

**Triveni Engineering and Industries Ltd. Vs. the State of Karnataka,
Represented by Its Principal Secretary and Others**

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Represented by Its Principal Secretary and Others**

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Court : Karnataka

Decided On : Feb-21-2014

Judge : The Honourable Chief Justice Mr. D.H. Waghela, B.S. Patil & a.N. Venugopala Gowda

Appeal No. : W. A. Nos. 31266-267 of 2013

Appellant : Triveni Engineering and Industries Ltd.

Respondent : The State of Karnataka, Represented by Its Principal Secretary and Others

Judgement :

(Prayer: These writ appeals are filed under Section 4 of the Karnataka High Court Act, praying to quash the order dated i 1.12.2012 passed by the learned Single Judge of this Hon'ble Court in W.P.No. 13841/2006.)

1. The High Court of Karnataka has framed Rules to regulate the proceedings under Articles 226 and 227 of the Constitution of India. They are known as "'Writ Proceedings Rules, 1977" (for short, 'the Rules'). They have come into force with effect from 01.02.1977. Among other things, the said Rules provide for the procedure to be followed once the matter is posted before the bench for preliminary hearing. Rule 13 which is relevant for the purpose provides in sub-

clause (a) that the Court if satisfied shall issue rule nisi calling upon the respondent to show cause why the order sought should not be made. The first proviso to Rule 13(a) provides for issue of notice to show cause why rule nisi shall not be issued. The second proviso to Rule 13(a) provides that the Court may direct the respondent to file objection and documents while issuing notice regarding rule, in which event, as per sub-clause (b) of Rule 13, issue of rule nisi may be dispensed with and the matter may be heard and disposed of on merits.

2. With regard to the interpretation of Rule 13, there are two conflicting judgments of two Division Benches of this Court. The view taken by a Division Bench in LALBI VS MODINAMMA @ MODINBEE and OTHERS - ILR 2012 KAR 4403, is held per incuriam in the subsequent judgment of another Division Bench in the case of K.PEDDANNA V3 THE MANAGEMENT OF KSRTC, DAVANAGERE DIVISION - ILR 2013 KAR 4335. The matter has been referred to the Full Bench. The question referred is,

"whether the judgment of the Division Bench in Lalbi can be held to be per incuriam?"

3. In Lalbi's case, a Division Bench of this Court has taken the view that as per the first proviso to Rule 13(a), it was clear that where notice was issued to show cause why rule nisi should not be issued, it would not be proper to allow the writ petition finally if the respondent chose not to appear on receipt of such notice and to dispose of the petition. In such a case, it would render the order an ex-parte order and there would be danger of violation of the principles of natural justice if such course was adopted.

4. In Lalbi's case (supra), the Division Bench has examined the language employed in Rule 13 and also the submission made at the bar by the counsel for the respondents therein with reference to the terms of the notices contained in Form II-A and Form III-A stipulating that the petition could be heard and decided finally on merits in case the respondent fails to appear on the date specified or on any subsequent date to which the matter may be adjourned. In paragraph 32 of the said judgment, it has been found that notice in terms of Form II-A and III-A cannot be and is not a substitute to an order of the Court, if the order of the Court

is silent as regards the intention of the Court to dispose of the petition finally at the stage of preliminary hearing of the petition and that the said expression used in Form IJ-A or III-A would only mean that the petition would be dealt with, heard and decided on merits in the absence of the respondent with regard to the question of issue of rule nisi and would not mean that the petition itself would be decided on merits finally.

5. However, in a subsequent judgment rendered by another Division Bench in Peddanna's case (supra), it has been held that when a notice regarding rule is issued in Form III-A, the Court is well within its jurisdiction to dispose of the matter without any further notice, because the rules of procedure have to be read so as to assist the court in quick dispensation of justice. It is, therefore, observed that interpretation of Form III- A contrary to its intention and contrary to the procedure followed by this Court for decades being uncalled for, the judgment in Lalbi's case was per incuriam.

6. The Division Bench has, in the latter case, held that this Court has been consistently issuing notice in Form III-A wherein there is a clear indication that if the party fails to appear on the date mentioned in the notice, the matter may be disposed of without any further notice and therefore, there was no necessity to issue notice for the second time after issuance of rule nisi because Form III-A clearly envisaged the Court to decide the matter on merit in the absence of a party failing to appear even after receipt of the notice.

