee to show cause against the punishment proposed and, therefore, to furnish a copy of the enquiry officer's report along with the notice to make representation against the penalty, whether it was still necessary to furnish a copy of the report to him to enable him to make representation against the findings recorded against him in the report before the disciplinary authority took its own decision with regard to the guilt or otherwise of the employee by taking into consideration the said report. The Court held that whenever the enquiry officer is other than the disciplinary authority and the report of the enquiry officer holds the employee guilty of all or any of the charges with proposal for any punishment or not, the delinquent employee is entitled to a copy of the report to enable him to make a representation to the disciplinary authority against it and the non-furnishing of the report amounts to a violation of the rules of natural justice. However, after taking this view, the Court directed that the law laid down there shall have prospective application and the punishment which is already imposed shall not be open to challenge on that

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A ground. Unfortunately, the Court by mistake allowed all the appeals which were before it and thus set aside the disciplinary action in every case, by failing to notice that the actions in those cases were prior to the said decision. This anomaly was noticed at a later stage but before the final order could be reviewed and rectified, the present reference was already made, as stated above, by a Bench of three learned Judges. The anomaly has thus lent another dimension to the question to be resolved in the present case.

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C 20. The origins of the law can also be traced to the principles of natural justice, as developed in the following cases: In A.K. Kraipak v. Union of India it was held that the rules of natural justice operate in areas not covered by any law. They do not supplant the law of the land but supplement it. They are not embodied rules and their aim is to secure justice or to prevent miscarriage of justice. If that is their purpose, there is no reason why they should not be made applicable to administrative proceedings also especially when it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial ones. An unjust decision in an administrative inquiry may have a more far-reaching effect than a decision in a quasi-judicial inquiry. It was further observed that the concept of natural justice has undergone a great deal of change in recent years. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the inquiry is held and the constitution of the Tribunal or the body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice has been contravened, the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. The rule that inquiry must be held in good faith and without bias and not arbitrarily or

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unreasonably is now included among the principles of natural justice. A

21. In *Chairman, Board of Mining Examination v. Ramjee* the Court has observed that natural justice is not an unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. The Courts cannot look at law in the abstract or natural justice as a mere artifact. Nor can they fit into a rigid mould the concept of reasonable opportunity. If the totality of circumstances satisfies the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity, the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures. B  
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23. What emerges from the above survey of the law on the subject is as follows. E

24. Since the Government of India Act, 1935 till the Forty-second Amendment of the Constitution, the Government servant had always the right to receive the report of the enquiry officer/authority and to represent against the findings recorded in it when the enquiry officer/authority was not the disciplinary authority. This right was however, exercisable by him at the second stage of the disciplinary proceedings viz., when he was served with a notice to show cause against the proposed penalty. The issuance of the notice to show cause against the penalty necessarily required the furnishing of a copy of the enquiry officer's report since, as held by the Courts, the right to show cause against the penalty also implied the right to represent F  
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against the findings on the charges. This was considered to be an essential part of the 'reasonable opportunity' incorporated earlier in Section 240(3) of the GOI Act and later in Article 311(2) of the Constitution as originally enacted. The right to receive the enquiry officer's report and to show cause against the findings in the report was independent of the right to show cause against the penalty proposed. The two rights came to be confused with each other because as the law stood prior to the Forty-second Amendment of the Constitution, the two rights arose simultaneously only at the stage when a notice to show cause against the proposed penalty was issued. If the disciplinary authority after considering the enquiry officer's report had dropped the proceedings or had decided to impose a penalty other than that of dismissal, removal or reduction in rank, there was no occasion for issuance of the notice to show cause against the proposed penalty. In that case, the employee had neither the right to receive the report and represent against the finding of guilt nor the right to show cause against the proposed penalty. The right to receive the report and to represent against the findings recorded in it was thus inextricably connected with the acceptance of the report by the disciplinary authority and the nature of the penalty proposed. Since the Forty-second Amendment of the Constitution dispensed with the issuance of the notice to show cause against the penalty proposed even if it was dismissal, removal or reduction in rank, some courts took the view that the Government servant was deprived of his right to represent against the findings of guilt as well. The error occurred on account of the failure to distinguish the two rights which were independent of each other."

29. The aforesaid ratio of law has been reiterated by this Court in *Haryana Financial Corp. and Anr.* (supra). This court again critically examined the entire issue and observed as

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follows:

“21. From the ratio laid down in B. Karunakar<sup>1</sup> it is explicitly clear that the doctrine of natural justice requires supply of a copy of the inquiry officer’s report to the delinquent if such inquiry officer is other than the disciplinary authority. It is also clear that non-supply of report of the inquiry officer is in the breach of natural justice. But it is equally clear that failure to supply a report of the inquiry officer to the delinquent employee would not ipso facto result in the proceedings being declared null and void and the order of punishment non est and ineffective. It is for the delinquent employee to plead and prove that non-supply of such report had caused prejudice and resulted in miscarriage of justice. If he is unable to satisfy the court on that point, the order of punishment cannot automatically be set aside.

22. In the instant case, it is not in dispute by and between the parties either before the High Court or before us that a copy of the report of the inquiry officer was not supplied to the delinquent writ petitioner. While the contention of the writ petitioner is that since failure to supply the inquiry officer’s report had resulted in violation of natural justice and the order was, therefore, liable to be quashed, the submission on behalf of the Corporation is that no material whatsoever has been placed nor is a finding recorded by the High Court that failure to supply the inquiry officer’s report had resulted in prejudice to the delinquent and the order of punishment was, therefore, liable to be quashed.

23. The High Court, unfortunately, failed to appreciate and apply in its proper perspective the ratio laid down in B. Karunakar<sup>1</sup>, though the High Court was conscious of the controversy before it. The Court also noted the submission of the Corporation that there was “no whisper” in the writ petition showing any prejudice to the delinquent as required by B. Karunakar<sup>1</sup>, but allowed the writ petition and set aside the order of punishment observing that in such

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cases, prejudice is “writ large”.

24. In our considered view, the High Court was wrong in making the above observation and virtually in ignoring the ratio of B. Karunakar<sup>1</sup> that prejudice should be shown by the delinquent. To repeat, in B. Karunakar<sup>1</sup>, this Court stated: (SCC p. 757, para 30)

“30. (v) ... Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case.”

25. It is settled law that principles of natural justice have to be complied with. One of the principles of natural justice is audi alteram partem (hear the other side). But it is equally well settled that the concept of “natural justice” is not a fixed one. It has meant many things to many writers, lawyers, jurists and systems of law. It has many colours, shades, shapes and forms. Rules of natural justice are not embodied rules and they cannot be imprisoned within the straitjacket of a rigid formula.”

30. Thereafter, this Court notices the development of the principle that prejudice must be proved and not presumed even in cases where procedural requirements have not been complied with. The Court notices a number of judgments in which the action has not been held *ipso facto* illegal, unlawful or void unless it is shown that non-observance had prejudicially affected the applicant. Ultimately, it is concluded as follows:

“44. From the aforesaid decisions, it is clear that though supply of report of the inquiry officer is part and parcel of natural justice and must be furnished to the delinquent employee, failure to do so would not automatically result in quashing or setting aside of the order or the order being declared null and void. For that, the delinquent employee has to show “prejudice”. Unless he is able to show that



non-supply of report of the inquiry officer has resulted in prejudice or miscarriage of justice, an order of punishment cannot be held to be vitiated. And whether prejudice had been caused to the delinquent employee depends upon the facts and circumstances of each case and no rule of universal application can be laid down.”

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31. We have examined the factual situation in this case elaborately to see as to whether any prejudice has been caused to the respondent. We are unable to accept the submissions of the learned counsel for the respondent that any prejudice has been actually caused. We are of the considered opinion that there has been no failure of justice in the facts and circumstances of this case by non-supply of the enquiry report to the respondent.

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32. We are also of the opinion that the punishment imposed on the respondent cannot be said to be disproportionate to the gravity of the charges proved against the respondent. The charges related to the conduct of the respondent in a financial institution whereby taking advantage of the official position he attempted to procure unlawful pecuniary benefits for himself. The charges related to misappropriation, fraud and irregularities with regard to the maintenance of accounts. He had been siphoning off money belonging to the account holders. He was holding a position of trust in the Bank, which he betrayed. We are of the opinion that the Chairman has correctly observed at the personal hearing given to the respondent that the Bank has already been sympathetic and lenient enough.

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33. In view of the above, the appeal is allowed. The judgment of the High Court is set aside. The Writ Petition filed by the respondent is dismissed.

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Appeal allowed.

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DALJIT SINGH AND OTHERS

v.

UNION TERRITORY CHANDIGARH THROUGH ITS CHIEF ADMINISTRATOR, U.T. CHANDIGARH AND ANOTHER  
(Civil Appeal No.1640 of 2010)

FEBRUARY 09, 2010.