7. We have heard learned Senior Counsel for the parties, Mr. Subramanya Jois and Mr. K.M.Nataraj. Apart from arguing on the question referred for consideration of the Full Bench, they requested us to put at rest the controversy regarding the scope, intent and purport of Rule 13 read with the format of the notices and also the other relevant rules.

8. Indeed, the anxiety expressed by learned Counsel for both parties reflects the need to put an end to a very important aspect of procedure governing proceedings in the matter of service of notice on the respondents, opportunity to be given to them to contest the case and the final disposal of the cases by the Court. Therefore, we have acceded to the request of learned Counsel for both parties,

keeping in mind the interest of the litigant public and the need to urgently address the issue on hand.

9. In fact, answer to the question referred to the Full Bench as to whether Lalbi-3. case is per in curiam as held in Peddanna's case, will not detain us for long. It is well established that doctrines of per incuriam and sub-silentio operate as exceptions to the rule of precedent. Incuriam literally means carelessness. In practice, per incuriam means per ignorantiam. In STATE OF U P. and ANOTHER VS SYNTHETICS AND CHEMICALS LTD. and ANOTHER - (1991)4 SCC 139, the Apex Court has held that the doctrines of per incuriam and sub-silentio have been taken recourse to by the Courts for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons or consideration of the issue, could not be deemed to be a law declared having binding effect as is contemplated under Article 141 of the Constitution of India. In paragraph 41, the Apex Court has observed as under:

" Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In B. Shyama Rao Vs Union Territory of Pondicherry -AIR 1967 SC 1480, it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles. laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law".

10. It is also well established that Judges are bound by precedents. They could use their discretion only when there is no declared principle to be found. The Apex Court, in the judgment rendered in the case of SUNDARJAS KANYALAL EHATHIJA and OTHERS VS THE COLLECTOR, THANE, MAHARASHTRA and OTHERS - AIR 1990 SC 261, has held in paragraph 17 that, 'in a multi-judge court, the Judges are bound by precedents and procedure. They could use their discretion only when there is no declared principle to be found, no rule and no authority. The judicial decorum and legal propriety demand where a learned Single

Judge or a Division Bench does not agree with the decision of a bench of coordinate jurisdiction, the matter shall be referred to a larger Bench. It is a subversion of judicial process, not to follow this procedure'.

11. Useful reference can also be made to the decision of the Constitutional Bench of the Apex Court in the case of *CENTRAL BOARD OF DAWOODI BOHPA COMMUNITY and ANOTHER VS STATE OF MAHARASHTRA and ANOTHER* - AIR 2005 SC 752, wherein referring to the binding precedents and rule of judicial discipline and propriety, the Apex Court has held that a decision concerning questions of construction of statutes or other documents ought not to be overruled except in rare and exceptional cases. Referring to the judgment in *UNION OF INDIA VS RAGHUBIR SINGH (DEAD) BY LRS. ETC.* - (1989)2 SCC 754, the Apex Court pointed out that the doctrine of binding precedent has the merit of promoting certainty and consistency in judicial decisions and enables an organic development of the law, besides providing assurance to the individuals as to the consequence of transactions forming part of his daily affairs.

12. Keeping in mind the aforesaid principles, if we examine the question referred, it is clear that in Lalbi's case, the Division Bench has examined Rule 13 and other relevant rules including the format prescribed under Rule 13(a) as per Form II-A and III- A while laying down the law on the point. If at all the subsequent Division Bench in Peddanna's case wanted to differ from this view, the only course was to refer the matter to the Full Bench. The doctrine of per incuriam has no application in such case to ignore the principle laid down after analyzing and interpreting the relevant provisions of law by a coordinate bench. The same is impermissible. The doctrine of per incuriam is resorted to when decisions are rendered without reference to statutory prescriptions or other binding authorities. In the instant case, Lalbi's case has not ignored any such statutory prescription or binding authority or precedent while interpreting Rule 13. Therefore, there was no scope to hold that the said decision was rendered per incuriam.

13. As requested by learned Counsel for the parties and in order to put at rest the controversy regarding the interpretation and understanding of Rule 13, we feel it absolutely necessary to accede to the request of learned Counsel and in larger

public interest to examine these rules to remove any uncertainty in the matter.

14. Rule 13 provides for procedure to be followed when a writ petition is posted for preliminary hearing. It states as under: "13. Upon the hearing.-

(a) the Court if satisfied, shall direct a rule nisi to the respondent calling upon him to show cause why the order sought should not be made, and shall adjourn the hearing for the respondent to appear and for being heard;

(i) Provided that, where the Court deems fit, it may before directing issue of a rule nisi, direct notice to the respondent to show cause why rule nisi should not be issued;

(ii) Provided, further, that when a notice is issued to show cause why rule nisi should not be issued, the Court may direct the respondent to file objection and documents, if any, in accordance with Rule 21.

(b) In the event of a direction in accordance with proviso (ii) the issue of rule nisi may be dispensed with and the matter may be heard and disposed of on merits."

15. It is clear from the above that as per Rule 13(a), upon hearing, the Court can direct rule nisi to the respondent, or as per the first proviso issue notice regarding rule. As per the second proviso to Rule 13(a), where a show cause notice as to why rule nisi should not be issued, is directed, the Court may direct the respondent to file objection and documents in accordance with Rule 21. Rule 13(b) makes it clear that wherever such show cause notice as to why rule nisi should not be issued with a direction to file statement of objections has been ordered, issue of rule nisi may be dispensed with and the matter may be decided on merit.

16. Rule 17(1) states that if the Court has directed rule nisi to the respondent, notice to be issued to the respondent thereon shall be in Form-IV of the Rules. Rule 17(2) requires that the respondent shall produce on the date of appearance all the records, orders and documents, touching the matter in question in his custody or power, if so directed by the Court.

The format in which the notice is issued when rule nisi is ordered, is furnished in Form-IV which states as under:

FORM No. IV

Notice to Respondent on an order of rule nisi

[Rule 17]

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Writ Petition No. of 20

Petitioner.

Respondent.

By Sri To,

Whereas a writ petition filed by the above named, petitioner under Article 226 of the Constitution of India, as in the copy annexed hereunto has been registered by this Court and upon preliminary hearing, the Court has directed the issue of rule nisi.

Notice is hereby given to you that if you wish to contest the writ petition, you may enter appearance within (strike off whichever is inapplicable) 10/5 days of the receipt of this notice either in person or by an Advocate appointed by you in that behalf and take such part in the proceedings as you may be advised.

(To be used when the date is not fixed by the Court)

Take further notice that in default of your appearance within the time prescribed, the writ petition will be heard and determined in your absence on any subsequent date and no further notice in relation thereto will be given to you.

Take notice that the above case is directed to be posted for final hearing/for consideration of interim prayer on . at 10.30 a.m. You may appear in person or by an Advocate on the said date, if you wish to contest the above matter.

(To be used when the date is fixed by the order of the Court either for final hearing or regarding interim prayer)

You shall produce in court on the date of appearance all the records, orders and documents touching the matters in question which are in your custody or power.

(The above clause to be struck off, if there is no direction by the court to call for records).

Take further notice that if you fail to appear on the said date, the matter will be heard in your absence on the said date or on any subsequent date to which the matter may be posted as directed by the court without any further notice.

INTERIM PRAYER

Pending disposal of the aforesaid writ petition, it is ordered by this Court on as follows:-

(Interim order of the Court to be extracted).

Issued under' hand and the seal of this Court, this the . day of .19.

By order of the Court, Assistant Registrar.

17. If notice is issued under the first proviso to Rule 13(a), the format prescribed under the Rules in which notice has to be issued is under Form II-A and Form III-A. Form II-A is usefully extracted as under:

FORM II-A

(Rule ..)

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Writ Petition No. /20

(Notice under Rule 13(a) proviso)

Petitioner.

(By Sri)

Respondents:

To

Respondent No.

Whereas a writ petition filed by the above named petitioner under Article 226 of the Constitution of India, as in the copy annexed hereunto, has been registered by this Court.

Notice is hereby given to you to appear in this Court, in person or through an Advocate duly instructed or through some one authorized by Law to act for in this case, at 10.30 a.m. in the forenoon, on the day of .. 20 .. show cause why rule nisi should not be issued.

It is ordered that you shall also file your Counter on merits and produce documents in your defence in accordance with Rule 21 of the Writ Proceedings Rules, 1977.

If you fail so to appear on the said date or any subsequent date to which the matter may be posted as directed by the Court, without any further Notice, the petition will be dealt with, heard and decided on merits in your absence.

Issued under my hand and the seal of this Court, this .day of . 20

By order of the Court, Assistant Registrar.

INTERIM ORDER Pending issue of rule nisi in the aforesaid writ petition, it is hereby ordered by this Court on ..(By Hon'ble Mr. Justice that . Issued under my hand and the seal of this Court, this the . day of 20

By order of the Court, Assistant Registrar.