**[G.S. SINGHVI AND ASOK KUMAR GANGULY, JJ.]**

*Chandigarh (Sale of Sites & Buildings) Rules, 1960 – r. 7-A(2) – Purchase of site in auction – Payment of 25% of bid money – Taking of physical possession of site – Surrender of site within 36 days of allotment – Acceptance of surrender by competent authority – Demand of penalty @ 2.5% of the premium u/r 7-A – After 2 ½ years, demand of additional 2.5% of premium amount as penalty u/r. 7-A(2) – Legality of – Held: If surrender is made after possession is offered by competent authority, penalty @ 5% of the premium is leviable in terms of r. 7-A(2) even if surrender is made within 180 days – Transferee surrendered the site after taking possession thus, competent authority did not commit any illegality by demanding the balance penalty – However, the said demand having been raised after 2 ½ years of acceptance of surrender of site, was arbitrary exercise of power and violation of doctrine of fairness in state action – Thus, demand of additional penalty quashed and order of High Court set aside.*

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**Appellants purchased a residential site in an auction. They deposited 25% of the bid money and took physical possession of the site. After one month they surrendered the site. Respondent no. 2 accepted the surrender of the site and imposed penalty @ 2.5% of the premium under Rule7-A of the Chandigarh (Sale of Sites and Buildings) Rules, 1960. After 2 ½ years, respondent no.2 issued notice to the appellants requiring them to deposit**

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Rs.3,38,082/-, which was 2.5% of the premium as penalty because in terms of Rule 7-A(2), penalty @ 5% of the premium ought to have been imposed. The appellants challenged the demand of additional amount and prayed for withdrawal of the request of surrender. Respondent no.2 rejected the same. The appellants then filed writ petition. The Division Bench of the High Court dismissed the petition. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1.1. A reading of the plain language of Rule 7-A of the Chandigarh (Sale of Sites and Buildings) Rules, 1960 makes it clear that sub-rule (1) thereof is attracted if the transferee who has paid 25% of the premium of the site, surrenders the same within 180 days of the allotment and that too before possession of the site is offered by the competent authority. In such a case, the surrender can be accepted by the competent authority subject to deduction of penalty @ 2.5% of the premium. If the surrender is made after possession is offered by the competent authority, penalty @ 5% of the premium is leviable in terms of Rule 7-A(2) irrespective of the fact that the surrender is made within 180 days. To put it differently, if a transferee who has paid 25% of the premium and to whom possession is offered by the competent authority, surrenders the site then penalty @ 5% of the premium is leviable and he cannot avoid this consequence only on the premise that the surrender was made within 180 days of the allotment. Only in exceptional cases the Chief Administrator can accept surrender after expiry of the period of 2 years subject, of course, to the payment of penalty @ 5% of the premium [Rule 7-A(3)]. Under sub-rule (4) of Rule 7-A, the Chief Administrator can, for reasons to be recorded in writing, reduce or waive off the penalty leviable in terms of sub-rules (1) and (2). [Para 10] [543-C-G]

1.2. The appellants had surrendered the site after taking possession thereof. Therefore, in principle the order of High Court that sub-rule (2) of Rule 7-A was applicable to their case and respondent no.2 did not commit any illegality when he called upon them to pay balance penalty @ 2.5% of the premium is accepted. However, keeping in view the fact that the demand for the balance penalty was made after more than 2 years and 6 months of the acceptance of surrender of the site and the appellants' legitimate prayer for withdrawal of the letter of surrender was rejected without any tangible reason, the High Court should have quashed the demand raised by respondent no.2 on the ground of arbitrary exercise of power and violation of the doctrine of fairness in state action. [Para 11] [543-G-H; 544-A-B]

1.3. While approving the view taken by the High Court on the interpretation of Rule 7-A (1) and (2) of the Rules, the prayer made by the appellants is accepted and the demand raised by respondent no.2 vide notices dated 5.11.2007 and 26.12.2007 is quashed. [Para 12] [544-C-D]

CIVIL APPELLATE JURISDICTION : Civil AppealNo. 1640 of 2010.

From the Judgment & Order dated 3.12.2008 of the High Court of Punjab & Haryana at Chandigarh in Civil Writ Petition No. 2964 of 2008.

P.S. Patwalia, Pragati Neekhra , Suryanaryana and Sonika for the Appellants.

Kamini Jaiswal for the Respondents.

The Judgment of the Court was delivered by

**G.S. SINGHVI, J.** 1. Leave granted.

2. Feeling aggrieved by order dated 3.12.2008 passed by the Division Bench of Punjab and Haryana High Court refusing to quash the proceedings initiated by the Chandigarh Administration under Rule 7-A(2) of the Chandigarh (Sale of Sites and Buildings) Rules, 1960 (for short, 'the Rules') for recovery of Rs.3,38,082/- in lieu of the surrender of residential plot sold to them, the appellants have preferred this appeal.

3. On the basis of highest bid of Rs.80 lacs given by them in the open auction conducted by the Chandigarh Administration, residential site No.1199, Sector 19-B was sold to the appellants subject to the conditions enumerated in letter dated 3.1.2005 issued by the Estate Officer, Union Territory, Chandigarh (respondent No.2). The appellants deposited Rs.20 lacs representing 25% of the bid money. They took physical possession of the site on 25.1.2005 (in the impugned order, the date of delivery of possession has been mentioned as 22.2.2005) but surrendered the same on 3.3.2005 by stating that due to unavoidable reasons they were not in a position to retain the site. Upon receipt of the appellants' request for surrender, respondent No.2 issued letter dated 24.3.2005 and called upon them to show cause as to why penalty @ 2.5% of premium may not be imposed and recovered under Rule 7-A of the Rules. The appellants did not contest the notice. Rather, appellant No.1 appeared before respondent No.2 and pleaded that the request for surrender be accepted subject to the condition specified in the notice. Thereupon, respondent No.2 passed order dated 20.4.2005 whereby he accepted the surrender of the site and imposed penalty in terms of the show cause notice.

4. After 2 years and 6 months, respondent No.2 issued notice dated 5.11.2007 to the appellants requiring them to deposit Rs.3,38,082/-. This was done on the premise that inadvertently penalty @ 2% of the premium had been imposed at the time of acceptance of surrender of the site, though in terms of Rule 7-A(2) of the Rules, penalty @ 5% of the premium

A ought to have been imposed. Appellant No.1 submitted reply dated 16.11.2007 and contested the demand by asserting that notice had been issued by the concerned officer without taking cognizance of the fact that surrender had already been accepted. Simultaneously, he prayed for withdrawal of the request of surrender by stating that he was ready to deposit 25% premium. The relevant portions of the reply submitted by appellant No.1 are extracted below:

C "That the said memo has wrongly been sent to me as I had surrendered the plot well within 90 days of the issuance of allotment letter and had been charged penalty at the rate of 2.5% of the premium as per the relevant rule in this regard. The present recovery notice has been sent to me without any relevant rule and application of mind as a penalty of 2.5% had already been charged and stands deposited from me as per the orders passed by the Estate Officer, U.T. Chandigarh in this regard.

E That in view of the memo dated 5.11.2007 calling upon me to deposit 3,38,082/-, I hereby withdraw my letter for surrender of the said residential plot and I am ready to deposit the initial 25% premium as per the auction held in my favour on 10.12.2004 and also ready to pay any other charges with regard to the same.

F That I may kindly be allowed to take back the surrendered residential plot 1199, Sector 19-B, Chandigarh which is still vacant and has not been allotted till date to anybody. Moreover, the penalty already paid by me at the rate of 2.5% may also be adjusted against the said 25% premium. That in view of the submissions made above it is requested that the above memo No.34422 dated 5.11.2007 be withdrawn immediately and I may be intimated with regard to the amount which I am required to deposit on withdrawal of my surrender application with regard to the plot No.1199, Sector 19-B, Chandigarh."

5. Respondent No.2 declined to accept the  
aforementioned request made by appellant No.1 and again  
called upon him to deposit penalty amount mentioned in letter  
dated 5.11.2007.

6. The appellants challenged the demand of additional  
penalty and rejection of their prayer for withdrawal of the  
request for surrender of the site by filing writ petition under  
Article 226 of the Constitution. The Division Bench of the High  
Court opined that the appellants' case is covered by Rule 7-  
A(2) of the Rules which provides for imposition of penalty @  
5% of the premium and Rule 7-A(1) is not attracted in their case  
because they had applied for surrender of the site after physical  
possession thereof had been delivered to them.

7. Shri P.S. Patwalia, learned senior counsel submitted  
that the appellants' case falls within the ambit of Section 7-A(1)  
because they had surrendered the site within 180 days of the  
allotment and the High Court committed serious error by  
refusing to quash the demand of additional penalty. Learned  
senior counsel then argued that even if Rule 7-A(2) is held  
applicable to the appellants' case, the High Court should have  
quashed the demand because the same was raised after more  
than 2 years and 6 months of the acceptance of the request  
for surrender of the site. Shri Patwalia emphasized that if the  
appellants had been told that penalty @ 5% of the premium  
would be imposed then they may not have pressed for  
acceptance of their request for surrender of the site. He finally  
submitted that if the respondents want to invoke Rule 7-A(2) of  
the Rules then they should be directed to accept the appellants'  
prayer for permission to withdraw the request for surrender of  
the site.

8. Ms. Kamini Jaiswal, learned counsel for the  
respondents supported the impugned order and argued that  
respondent No.2 did not commit any illegality by requiring the  
appellants to pay penalty @ 5% of the premium because they

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A had surrendered the site after taking physical possession  
thereof and, as such, their case is governed by Rule 7-A(2) of  
the Rules. Ms. Jaiswal submitted that the benefit of sub-rule (1)  
of Rule 7-A can be availed within 180 days of allotment of site  
and that too before the offer of possession of the site is made.  
B She pointed out that the appellants had not only been offered  
but they had taken physical possession of the site on 25.1.2005  
and argued that the High Court rightly refused to quash the  
demand for the remaining amount of penalty.

C 9. We have considered the respective submissions. Rule  
7-A of the Rules which has bearing on the decision of this  
appeal reads as under:

*"Surrender of site.-* (1) A transferee who has already paid  
at least 25% premium of the site, may, before he is offered  
possession of the site by the Estate Officer, and within 180  
days of the allotment of the site, whichever is earlier,  
surrender the site on payment of 2.5% of the premium as  
penalty. In this event, interest at the rate prescribed in rule  
10(1) shall be chargeable on the balance premium due  
from the transferee for the period from the date of allotment  
upto the date of surrender. The date of surrender under  
these rules shall be the date when intimation by the  
transferee to this effect reaches the Estate Officer.

F (2) A transferee as mentioned in sub-rule (1) above, may  
surrender the site within two years of the date of the  
allotment on payment of 5% of the premium as penalty.  
Interest shall be chargeable from the transferee as  
provided in sub-rule (1) above. The Estate Officer shall be  
competent to decide such cases, as also cases under  
sub-rule (1).  
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H (3) The Chief Administrator, may, in exceptional  
circumstances for reasons to be recorded in writing,  
accept the surrender of site from the transferee as  
prescribed in sub-rule (1) above, at anytime after two years

from the date of allotment on payment penalty which shall not be less than 5% of the premium. Interest shall be chargeable from the transferee as prescribed in sub-rule (1) above.

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(4) The Chief Administrator may, on compassionate grounds, in case of extreme hardships, for reasons to be recorded in writing, reduce or waive off the amount of penalty in any case of surrender.”

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10. A reading of the plain language of Rule 7-A makes it clear that sub-rule (1) thereof is attracted if the transferee who has paid 25% of the premium of the site, surrenders the same within 180 days of the allotment and that too before possession of the site is offered by the competent authority. In such a case, the surrender can be accepted by the competent authority subject to deduction of penalty @ 2.5% of the premium. If the surrender is made after the possession is offered by the competent authority, penalty @ 5% of the premium is leviable in terms of sub-rule (2) of Rule 7-A irrespective of the fact that the surrender is made within 180 days. To put it differently, if a transferee who has paid 25% of the premium and to whom possession is offered by the competent authority, surrenders the site then penalty @ 5% of the premium is leviable and he cannot avoid this consequence only on the premise that the surrender was made within 180 days of the allotment. Only in exceptional cases the Chief Administrator can accept surrender after expiry of the period of 2 years subject, of course, to the payment of penalty @ 5% of the premium [Rule 7-A(3)]. Under sub-rule (4) of Rule 7-A, the Chief Administrator can, for reasons to be recorded in writing, reduce or waive off the penalty leviable in terms of sub-rules (1) and (2).

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11. It is not in dispute that the appellants’ had surrendered the site after taking possession thereof. Therefore, in principle we agree with the High Court that sub-rule (2) of Rule 7-A was applicable to their case and respondent No.2 did not commit

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A any illegality when he called upon them to pay balance penalty @ 2.5% of the premium. However, keeping in view the fact that the demand for the balance penalty was made after more than 2 years and 6 months of the acceptance of surrender of the site and the appellants’ legitimate prayer for withdrawal of the letter of surrender was rejected without any tangible reason, we feel that the High Court should have quashed the demand raised by respondent No.2 on the ground of arbitrary exercise of power and violation of the doctrine of fairness in state action.

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12. In the result, the appeal is allowed. While approving the view taken by the High Court on the interpretation of Rule 7-A (1) and (2) of the Rules, we accept the prayer made by the appellants and quash the demand raised by respondent No.2 vide notices dated 5.11.2007 and 26.12.2007. The parties are left to bear their own costs.

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N.J. Appeal allowed.

RAVI KUMAR  
v.  
JULMIDEVI  
(Civil Appeal No. 1868 of 2007)

FEBRUARY 09, 2010

[P. SATHASIVAM AND ASOK KUMAR GANGULY, JJ.]

*Hindu Marriage Act, 1955:*

s. 28 – Power of High Court – Scope of – Held: While exercising power under s. 28, High Court as the first court of appeal is both a court of law and also of facts – In exercise of its power, first appellate court can come to a finding different from one arrived at by trial court – Code of Civil Procedure, 1973 – Order 41 r. 33 – Power of appellate court.

s.13(1)(ia) and (ib) – Divorce petition filed by husband on the ground of cruelty and desertion – Decreed by trial court – Decree reversed by High Court – On appeal, held: No reason to interfere with the order of High Court – Evidence of daughter of parties was vital in the facts of the case – She clearly stated that her father used to beat her mother – Thus, wife had sufficient reason to live apart, and cannot be held guilty of either cruelty or desertion.

*Words and Phrases:*

*Cruelty in matrimonial cases – Meaning of.*

Appellant-husband filed divorce petition on the ground of cruelty and desertion. District Judge granted decree of divorce. High Court set aside the decree. Hence the appeal.

Dismissing the appeal, the Court

HELD: 1.1. It cannot be disputed that while exercising

A its power under Section 28 of the Hindu Marriage Act, the High Court, as the first Court of appeal is both a Court of law and also of facts. The power of the appellate court as explained in Order 41 Rule 33 of the Civil Procedure Code are very wide. Therefore, in exercise of its power, the First Appellate Court can come to a finding different from the one which has been arrived at by the trial Court especially in a case where appreciation of evidence by the trial Court is not proper. In the instant case, trial Court did not properly appreciate the evidence of the child. The evidence of the child is very vital in the facts and circumstances of this case of matrimonial discord. The child clearly stated the cruelty of the appellant-husband towards his wife. The daughter in her evidence categorically stated that her father used to beat her mother. She denied that her mother abused her father but she repeatedly deposed that her father used to beat her mother and the reasons of which were not known to her. Therefore, there was sufficient reason for the wife to stay apart. Under such circumstances one cannot say the wife was guilty of either cruelty or desertion. [Paras 12, 14, 15 and 17] [550-H; 551-A-H; 552-A-B]

*S. Nazeer Ahmed v. State Bank of Mysore (2007) 11 SCC 75; Samundra Devi & Ors. v. Narendra Kaur & Ors. AIR 2008 SC 3205, relied on.*

*Mulla (CPC 15th Edition), referred to.*

1.2. It may be true that there is no definition of cruelty under the Act. Actually such a definition is not possible. In matrimonial relationship, cruelty would obviously mean absence of mutual respect and understanding between the spouses which embitters the relationship and often leads to various outbursts of behaviour which can be termed as cruelty. Sometime cruelty in a matrimonial relationship may take the form of violence, some time it may take a different form. At times, it may be

just an attitude or an approach. Silence in some situations may amount to cruelty. Therefore, cruelty in matrimonial behaviour defies any definition and its category can never be closed. Whether husband is cruel to his wife or the wife is cruel to her husband has to be ascertained and judged by taking into account the entire facts and circumstances of the given case and not by any pre-determined rigid formula. Cruelty in matrimonial cases can be of infinite variety – it may be subtle or even brutal and may be by gestures and words. [Para 18] [552-C-F]

*Dastane v. Dastane (1975) 2 SCC 326; Shobha Rani v. Madhukar Reddi AIR 1988 SC 121, relied on.*

*Sheldon v. Sheldon (1966) 2 All E.R. 257; Gollins v. Gollins (1963) 2 All. E.R. 966, referred to.*

#### Case Law Reference:

(2007) 11 SCC 75      relied on      Para 16

AIR 2008 SC 3205      relied on      Para 16

(1966) 2 All E.R. 257      relied on      Para 18

(1963) 2 All. E.R. 966      relied on      Para 19

(1975) 2 SCC 326      referred to      Para 20

AIR 1988 SC 121      referred to      Para 20

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1868 of 2007.

From the Judgment & Order dated 7.6.2005 of the High Court of Himachal Pradesh at Shimla in F.A.O. No. 95 of 2005.

Gurukrishna Kumar, Rajesh Pathak, Anil Bhati, Dharendra Pratap Singh and Sumit Kumar for the Appellant.

J.S. Attri, Balraj Dewan for the Respondent.

A The Judgment of the Court was delivered by

**GANGULY, J.** 1. The husband is in appeal before us impugning the Judgment and Order of the High Court in a Matrimonial Proceeding whereby the Judgment and Order of the District Judge, Mandi in Hindu Marriage Petition No.20 of 2002 dated 27.10.2004 was reversed by the High Court.

2. The marriage between the parties took place on 13.12.1988 according to Hindu rites and customs and in March, 1990 a girl child was born to them. The husband alleged that after the birth of the girl child, his wife left for parental house at village Samlet and spent her period of maternity leave there. It was further alleged that his wife, who was working, on being transferred from Garli to Chauaku, stayed at Chauaku instead of in the matrimonial home which was only at a distance of 3 Kms. from the place of her posting. However, the husband admitted that in May, 1994, his wife came to his house for a short period and stayed there with him till the month of May, 1994. Thereafter, his wife is alleged to have permanently deserted him. The further allegation is that in September, 1996, he tried to bring his wife back to his residence for staying with him and his old parents but she refused to do so.

3. Ultimately, the appellant filed a proceeding under Section 9 of the Hindu Marriage Act (hereinafter referred to as the Act) for restitution of conjugal rights and that was contested by his wife. Ultimately a compromise was arrived at before the Lok Adalat and the learned Sub-Judge, Sarkaghat presiding over the Lok Adalat passed an Order on 26-9-1998 treating the said petition under Section 9 as withdrawn, having ended in a compromise. The statements of the parties before the Lok Adalat were recorded and formed part of the decree. The statements, recorded before the Lok Adalat, may be set out hereinbelow:-

(a) *Statement of appellant - Husband*

H Stated that I shall provide room and kitchen for proper

living to my wife Julmi Devi and I shall not trouble her in any manner. A

(b) *Statement of respondent - Wife*

Stated that I am prepared to live with my husband Shri Ravi Kumar, I shall live with my husband properly. B

4. The allegation of the appellant is that his wife did not comply with the stand taken before the Lok Adalat by residing with him and continued to stay separately. The appellant, being frustrated thereby, filed a petition for a decree of divorce and dissolution of marriage on the grounds of cruelty and desertion. It was numbered as Petition No.20 of 2002. C

5. Initially, the District Judge, Mandi made some unsuccessful efforts to bring about a reconciliation between the parties. Then the proceeding was ultimately tried and evidence was recorded and by a Judgment and an Order dated 27.10.2004, the learned District Judge granted a decree of divorce which was challenged by the respondent wife before the High Court and the High Court reversed the finding of the learned District Judge. D E

6. While reversing the finding of the learned District Judge, the High Court acted in exercise of its powers under Section 28 of the Act. In doing to, the High Court acted as a first Court of appeal, which is a Court, both on facts and law. The High Court noted the case of the parties and also the evidence which was adduced before the Trial Court. F

7. Several questions cropped up in the course of hearing before the High Court. One of them being whether in view of filing of a proceeding for restitution of conjugal rights, the appellant had condoned all alleged prior acts of cruelty of the wife. The High Court after considering some decisions came to a finding that by filing a petition under Section 9 of the Act, the appellant had condoned the earlier alleged acts of cruelty of the respondent wife. Condonation is basically a question of H

A fact. This Court finds that reasoning of the High Court on condonation in the facts of this case is correct.