18. Similarly, Form TII-A which needs to be extracted is as under:

FORM III-A

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Writ Petition No. /20

(Notice under Rule 13(a) proviso)

Petitioner.

(By Sri

Respondents:

To

Respondent No.

Whereas a writ petition filed by the above named petitioner under Article 226 of the Constitution of India, as in the copy annexed hereunto, has been registered by this Court.

Notice is hereby given to you to appear in this Court, in person or through an Advocate duly instructed or through some one authorized by Law to act for in this case, at 10.30 a.m. in the forenoon (strike of whichever is inapplicable), on the . day of 19/ .

within 10 days/5 days of the service of this notice to show cause why rule nisi should not be issued.

You shall produce in Court, on the date of appearance on the records, orders and documents touching the matters in question which are in your custody or power.

(The above portion to be struck off, if there is no direction by Court to call for records)

If you fail so to appear on the said date or any subsequent date to which the matter may be posted as directed by the Court, without any further Notice, the petition will be dealt with, heard and decided on merits in your absence.

Issued under my hand and the seal of this Court, this .day of 20 ..

By order of the Court, Assistant Registrar.

INTERIM ORDER Pending issue of Rule nisi in the aforesaid writ petition, it is hereby ordered by this Court on

.. (By Hon'ble Mr. Justice .. that .. Issued under my hand and the seal of this Court, this the .. day of 20

By order of the Court, Assistant Registrar.

19. It. is also relevant to notice here that Form II-A is inserted by Notification No.HCE 618/1990 dated 29.08.1990 with effect from 13.09.1990, whereas Form III-A is inserted by notification No.HCE 618/1990 dated 20/22.12.1990 with effect from 27.12-1990.

20. The contents of Form II-A show that the respondent is called upon to file counter on merits and produce documents in his defence in accordance with Rule 21 of the Rules. This requirement is found in the second proviso to Rule 13(a).

21. The contents of Form III-A, show that there is no reference to filing any objections in accordance with Rule 21. But in both the Forms, whether it is Form II-A or Form III-A, the respondent is notified to show cause why rule nisi should not be issued. The respondent is also notified that if he fails to appear on the date specified or or: any subsequent date to which the matter may be posted, without any further notice, the petition will be dealt wrth, heard and decided on merit in the absence of the respondent Form III-A also provides that the respondent could be called upon to produce records, orders and documents touching the matter in question which are in the custody or power of the respondent.

22. Ruie 21(1) provides that when rule nisi is issued, objections supported by affidavit shall be filed within 14 days after the expiry of the term fixed for appearance or such earlier time as the Court may direct and petitioner may also file reply to the objections within one week of service of objections or such earlier time as the Court may direct.

23. A conjoint reading of all these rules, viz., Rules 13, 17 and 21, disclose that if rule nisi is ordered, notice in Form IV has to be issued. By way of answer to rule nisi, the respondent shall file objections within 14 days after the expiry of the time fixed for appearance or such earlier time as the Court directs. When rule nisi is ordered, the respondent is called upon to show cause why the order as sought should not be made. When notice regarding rule as stated in the first proviso is issued, the rule only says that the respondent is directed to show cause why rule nisi should not be issued. The rule is silent as to whether the writ petition can be decided on merit, once the show cause notice is served on the respondent. What is the procedure to be followed if the respondent appears pursuant to the show cause notice and if he does not choose to so appear despite service of such notice, are not spelt out in the first proviso. Rule 13(b) provides for the procedure to be followed in the event of a direction issued in accordance with the second proviso to Rule 13(a). It states that if a direction is issued in accordance with the second proviso directing the respondent to file objection and documents, if any, in accordance with Rule 21, then issue of rule nisi may be dispensed with and the matter may be heard and decided on merit.

24. Thus, what emerges is, if notice regarding rule is issued with a direction to file objection and documents in accordance with Rule 21, issue of rule nisi can be dispensed with and the matter can be heard and decided on merit, if no direction is issued to the respondent to file objection and documents and if only notice to show cause why rule nisi should not be issued is ordered, the rule being silent regarding further course, it could be said that the Court can only issue rule nisi, whereupon again notice under Form IV as contemplated under Rule 17 shall have to be ordered, if the party does not appear.