8. After recording the said finding, the High Court noted that there is no specific allegation by the appellant of wife's cruelty and in his deposition also husband does not refer to any specific instances of cruelty by his wife. In the absence of such specific allegations, the learned Trial Court was, in the opinion of the High Court, in error by granting a divorce on grounds of cruelty. B

9. From the petition filed by the appellant husband, it appears that in paragraph 6 of the said petition, the proceeding under Section 9 of the Act has been referred to. After the said paragraph, this Court finds that in paragraphs 7, 8, 9, 10 and 11 there is no specific allegation of cruelty against the wife. C

D There are some vague allegations but no allegation with specific particulars has been given about the alleged cruelty of the respondent wife. No specific case of desertion has been pleaded either.

E 10. It may be noted only after the amendment of the said Act by the amending Act 68 of 1976, desertion per se became a ground for divorce. On the question of desertion, the High Court held that in order to prove a case of desertion, the party alleging desertion must not only prove that the other spouse was living separately but also must prove that there is an animus deserendi on the part of the wife and the husband must prove that he has not conducted himself in a way which furnishes reasonable cause for the wife to stay away from the matrimonial home. F

G 11. Looking to the materials which have come on record in this case, it is clear that the wife had sufficient ground to live separately. In this case, the evidence of the daughter is very crucial.

H 12. The daughter in her evidence categorically stated that



her father used to beat her mother. She denied that her mother abused her father but she repeatedly deposed that her father used to beat her mother and the reasons of which are not known to her.

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13. It has been argued by the learned counsel for the appellant that Appellate Court did not have the occasion to appreciate the demeanour of the witnesses and the High Court acting as a First Appellate Court ought not to reverse a finding which was arrived at by the learned Trial Court.

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14. It is difficult for this Court to accept the aforesaid contention. It cannot be disputed that while exercising its power under Section 28 of the said Act, the High Court, as the first Court of Appeal is both a Court of Law and also of facts.

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15. The power of the Appellate Court as explained in Order 41 Rule 33 of the Civil Procedure Code shows that very wide powers have been conferred. Commenting on the width of this power, Mulla (CPC 15th Edn, p. 2647) commented that this rule is modelled on Order 59, rule 10(4) of the Supreme Court of Judicature in England. The learned author further commented that the object of this rule is to empower the appellate court to do complete justice between the parties.

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16. This Court is in respectful agreement with the aforesaid commentary of Mulla on order 41 Rule 33 with one rider. If there is a legal interdict, the rule will not apply – (See *S. Nazeer Ahmed vs. State Bank of Mysore* - (2007) 11 SCC 75 and which has been followed in *Samundra Devi & Ors. vs. Narendra Kaur & Ors.*- AIR 2008 SC 3205 at para 19, p 3208).

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17. Therefore, in exercise of its power, the First Appellate Court can come to a finding different from the one which has been arrived at by the Trial Court especially in a case where appreciation of evidence by the Trial Court is not proper. In the instant case, this Court finds that Trial Court has not properly appreciated the evidence of the child. It may be noticed here

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A that the evidence of the child is very vital in the facts and circumstances of this case of matrimonial discord. In this case the child has clearly stated the cruelty of the appellant-husband towards his wife. Therefore, there is sufficient reason for the wife to stay apart. Under such circumstances one cannot say the wife is guilty of either cruelty or desertion.

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18. It may be true that there is no definition of cruelty under the said Act. Actually such a definition is not possible. In matrimonial relationship, cruelty would obviously mean absence of mutual respect and understanding between the spouses which embitters the relationship and often leads to various outbursts of behaviour which can be termed as cruelty. Sometime cruelty in a matrimonial relationship may take the form of violence, some time it may take a different form. At times, it may be just an attitude or an approach. Silence in some situations may amount to cruelty. Therefore, cruelty in matrimonial behaviour defies any definition and its category can never be closed. Whether husband is cruel to his wife or the wife is cruel to her husband has to be ascertained and judged by taking into account the entire facts and circumstances of the given case and not by any pre-determined rigid formula. Cruelty in matrimonial cases can be of infinite variety – it may be subtle or even brutal and may be by gestures and words. That possibly explains why Lord Denning in *Sheldon vs. Sheldon*, [(1966) 2 All E.R. 257] held that categories of cruelty in matrimonial cases are never closed.

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19. This Court is reminded of what was said by Lord Reid in *Gollins vs. Gollins* [(1963) 2 All. E.R. 966] about judging cruelty in matrimonial cases. The pertinent observations are:

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“In matrimonial cases we are not concerned with the reasonable man, as we are in cases of negligence. We are dealing with this man and this woman and the fewer a priori assumptions we make about them the better. In cruelty cases one can hardly ever start with a presumption that the parties are reasonable people, because it is hard

to imagine any cruelty case ever arising if both the spouses think and behave as reasonable people.” A

20. The aforesaid passage was quoted with approval by this Court in *Dastane vs. Dastane* [(1975) 2 SCC 326]. About changing perception of cruelty in matrimonial cases, this Court observed in *Shobha Rani vs. Madhukar Reddi* - AIR 1988 SC 121 at page 123 of the report: B

“It will be necessary to bear in mind that there has been a marked change in the life around us. In matrimonial duties and responsibilities in particular, we find a sea change. They are of varying degrees from house to house or person to person. Therefore, when a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. We, the judges and lawyers, therefore, should not import our own notions of life. We may not go in parallel with them. There may be a generation gap between us and the parties”. C D E

21. For the reasons aforesaid, this Court does not find any reason to interfere with the judgment of the High court. F

22. The appeal is dismissed. The parties are to bear their own costs.

D.G. Appeal dismissed.

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MANISHA TYAGI  
v.  
DEEPAK KUMAR  
(Civil Appeal No. 5387 of 2007)

B

FEBRUARY 10, 2010

**[V.S. SIRPURKAR AND SURINDER SINGH NIJJAR, JJ.]**

*Hindu Marriage Act, 1955:*

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*s.13(1)(i-a) – Divorce – On ground of cruelty – Standard required to establish cruelty – Held: It would be sufficient to show that the conduct of one of the spouses is so abnormal and below the accepted norm that the other spouse could not reasonably be expected to put up with it – To establish cruelty it is not necessary that physical violence should be used – Continued ill-treatment, cessation of marital intercourse, studied neglect, indifference of one spouse to the other may lead to an inference of cruelty.*

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*ss.10 and 13 – Petition of husband for divorce on ground of cruelty – Dismissed by trial court – Single Judge of High Court found both the parties to be at fault and granted decree of judicial separation instead of divorce – Wife challenged the decree of judicial separation – Division Bench re-appreciated the entire evidence and decreed divorce – On appeal, held: The husband had not challenged the decree passed by the Single Judge, yet the effect of the order passed by the Division Bench was as if an appeal of the husband against the decree of judicial separation was allowed – Also, it was not a case where it was necessary for the Division Bench to correct any glaring and serious errors committed by the court below which had resulted in miscarriage of justice – There was no compelling necessity, independently placed before the*

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*Division Bench to justify reversal, of the decree of judicial separation – Order passed by the Single Judge restored.*

The husband-respondent filed petition under Section 13 of the Hindu Marriage Act, 1955 seeking divorce on the ground of cruelty. The petition was dismissed by the trial court. Respondent challenged the order. A Single Judge of the High Court found both the parties to be at fault and granted decree of judicial separation under Section 10 of the Hindu Marriage Act, 1955 instead of divorce. Aggrieved, the wife filed LPA before the Division Bench. The Division Bench re-appreciated the entire evidence and held that the cruelty alleged by the husband stood proved and granted decree of divorce. The said judgment is challenged by the wife in the present appeal.

Allowing the appeal, the Court

HELD: 1.1. As regards the standard required to establish cruelty in matrimonial cases, now it would be sufficient to show that the conduct of one of the spouses is so abnormal and below the accepted norm that the other spouse could not reasonably be expected to put up with it. The conduct is no longer required to be so atrociously abominable which would cause a reasonable apprehension that it would be harmful or injurious to continue the cohabitation with the other spouse. Therefore to establish cruelty it is not necessary that physical violence should be used. However continued ill-treatment, cessation of marital intercourse, studied neglect, indifference of one spouse to the other may lead to an inference of cruelty. However in the present case even with aforesaid standard both the Trial Court and the Appellate Court (the Single Judge of High Court) had accepted that the conduct of the wife did not amount to cruelty of such a nature to enable the husband to obtain a decree of divorce. [Para 24] [569-G-H; 570-A-B]

1.2. In the present case, taking into consideration the conduct of the parties over a period of time, the Trial Court as well as the Appellate Court concluded that the husband had failed to establish cruelty on the part of the wife which will be sufficient to grant a decree of divorce. The Appellate Court further came to the conclusion that since both the parties made extremely serious allegations, it would be appropriate as the parties were not compelled to live together. The Appellate Court came to the conclusion that it would be more appropriate to give the couple some time to ponder over the issue especially keeping in view the welfare of their daughter. If in due course they manage to reconcile their differences the decree of judicial separation would be of no consequence. On the other hand, if the parties continued with their adamant attitudes it would be possible for either party to seek dissolution of the marriage on the basis of the aforesaid decree of judicial separation. The husband did not challenge the aforesaid decree of the Appellate Court, he was content to wait for one year and thereafter seeking decree of divorce. In fact upon the expiry of one year he has actually filed the necessary proceedings seeking decree of divorce in the Court of District Judge. These proceedings are still pending. On the other hand the wife had filed the Latest Patent Appeal challenging the grant of decree of judicial separation to the husband by the Appellate Court. The High Court erred in granting a decree of divorce to the husband. [Paras 27, 28, 29 and 30] [571-G-H; 572-A-H; 573-A-C]

1.3. The wife had come in appeal before the Division Bench complaining that the Appellate Court had wrongly granted the decree of judicial separation even after concurring with the findings of the Trial Court that the husband had failed to establish cruelty by the wife. Therefore even if the appeal had been dismissed, the

findings recorded by the Trial Court in her favour would have remained intact. The effect of the order passed by the Division Bench is as if an appeal of the husband against the decree of judicial separation has been allowed. Both the parties had failed to make out a case of divorce against each other. The husband had accepted these findings. Therefore he was quite content to wait for the statutory period to lapse before filing the petition for divorce, which he actually did. On the basis of the proven facts the Trial Court was more inclined to believe the wife, whereas the Single Judge of the High court found both the parties to be at fault. Hence the middle path of judicial separation had been accepted. Therefore, it was not a case where it was necessary for the Division Bench to correct any glaring and serious errors committed by the court below which had resulted in miscarriage of justice. There was no compelling necessity, independently placed before the Division Bench to justify reversal, of the decree of judicial separation. In such circumstances it was wholly inappropriate for the Division of High Court to have granted a decree of divorce to the husband. The Judgment passed by the Division Bench of High Court is set aside and that passed by the Single Judge is restored. [Paras 30 and 31] [572-E-H; 573-A-D]

*Naveen Kohli v. Neelu Kohli* (2006) 4 SCC 558; *N.G. Dastane v. S. Dastane* (1975) 2 SCC 326; *Shobha Rani v. Madhukar Reddi* (1988) 1 SCC 105 and *V. Bhagat v. D. Bhagat* (1994) 1 SCC 337, referred to.

#### Case Law Reference:

(2006) 4 SCC 558	referred to	Para 22	A
(1975) 2 SCC 326	referred to	Para 23	B
(1988) 1 SCC 105	referred to	Para 25	C
(1994) 1 SCC 337	referred to	Para 26	D

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5387 of 2007.

B From the Judgment & Order dated 25.8.2006 of the High Court of Punjab & Haryana at Chandigarh in L.P.A. No. 1625 of 2001.

Kamini Jaiswal for the Appellant.

Rajender Kumar, M.A. Chinnasamy, K. Krishnakumar and Ravi Tomar for the Respondent.

C The Judgment of the Court was delivered by

D **SURINDER SINGH NIJJAR, J.** 1. In this appeal the wife has challenged the judgment of High Court of Punjab and Haryana in LPA No.1625/01 dated 25.8.2006 whereby the High Court set aside the judgment of the Trial Court and the Judgment of Ld. Single Judge and granted a decree of divorce to the husband.

E 2. Marriage between the parties was celebrated according to Hindu rites at New Delhi on 17.11.1991. For a short period after the marriage, the couple stayed at Meerut where the husband was posted as a Captain in the Indian Army. Mutual cohabitation of the parties seems to have come to an end on 30.12.1992. They have been living separately since 31.12.1992. They have a daughter who was born on 2.6.1993.

G 3. On 24.11.1993 the husband filed a petition under Section 13 of the Hindu Marriage Act being Matrimonial Case No.644 of 1993 for dissolution of the marriage. Later on the petition was amended and filed in the Court of District Judge of Gurgaon on 28.11.1995 pursuant to the order issued by this Court in a transfer petition.

H 4. The husband has mentioned numerous instances of cruelty in paragraph 7 of the divorce petition. He has described the wife as quarrelsome, rude and ill-mannered. He had gone

to the extent of terming his wife to be schizophrenic, making his life a living hell. He goes on to narrate that all efforts at conciliation even by his parents did not yield any result. He then proceeds to state that his wife is misusing her position as a practising advocate. According to him she has been constantly threatening him as well as his family that since she and her two uncles are advocates they would make the lives of the husband and his family miserable. The husband then complains that the wife has been making baseless complaints to his superiors. This has affected his career prospects in the Army. He makes a special reference to a statutory complaint dated 10.12.1993 in which according to him the wife had made numerous false allegations about the behaviour of the husband and his family even prior to the marriage ceremony.

5. We may notice here the contents of the statutory complaint. She complained about the exorbitant demands made by the husband's family for dowry. She complained that within days of the marriage the husband started behaving in a strange manner; throwing household articles and clothes all around in the room and also mimicking the sound of different animals and sometimes barking like a dog. She had also claimed that she had never seen a human being behaving that way even if very heavily drunk, as he was most of the times she remained in his company. She has stated that the husband and in-laws had willfully and cruelly treated her and had spared no effort to cause her mental harm and inflicted grave injuries. She also complains that there is danger to her life, limb and health. They had pressurised her to meet not only their unlawful demands of money but also for spurious reasons. She ends the complaint with the comment that she has a child to support. She requested that an enquiry be held into the conduct of the husband which is not only rude, indiscreet, disgraceful and unbecoming of an Army officer but he has committed the offences under the Penal Code.

6. The husband further complains that even during this

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A short period of cohabitation the behaviour of the wife was erratic, inhuman and unbearable. In order to cause mental agony to the husband the wife would deliberately indulge in erratic sexual behaviour. She would intentionally interrupt the coitus. On many occasions she even refused to share the bed with him.

7. The husband then makes a grievance that the wife had made a complaint to the Women Cell, Nanakpura, New Delhi where notice was received by the husband for appearance on 28.1.1994. She had also registered FIR No.10 on 19.1.1994 with Police Station, Keshavpuram, Delhi under Section 406, 498-A, IPC. The police raided the flat of the parents of the husband at Noida on 22.1.1994 along with the wife. She even took away all her belongings including the Maruti car. The husband in fact goes on further to allege that she even took the ornaments belonging to the husband and his parents. It is further alleged that the husband and the parents had to approach the court for anticipatory bail. She then filed a petition for maintenance before the Family Court, Meerut. She also lodged an FIR on 18.8.1999 under Section 354/506/34. She made false allegations against his father, advocate and the son of the advocate. With these allegations the husband had gone to court seeking divorce.

8. The Trial Court also took notice of the counter allegations made by the wife. She claimed that the husband and his family had started treating her with cruelty when the unwarranted demands for dowry were not met by her parents. She also claimed that the husband is deliberately disrupting the marriage as he wants to get married to someone else. She however admitted that the couple had separated on 31.12.1992. She complains about the deliberate neglect by the husband of his matrimonial as well as parental duties towards the new born daughter. She denied all the allegations made by the husband with regard to her erratic behaviour. She dwells on the illegal demands made by the in-laws for cash, jeweler and electronic

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items. She states that the marriage was celebrated under shadow of extortion. She was harassed by the in-laws and rudely informed that they were expecting a sum of more than 30-lakh rupees to be spent in the marriage as her father was working abroad. On the very first day when she went to the matrimonial home she was informed by the mother-in-law that her son was destined to marry twice as per the horoscope. She reiterates the allegations about the erratic behaviour of the husband. She states that in his show of temper he threw household things at her. She was constantly beaten on one pretext or the other. Denying the allegations with regard to sexual misbehaviour she stated that in fact the respondent tried to have sexual intercourse during menstruation period or after conception. She had asked him to desist from acting in such an unnatural manner but to no effect. She further admitted having made the complaint but she denied that these are made as a counter blast to the divorce petition filed by the husband.

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9. On the basis of the pleadings of the parties the Trial Court framed the following issues:

“1. Whether respondent has been exercising such cruelty towards the petitioner so as to entitle the petitioner to the dissolution of the marriage? OPP

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2. Whether the petitioner has been ill-treating the respondent and as such, cannot take benefit of his own cruel and tortuous acts, if so, to what effect? OPR

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3. Whether the petitioner is bad as premature?

OPP

4. Whether the petition is malafide? OPR

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5. Relief.”

10. The Trial Court on evaluation of the entire evidence however held as follows:

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“Although the circumstances mentioned above clearly reveal that it is a case of broken marriage, however, there is no ground given in Section 13 of the Hindu Marriage Act, where a decree of divorce can be founded on the proof of irretrievably broken marriage. In this regard, I may cite a recent judgment of our own Hon’ble High Court reported as *Rupinder Kaur Vs. Gurjit Singh Sandhu* (1997-3) P.L.R. 553. It is laid down in this decision that even if the marriage is assumed to have (illegible) for irretrievably, it is not ground to dissolve the marriage.

However, the situation reached between the parties is of the doing of the petitioner and it is well cherished principle laid down in Section 11 of the Hindu Marriage Act that a party cannot be permitted to take benefit of his own wrongs.

For the discussion made above and the conclusions reached thereon, I hold that the petitioner has been unsuccessful in proving the respondent to have treated him with cruelty of the nature as to entitle him to a decree of divorce. It is however, proved on the other side that the petitioner had harassed the respondent for getting his demand and the demands of his parents fulfilled. However, the respondent has prayed for no relief on that ground. Issue No.1 is, therefore, decided against the petitioner while Issue No.2 is decided in favour of the respondent.”