25. While this may be the literal interpretation of the rule, in practice and in the interest of speedy disposal of the cases while prescribing the formats in which the notice is issued to the respondents in the writ proceedings, by notification dated 20/22.12.1990 with effect from 27.12.1990, Form III-A has been introduced. A perusal of the same makes it clear that the respondent is indeed notified that if he fails to appear pursuant to the notice issued either on the date specified or on any subsequent date to which the matter may be posted, without further notice, the

petition will be dealt with, heard and decided on merit in his absence. Similar is the format of notice in Form II-A as inserted by notification dated 29.08.1990 with effect from 13.09.1990. Therefore, in either case, i.e., whether the notice is issued under the first proviso or under the second proviso to Rule 13(a), the respondent is notified that if he fails to appear, the matter will be dealt with, heard and decided on merit, in his absence.

26. What is of utmost importance is due notice of the proceeding to the respondent. A clear, definite and unambiguous notice of the proceeding informing him that the matter will be heard and decided on merit, in case the respondent does not appear in the matter, is a mandatory requirement, so that the first step towards compliance of principles of natural justice is observed. Once such a notice is served on the respondent, it will be his duty to appear before the Court and contest the matter, if he does not want the matter to be heard ex-parte. The format of the notices in Form II-A and Form III-A very clearly disclose that the respondent is notified that the petition will be dealt with, heard and decided on merits, if he fails to appear on the specified date.

27. The phraseology is similar in Form II-A and III-A in this connection. Even in Form-IV, the respondent is notified that if he fails to appear, the matter will be heard in his absence on the date specified or on any subsequent date without any further notice. Therefore, although there is scope for holding that once notice to show cause why rule nisi should not be issued is ordered under the first proviso to Rule 13(a), at per the said rule there is no provision for disposal of the writ petition on merits because the show cause notice is issued only for calling upon the respondent to show cause why rule nisi should not be issued, if such an approach is adopted, it will lead to several undesirable consequences. For instance, a party on whom notice regarding rule has been served, may deliberately abstain from appearing before the Court for various reasons, either so as to avoid the bench or so as to postpone the anticipated consequences. In such an event, the Court will be left with no option but to issue rule and cannot decide the case. It is to remedy such situation Form II-A and III-A were inserted in the Rules notifying the respondent while issuing notice regarding rule that if he fails to appear, without any further notice, the petition may be dealt with, heard and decided on merit, in

his absence.

28. The notice in Form III-A is not a notice to hear the matter on merits only for issue of rule nisi, but it is also for deciding the matter on merits. Therefore, the party is given a clear and definite notice about likely disposal of the case, in case he does not appear before the Court. Whether notice regarding rule is issued under the first proviso or under the second proviso to Rule 13(a), if the respondent wants to file objections and if the case requires filing of objections for effective disposal, he will be entitled to file objections and produce documents, if any. In other words, after service of notice regarding rule, in case the Court finds that the grounds urged by the petitioner deserve a response by the respondent by filing objections and producing documents, he will certainly have the right to file counter and produce documents in support of his defence.

29. There may also be cases where there may not be any scope for filing statement of objections. In several cases, on perusal of records/documents and after hearing the parties, the case may deserve to be disposed of by granting the relief either partly or wholly or by remitting the case to the authority concerned for fresh consideration. In such cases, there is no point in insisting upon the parties to follow the ritual of filing statement of objections and producing documents followed by an opportunity to the petitioner to submit reply and thereafter, hear and decide the case.

30. This Court has evolved over a very long period of time the practice of issuing notice regarding rule with a view to provide an opportunity of being heard to the other side and after appearance of the respondent, quickly decide the case. This subserves the ends of justice and speedy disposal of cases. If such cases, which do not require elaborate hearing, are cleared at the initial stage, serious attention can be given to the cases where complex questions are involved and which deserve to be disposed after regular hearing on their turn after the statement of objections are filed and relevant documents are placed before the Court.

31. The litigant comes to the Court with an expectation of speedy redressal of his grievance. Nobody has any vested right in delaying the litigation or the legal proceeding. On the other hand, the right to be recognized in the litigant is that of

speedy disposal of cases which will ensure rule of law in the administration of justice. The rules of procedure such as the ones with which we are now concerned, being meant to provide for such speedy disposal, without, of course, denying a fair and reasonable opportunity of being heard, care has to be taken to ensure that such rules of procedure do not clothe the respondent with a right to delay or frustrate the speedy disposal of the case. Therefore, there is absolutely no need to insist upon for service of notice on the respondent twice, once when notice regarding rule is issued and for the second time after rule nisi is issued. Issue of notice for the second time will result in unnecessarily duplicating the work, thereby engaging the Court and its staff in unproductive work of processing the notice, dispatching the same and awaiting the service.