11. Aggrieved by the aforesaid findings the respondent filed F.A.O. No.16-M of 2000 in the Punjab and Haryana High Court. The Learned Single Judge independently examines the entire evidence and the material on the record. Upon evaluation of the entire evidence the Learned Single Judge observed that both the parties are at fault. According to the Learned Single Judge the wife had crossed “Lakshman Rekha”. Apart from what was stated by the Trial Court, the Learned Single Judge notices that the wife had not only made allegations about the unnatural demands of the husband for sexual intercourse when

she was pregnant but she had also made an allegation that he had wanted to commit the act of sodomy with her which she resisted. The Learned Single Judge concludes that the evidence led by the husband with regard to cruelty of the wife is not such that he can be granted a decree of divorce under Section 13 of the Hindu Marriage Act. At the same time, advertent to the behaviour of wife the Learned Single Judge observed as follows:

“I have considered the contentions of the parties with reference to the documents and first of all I must say here that respondent had crossed “Lakshman Rekha”. I do not deny that a woman has no rights after the lawful marriage. She expects love and affection, financial and physical security, equal respect and lots more but at the same time, the wife must remain within the limits. She should not perform her acts in such a manner that it may bring incalculable miseries for the husband and his family members She should not go to that extent that it may be difficult for her to return from that point.”

12. The final conclusion reached by the Learned Single Judge is as follows:

“I have made an independent assessment of the oral evidence and am of the opinion that both the parties are at fault. The respondent exceeded the limits of decency when she went to the extent of lodging a false FIR and when she tried to humiliate the appellant in the eye of his superiors by writing a very damaging letter Ex. PW2/1 without knowing its consequences.”

13. In view of the aforesaid conclusions the Learned Single Judge granted the alternative relief to the husband by passing a decree for judicial separation under Section 10 of the Hindu Marriage Act. This decree was passed with the hope that the parties would ponder upon the situation and may be able to reunite for the welfare of the child. If, on the other hand, the parties

A do not reconcile within the statutory period of one year it will be open to either of them to seek a decree of divorce.

B 14. Aggrieved by the aforesaid judgment the wife went in appeal before the Division Bench in LPA No.1625/01. The Division Bench noticed the extensive pleadings as well as the evidence led by the parties. On a re-evaluation of the evidence the Division Bench concluded that all efforts of reconciliation between parties have failed. They have been living separately since 31.12.1992. According to the Division Bench the marriage has irretrievably broken down. The Division Bench sums up the entire matrimonial scene of the parties in the following words:

C “The allegations and counter allegations had flown thick and proper in this case. To an extent these did receive support by the evidence led by the respective parties. The learned Single Judge chose a middle-path by holding that both the parties were at fault and accordingly granted decree of judicial separation instead of divorce. To what effect and what difference it has made to the lives of parties can not really be made out. The parties are living separately since 31.12.1992. Though not revealed from the record but we can assume that efforts must have been made for reconciliation between the parties at the trial and at the first appellate stage. Both the parties continue to differ and have refused to patch up. As noticed earlier, we also failed in our efforts to bring this matrimonial dispute to some agreed solution. What is left of this marriage? Both the parties though educated but are still standing firm on their respective stands. They both seem to be totally unconcerned about their young child and have continued with their combatant attitude without any remorse. This marriage, if we may say, has irretrievably broken down. That of course cannot be a ground for granting divorce between this fighting couple. No wonder, the Hon’ble Supreme Court in a latest decision in Naveen Kohli vs.

Neelu Kohli, 2006 (3) Scale 252 has made a recommendation to the executive to provide this as a legal ground for divorce. Till the law is amended, we will remain handicapped to act even in those cases where one finds that a marriage just cannot work and existence thereof is nothing but an agony for both the parties. We, as such, are required to decide if the allegations of cruelty made by the respondent were proved or not.”

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15. While reappreciating evidence the Division Bench notices the averments made by the wife in paragraphs 13 and 31 of the Statutory Complaint dated 10.12.1993 wherein she had stated as follows:

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“13. On 2.12.1991, my husband started behaving in a strange manner throwing the household articles and clothes all around in the room and also mimicking the sound different animals and some times barking like a dog. I was not only stunned but also shocked because I had never seen a human being behaving that way even if very heavily drunk as he was most of the time I remained in his company. I was not allowed to touch any thing which belong to him. When I told my mother-in-law, she warned me to ensure that I obeyed all orders given to me, either my husband or in laws.”

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“31. My health started deteriorating. My mind was disturbed to the extreme. Now another form of torture, unnatural sex. He would thrust on me at odd hours. I was no longer a human being but a slave to his wild passions.”

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16. It is also observed that the wife has not denied the aforesaid averments while giving her evidence. She had in fact further elaborated the allegation of sodomy made by her in the complaint. The conclusion recorded by the Division Bench is as follows:

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“We have given our thoughtful consideration to the

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A while issue. It cannot be disputed that the appellant had made the averments in paras 13 and 31 of the complaints, which have been reproduced above. She has also not denied the same, rather while giving her evidence, she had further elaborated the allegations of sodomy made by her in the complaint. Wife cannot deny that she had compared her husband to a barking dog that she also made allegations against him for having behaved in a strange manner. She had also referred to him as heavy drunkard. Even if we leave aside the other allegations as made by the husband, we think that describing husband as dog and mimicking as animals and making allegations of sodomy would be enough to say that these amounted to cruelty on her part towards her husband. It cannot be denied that the wife had lodged various complaints and criminal proceedings against the respondent-husband. FIR under sections 498-A and 406 IPC was got registered by the wife. Respondent-husband, however, earned acquittal in this case. Another complaint filed before the Police Station Civil Lines, Meerut ended in dropping of the proceedings. Yet in another FIR got registered under Sections 417, 419 and 420 IPC, the respondent-husband was discharged. The record also reveals that still another FIR was got registered under Sections 354 and 506 read with Section 34 IPC on 18.8.1999 against the father-in-law, an Advocate and son of an Advocate by the appellant-wife. We think that this conduct would exceed all bounds of moderation. A daughter-in-law making an allegation against her old and infirm father-in-law for molesting her would certainly be an intolerable behaviour, which can be termed nothing but an act of immense cruelty for a son, who was none else than the husband of such complaint-wife. This FIR was quashed on 20.3.2002. Seeing the cumulative effect of all these allegations, we would not have any hesitation to hold that the allegations of cruelty made by the respondent-husband stand established.”

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17. Since the allegation of cruelty made by the husband had been accepted, the Division Bench further observed as follows:

“We would, accordingly, hold that the finding of the learned Single Judge in grating partial relief and that of the trial Judge in declining the relief of divorce cannot be sustained. We would, accordingly, set aside both the judgments and hold that the cruelty alleged by the respondent husband stands proved. As a result, we will dismiss the appeal and modify the judgment of the learned Single Judge to hold that the decree of divorce prayed by the respondent-husband is granted.”

The aforesaid judgment has been challenged by the wife in the present appeal.

18. We have heard the counsel for the parties. Ms. Kamini Jaiswal, appearing for the appellant, submitted that order passed by the High Court could not have been passed in an appeal filed by the wife. The husband had not filed any appeal. Both the courts below had given concurrent findings that the allegations of the husband about cruelty of the wife have not been proved. These findings were based on a thorough evaluation of the evidence by the Trial Court as well as the learned Single Judge of the High Court. The Division Bench reversed the findings without any recording any independent reasons. Learned Counsel made a reference to the observations of the Trial Court wherein it has been observed that averments made in paragraph 13 would not amount to calling her husband a dog. The District Judge had observed “to say that a person started barking like a dog and that that person is a dog are two different things. In Para 13 of exh. PW2/1, the respondent only speaks about unhuman behaviour of her husband and she cannot be taken as addressing her husband as dog in this paragraph”.

19. The Trial Court also observed that the allegations made

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A in paragraph 31 of the Statutory Complaint about unnatural sex cannot be equated with sodomy. The Trial Court also came to the conclusion that it is a case of broken marriage. However, in the absence of a ground under Section 13 of the Hindu Marriage Act where a decree of divorce can be founded on the proof of irretrievable broken marriage, it would not be a ground to dissolve the marriage. It is also pointed out that these findings were not rejected by the Appellate Court. According to the learned counsel on this short ground the judgment of the Division Bench is liable to be set aside.

C 20. On the other hand, Mr. Rajender Kumar, appearing for the husband submitted that the High Court possibly could not have granted the decree on the basis of irretrievable break down of marriage. However, the High Court has granted the decree of divorce upon re-appreciation of the evidence and recording an independent finding that the conduct of the wife amounts to cruelty which would entitle the husband to a decree of divorce. According to the learned counsel substantial justice has been done between the parties and the judgment does not call for any interference. It has also been pointed out by the learned counsel that, a petition was filed for divorce on the basis of the decree of judicial separation which had been granted by the learned Single Judge. However proceedings in the aforesaid case have been kept in abeyance due to the pendency of the appeals in the High Court and this Court. F Learned counsel submitted that there is absolutely no room for reconciliation between the parties. Therefore, the judgment of the High Court need not be reversed at this stage.

G 21. We have considered the submissions made by the learned counsel. The Trial Court as well as the Appellate Court have both concluded that the behaviour of the husband as well as the wife falls short of the standard required to establish mental cruelty in terms of Section 13(1) (i-a).

H 22. At this stage we may notice the observations made by this Court in the case of *Naveen Kohli vs. Neelu Kohli*

(2006) 4 SCC 558. In this case the Court examined the development and evolution of the concept of mental cruelty in matrimonial causes. In paragraph 35 it is observed as follows:

“35. The petition for divorce was filed primarily on the ground of cruelty. It may be pertinent to note that, prior to 1976 amendment in the Hindu Marriage Act, 1955 cruelty was not a ground for claiming divorce under the Hindu Marriage Act. It was only a ground for claiming judicial separation under Section 10 of the Act. By the 1976 amendment, cruelty was made a ground for divorce and the words which have been omitted from Section 10 are “as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party”. Therefore, it is not necessary for a party claiming divorce to prove that the cruel treatment is of such a nature as to cause an apprehension—reasonable apprehension – that it will be harmful or injurious for him or her to live with the other party.”

23. The classic example of the definition of cruelty in the pre-1976 era is given in the well known decision of this Court in the case of *N.G. Dastane vs. S. Dastane* (1975) 2 SCC 326, wherein it is observed as follows:

“The enquiry has to be whether the conduct charged as cruelty is of such a character as to cause in the mind of the petitioner as reasonable apprehension that it would be harmful or injurious for him to live with the respondent”.

24. This is no longer the required standard. Now it would be sufficient to show that the conduct of one of the spouses is so abnormal and below the accepted norm that the other spouse could not reasonably be expected to put up with it. The conduct is no longer required to be so atrociously abominable which would cause a reasonable apprehension that it would be harmful or injurious to continue the cohabitation with the other spouse. Therefore to establish cruelty it is not necessary that

A physical violence should be used. However continued ill-treatment cessation of marital intercourse, studied neglect, indifference of one spouse to the other may lead to an inference of cruelty. However in this case even with aforesaid standard both the Trial Court and the Appellate Court had accepted that the conduct of the wife did not amount to cruelty of such a nature to enable the husband to obtain a decree of divorce.

25. We may notice here the observations made by this Court in the case of *Shobha Rani vs. Madhukar Reddi* (1988) 1 SCC 105 wherein the concept of cruelty has been stated as under:

“The word “cruelty” has not been defined in the Hindu Marriage Act. It has been used in Section 13(1)(i-a) of the Act in the context of human conduct or behaviour in relation to or in respect of matrimonial duties or obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, it is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted. The absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. Intention is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that

there has been no deliberate or willful ill-treatment.” A

26. In the case of *V. Bhagat vs. D. Bhagat* (1994) 1 SCC 337, this Court while examining the concept of mental cruelty observed as follows:

“16. Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.” B  
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27. Taking into consideration the conduct of the parties over a period of time, the Trial Court as well as the Appellate Court concluded that the husband had failed to establish cruelty on the part of the wife which will be sufficient to grant a decree of divorce. G

28. The Appellate Court further came to the conclusion that since both the parties made extremely serious allegations, it would be appropriate as the parties were not compelled to live H

A together. The Appellate Court came to the conclusion that it would be more appropriate to give the couple some time to ponder over the issue especially keeping in view the welfare of their daughter. If in due course they manage to reconcile their differences the decree of judicial separation would be of no consequence. On the other hand, if the parties continued with their adamant attitudes it would be possible for either party to seek dissolution of the marriage on the basis of the aforesaid decree of judicial separation. B

C 29. As noticed earlier the husband did not challenge the aforesaid decree of the Appellate Court, he was content to wait for one year and there after seeking decree of divorce. In fact upon the expiry of one year he has actually filed the necessary proceedings seeking decree of divorce in the Court of District Judge, Gurgaon on 9.5.2002. These proceedings are still pending. D

E 30. On the other hand the wife had filed the Latest Patent Appeal challenging the grant of decree of judicial separation to the husband by the Appellate Court. We are of the opinion that the High Court erred in granting a decree of divorce to the husband. She had come in appeal before the Division Bench complaining that the Appellate Court had wrongly granted the decree of judicial separation even after concurring with the findings of the Trial Court that the husband had failed to establish cruelty by the wife. Therefore even if the appeal had been dismissed, the findings recorded by the Trial Court in her favour would have remained intact. The effect of the order passed by the Division Bench is as if an appeal of the husband against the decree of judicial separation has been allowed. F  
G Both the parties had failed to make out a case of divorce against each other. The husband had accepted these findings. Therefore he was quite content to wait for the statutory period to lapse before filing the petition for divorce, which he actually did on 9.5.2002. On the basis of the proven facts the Trial Court was more inclined to believe the wife, whereas the learned H

Single Judge of the High court found both the parties to be at fault. Hence the middle path of judicial separation had been accepted. Therefore, it was not a case where it was necessary for the Division Bench to correct any glaring and serious errors committed by the court below which had resulted in miscarriage of justice. In our opinion there was no compelling necessity, independently placed before the Division Bench to justify reversal, of the decree of judicial separation. In such circumstances it was wholly inappropriate for the Division of High Court to have granted a decree of divorce to the husband.

31. For the aforesaid reasons, we are unable to uphold the judgment and the decree of the Division Bench. Consequently, we allow the appeal. We set aside the Judgment and the Order passed by the Division Bench and restore the Order passed by the learned Single Judge in FAO No. 16-M of 2000.

32. There shall be no order as to costs.

B.B.B. Appeal allowed.

A RAJU & ANR.  
v.  
STATE OF HARYANA.  
(Criminal Appeal No. 281 of 2009)  
B FEBRUARY 10, 2010  
**[ALTAMAS KABIR AND SWATANTER KUMAR, JJ.]**

C *Penal Code, 1860 – s. 302/34 – Murder – Prosecution of appellant-accused with other co-accused – In the assault the co-accused were armed while the appellant-accused were unarmed – Incident was result of a previous incident of misbehavior of deceased with womenfolk – Conviction of the appellant-accused u/s. 302 with aid of s. 34, by courts below – Sentenced to life imprisonment – On appeal, held: On facts, D common intention of the appellant-accused with the co-accused to murder not proved – Conviction u/s. 302/34 not sustainable – Conviction altered to u/s. 304 (Part I) r/w s. 34 – Sentence of appellant No. 2 altered to two years RI – Appellant No. 1, since is a juvenile, his case referred to E Juvenile Justice Board – Juvenile Justice (Care and Protection of Children) Act, 2000 – ss. 15 and 20.*

F **The two appellants-accused were prosecuted u/s. 302/34 IPC alongwith two co-accused for having caused death of a person. The prosecution case was that the deceased misbehaved with the womenfolk in a marriage ceremony. As a fallout of that incident, the accused persons assaulted the deceased. The co-accused were armed with knives while the appellants-accused were not armed. One of the co-accused was declared a juvenile and his trial was separated. Trial Court convicted the co-accused u/s.302 IPC while convicted the appellants-accused u/s. 302/34 IPC. Appellants-accused challenged their conviction and the same was confirmed by High Court.**

In appeal to this Court, appellants contended that the evidence does not prove meeting of minds between the appellants and the co-accused; and that the case of appellant No. 2 is covered under Juvenile Justice (Care and Protection of Children ) Act, 2000, because he was less than 17 years on the date of the incident.

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Disposing of the appeal, the Court

HELD: 1.1. The conviction of both the appellants u/s. 302 IPC with the aid of Section 34 IPC is not warranted. The ultimate assault causing death of the deceased was the culmination of an incident which had occurred earlier during a marriage ceremony where the women folk, who were participating in the festivities, were teased by the deceased in an inebriated state. The resultant fall-out was the immediate response to the said incident with the intention of preserving the honour and dignity of the said women. It is on account of the said incident that subsequently the accused persons assaulted the deceased and when he tried to run away, they chased him and on being caught, he was fatally injured by the two co-accused with knives. [Para 9] [580-G-H; 581-A-C]

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1.2. Although, it has been urged that the appellants had knowledge that both the co-accused were carrying knives, the same is not borne out from the evidence and their role in the incident in chasing the victim and, thereafter, holding him, was more likely to teach him a lesson as was sought to be projected as his defence. In the absence of any common intention, the conviction of the appellants u/s. 302 with the aid of Section 34 cannot be sustained. [Para 9] [581-B-D]

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1.3. It is no doubt true that the evidence of PW.5 the complainant and PW.7 another eye-witness was corroborated by the injuries on the body of the victim, but

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that by itself would not establish common intention as far as the appellants in the present appeal are concerned. [Para 9] [581-D-E]

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1.4. The role attributed to the appellants would attract the provisions of Section 304 (Part I) IPC and not Section 302 read with Section 34 IPC. The appeal as far as the appellants' conviction under Section 302 read with Section 34 IPC must, therefore, succeed and their conviction must be altered to one under Section 304 Part I read with Section 34 IPC. [Para 9] [581-G-H; 581-A]

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*V. Sreedharan vs. State of Kerala 1992 Supp (3) SCC 21, relied on.*

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2. As far as the appellant No.1 is concerned, his case be referred to the concerned Juvenile Justice Board in terms of Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000, to be dealt with under the provisions of the said Act in keeping with the provision of Section 15 thereof and having particular regard to the period of detention already undergone by him during the course of the investigation and trial. [Para 11] [582-D-F]

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*Hari Ram vs. State of Rajasthan and Anr. 2009 (6) SCALE 695, referred to.*

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**Case Law Reference:**

2009 (6) SCALE 695 Referred to. Para 7

1992 Supp (3) SCC 21 Relied on. Para 9

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 281 of 2009.

From the Judgment & Order dated 30.10.2007 of the High

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Court of Punjab & Haryana at Chandigarh in Criminal Appeal A  
No.135-DB of 1998.

Rishi Malhotra for the Appellants.

Manjit Singh and Kamal Mohan Gupta for the Respondent. B

The Judgment of the Court was delivered by

**ALTAMAS KABIR, J.** 1. Leave granted.

2. The Appellants herein, Raju and Mangli, along with Anil C  
alias Balli and Sucha Singh, were sent up for trial for allegedly  
having committed an offence punishable under Section 302  
read with Section 34 Indian Penal Code. Accused Sucha Singh  
was found to be a juvenile and his case was separated for  
separate trial under the Juvenile Justice Act, 1986. The  
Appellants herein were convicted under Section 302 read with D  
Section 34 IPC and were sentenced to imprisonment for life  
and to pay a fine of Rs.5,000/-, in default to undergo rigorous  
imprisonment for a further period of three years. Anil alias Balli  
was convicted under Section 302 and was sentenced to  
imprisonment for life and to pay a fine of Rs.5,000/-, in default E  
to undergo further rigorous imprisonment for three years. He  
was also convicted under Section 25 of the Arms Act and was  
sentenced to undergo rigorous imprisonment for one year. The  
sentences, as far as Anil alias Balli is concerned, were directed  
to run concurrently. F

3. Of the three accused, Accused Nos.1 and 2, Raju and  
Mangli, have challenged their conviction under Section 302  
read with Section 34 IPC.

4. Appearing on their behalf, Mr. Rishi Malhotra, learned G  
Advocate, submitted that the role attributed to the Appellants  
in the alleged incident did not attract the provisions of Section  
302 Indian Penal Code, hereinafter referred to as "IPC", since  
there is nothing on record to either prove or indicate that they  
had any common intention to commit the murder. Mr. Malhotra H

A submitted that the allegation against the accused persons is  
that the deceased, Ishwar, the brother of the complainant,  
Chandu Lal (PW.5), was returning to his house on 31st March,  
1994, at about 10.30 p.m. after seeing a motion picture. When  
he reached near the gate of Government Livestock Farm,  
Hissar, the Appellants herein, along with Anil alias Balli and  
Sucha Singh, attacked him with fists and blows. In order to save  
himself, Ishwar started running towards his house, but he was  
chased and surrounded by the accused persons near the house  
of one Om Prakash. According to the complainant, he was  
present near the house of Om Prakash when the occurrence  
took place. He has stated that he witnessed the incident as  
indicated hereinabove and that at the time of the incident Anil  
alias Balli and Sucha Singh were armed with knives while the  
Appellants herein were empty-handed. In the First Information  
Report lodged by him, he has stated that after chasing and  
catching Ishwar, the Appellants herein, Raju and Mangli caught  
hold of Ishwar while Anil alias Balli inflicted a knife blow on the  
left anterior side of the victim's chest. Ishwar fell down on the  
ground and then accused Sucha Singh inflicted another knife  
blow on the right posterior side of his waist. On an alarm being  
raised by Chandu Lal, the accused persons ran away from the  
spot. An attempt was made to save Ishwar by taking him to  
hospital, but he died on the way.

5. Thereafter, the body of the victim was sent for post-  
mortem examination which was conducted by Dr. (Mrs.) K.K.  
Nawal, Senior Medical Officer, General Hospital, Hissar (PW.8)  
along with Dr. Pawan Jain, on 1st April, 1994, at 9.30 A.M. The  
post-mortem examination revealed the injuries as mentioned  
by PW.8 and in the opinion of the doctor, the cause of death  
was shock and haemorrhage, as a result of the multiple injuries,  
which were ante-mortem in nature and sufficient to cause death  
in the due course of time.

6. Mr. Malhotra submitted that from the aforesaid evidence,  
it would be evident that there was no prior meeting of minds  
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between the Appellants herein and Anil alias Balli and Sucha Singh, to kill Ishwar. Mr. Malhotra submitted that there is nothing on record to indicate that the Appellants herein had any knowledge that Anil alias Balli and Sucha Singh were carrying knives for commission of the murder. He urged that the only intention in chasing the deceased and holding him was to teach him a lesson following the altercation that had taken place between the deceased and the accused persons just prior to the incident, where the deceased was stabbed. Mr. Malhotra submitted that the altercation as well as the subsequent incident was the result of an earlier incident which had taken place on 31st March, 1994, in connection with the 'Bana' ceremony being conducted in connection with the marriage of the son of one Parwati. At the said ceremony, the women folk were singing songs near the Government Livestock Farm, Hissar, where deceased Ishwar came in a drunken condition and misbehaved with them. Mr. Malhotra submitted that the entire incident was triggered off on account of the said incident, where the deceased misbehaved with the ladies who were involved in marriage festivities which ultimately led to the altercation and stabbing of the deceased by the Accused Nos.3 and 4. Mr. Malhotra submitted that there was no prior motive or common intention to commit the murder of the deceased and the Appellants had, therefore, been wrongly roped in in respect of an offence under Section 302 with the aid of Section 34 IPC.

7. As far as the Appellant No.1, Raju, is concerned, Mr. Malhotra submitted that on the date of the incident (31.3.1994), he was a juvenile and as per his mark-sheet, wherein his date of birth was recorded as 1977, he was less than 17 years of age on the date of the incident. Mr. Malhotra submitted that having regard to the recent decision of this Court in the case of *Hari Ram vs. State of Rajasthan & Anr.* [(2009) 6 SCALE 695], the Appellant No.1 must be held to have been a minor on the date of the incident and the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, would apply in his case. Mr. Malhotra, therefore, contended that the

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A Appellant No.1 would have to be dealt with under the provisions of the said Act in keeping with the decision in the aforesaid case.

B 8. Appearing for the State of Haryana, Mr. Kamal Mohan Gupta, learned counsel, did not seriously dispute the submissions made by Mr. Malhotra as far as the Appellant No.1, Raju, was concerned having satisfied himself regarding the juvenility of the said Appellant upon due inquiry. However, as far as the second appellant, Mangli, is concerned, Mr. Gupta submitted that he had been rightly convicted under Section 302 with the aid of Section 34 IPC. Mr. Gupta submitted that the role attributed to the Appellant No.2 was not as innocent as had been attempted to be made out by Mr. Malhotra. On the other hand, there was a background of the incident involving the misbehaviour of the said deceased with the women folk at the marriage ceremony of the son of Parwati which triggered the incident. It was submitted that the subsequent incident culminating in Ishwar's death was not an isolated incident but a fall out of the earlier incident. He also urged that the common motive to kill the victim would also be evident by the fact that after Ishwar was initially assaulted and tried to run away, he was chased by all the four accused, including the Appellant No.2, who along with the Appellant No.1, held him while Anil @ Balli caused stab injuries with the knife, which ultimately resulted in his death. Mr. Gupta submitted that the conviction of the Appellant No.2 did not warrant any interference and the appeal as far as he was concerned, was liable to be dismissed.

G 9. We have carefully considered the submissions made on behalf of the respective parties and the evidence adduced on behalf of the prosecution and have arrived at the conclusion that the conviction of both the Appellants under Section 302 IPC with the aid of Section 34 is not warranted. As has been pointed out, the ultimate assault on Ishwar causing his death was the culmination of an incident which had occurred earlier during the marriage ceremony of the son of Parwati where the women folk,

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A who were participating in the festivities, were teased by the  
deceased in an inebriated state. The resultant fall-out was the  
immediate response to the said incident with the intention of  
preserving the honour and dignity of the said women. It is on  
account of the said incident that subsequently the accused  
persons assaulted Ishwar and when he tried to run away, they  
chased him and on being caught, he was fatally injured by Anil  
@ Balli and Sucha Singh with knives. Although, it has been  
urged that the Appellants herein had knowledge that both Anil  
and Sucha Singh were carrying knives, the same is not borne  
out from the evidence and their role in the incident in chasing  
the victim and, thereafter, holding him, was more likely to teach  
him a lesson as was sought to be projected as his defence. In  
the absence of any common intention, the conviction of the  
Appellants under Section 302 with the aid of Section 34 cannot  
be sustained. It is no doubt true that the evidence of PW.5 the  
complainant and PW.7 another eye-witness was corroborated  
by the injuries on the body of the victim, but that by itself would  
not establish common intention as far as the appellants in the  
present appeal are concerned. The learned counsel appearing  
for the appellant has placed strong reliance upon the judgment  
of this Court in the case of *V. Sreedharan vs. State of Kerala*  
reported in 1992 Supp (3) SCC 21, where the Court on the facts  
of the case took the view that the incident arising out of a quarrel  
at home and ending on the road was a continuous sequence,  
injury being a result of provocation and that prosecution under  
Section 304 Part I and not Section 302 IPC, was attracted.  
Even in that case the present deceased had kicked the food  
on an auspicious day giving provocation and after the  
deceased ran for some time, the fatal injuries were caused on  
his person. Somewhat similar are the facts here, as the cause  
of conflict arose from the conduct of the deceased in the  
marriage party which ultimately as a sequence of events  
resulted in fatal injuries on the person of the deceased. The role  
attributed to them would, in our view, attract the provisions of  
Section 304 Part I IPC and not Section 302 read with Section  
34 IPC. The appeal as far as the appellants' conviction under  
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A Section 302 read with Section 34 IPC must, therefore, succeed  
and their conviction must be altered to one under Section 304  
Part I read with Section 34 IPC.

B 10. The appeal is, therefore, allowed to the extent that the  
conviction of both the Appellants under Section 302 read with  
Section 34 IPC is set aside and they are convicted instead  
under Section 304 Part I read with Section 34 IPC. The  
Appellant No.2 is sentenced to two years' rigorous  
imprisonment and fine of Rs.500/-. In default of payment of such  
fine, the Appellant No.2 shall undergo rigorous imprisonment  
for a further period of 15 days. The Appellant No.2 shall be  
entitled to set off in respect of the period of imprisonment  
already undergone in terms of Section 428 Cr.P.C.

D 11. As far as the Appellant No.1 is concerned, let his case  
be referred to the concerned Juvenile Justice Board in terms  
of Section 20 of the Juvenile Justice (Care and Protection of  
Children) Act, 2000, to be dealt with under the provisions of the  
said Act in keeping with the provision of Section 15 thereof and  
having particular regard to the period of detention already  
undergone by him during the course of the investigation and  
trial. The Registry is directed to take immediate steps for  
transmission of the records to the concerned Juvenile Justice  
Board, as far as the Appellant No.1 is concerned.

F 12. The Appeal is disposed of accordingly.

K.K.T.

Appeal disposed of.