32. A simple and straight forward approach needs to be adopted in issuing notice. Whenever notice is issued to the respondent to appear, he should be clearly informed that, in case he does not appear on the date specified or on the subsequent dates when the case is notified for hearing, the case will be dealt with, heard and decided on merit, in his absence. If he appears on the date specified pursuant to the notice, then it will be for the respondent to impress upon the Court that the matter deserves statement of objections, whereupon the Court will grant him reasonable time to file statement of objections. If the case can be decided without any statement of objections on the basis of the available materials and documents, then the Court may decide the same on merit. Depending on the nature of the questions raised, the Court may decide either to admit the case or dispose of the same without admitting it. Proviso to Rule 13(a), therefore, deserves a re-look by the rule making authority. We may also make it clear that use of the expressions 'rule nisi' and 'notice regarding rule nisi' being phrases not in common use and not being understood in the common parlance, they can be avoided by substituting in their place simple and common expressions capable of being easily understood.

33. It may be necessary at this stage to refer to the normal practice followed in this Court. Wherever the petitioner has raised serious questions requiring statement of objections and comprehensive hearing, including in cases where challenge is laid to the vires of a provision of law, if the Court finds during preliminary hearing that

the questions raised are complex and require detailed examination, it will issue rule, meaning thereby, that the case has been admitted. Then final disposal of the case will be only after regular hearing when the matter is listed for hearing. In other cases, where the case does not involve any serious question or complex issues, only notice regarding rule is issued and after service of notice, when the respondent appears, the matter will be listed in "Preliminary Hearing 'B' Group". Even when the matter is listed in "Preliminary Hearing B Group" and if the respondent convinces the court that the matter requires detailed examination and regular hearing, the Court may issue rule, in which event, the case will then come up only in the hearing list and on its turn.

34. The purpose of keeping the case at the "Preliminary Hearing stage in 'B' Group" is to enable speedy disposal of the cases finally, having regard to the nature of the question raised and the possibility of the matter not requiring admission and then final hearing in due course. If such cases also have to be admitted by issuing rule, the danger would be that when they are heard and decided by holding that the matter was required to be remitted for re-consideration due to some technical errors, then the litigant would suffer due to the delay which was otherwise avoidable. Therefore, it is in order to facilitate the litigants and avoid delay in deciding such cases, the method of hearing in "Preliminary Hearing 'B' Group" after service of notice to the respondent has been evolved.

35. In order to maintain public confidence in the administration of justice, a continuous effort is necessary to address the delay in dispensation of justice. It is the duty of everyone involved in the system, the bench, the bar; the litigant and others, in order to sustain the faith of common man in the majesty of law and the effectiveness of the judicial system, to ensure that the process of dispensation of justice is not delayed by resorting to unhealthy practices, in a recent decision in *NOOR MOHAMMED VS GETHANAN S-. ANOTHER* - AIR 2013 SC 1217 referring to several earlier judgments, the Supreme Court has summed up as under the need for timely delivery of justice to sustain the faith of the common man in the justice delivery system:

"29. In a democratic set up, intrinsic and embedded faith in the adjudicatory system is of seminal and pivotal concern. Delay gradually declines the citizenry faith in the system. It is the faith and faith alone that keeps the system alive. It provides oxygen constantly. Fragmentation of faith has the effect-potentiality to bring in a state of cataclysm where justice may become causality. A litigant expects a reasoned verdict from a temperate Judge but does not intend to and, rightly so, to guillotine much of time at the altar of reasons. Timely delivery of justice keeps the faith ingrained and establishes the sustained stability.

Access to speedy justice is regarded as a human right which is deeply rooted in the foundational concept of democracy and such a right is not only the creation of law but also a natural right. This right can be fully ripened by the requisite commitment of all concerned with the system, li cannot be regarded as a facet of Utopianism because such a thought is likely to make the right a mirage losing the centrality of purpose. Therefore, whoever has a role to play in the justice dispensation system cannot be allowed to remotely conceive of a casual approach."

36. Thus, the ruleii of procedure framed in Rule 13 have to be interpreted and understood keeping in mind the twin considerations of providing a clear and unambiguous notice of the proceedings to the litigant and the need to avoid unnecessary delay in the disposal of the cases. Allowing the parties to resort to undesirable and unhealthy practice by misusing a lacuna in the rule has to be strictly curbed. In fact, in the past, while interpreting the very rule in the light of the format prescribed under Form III-A for issuing notice under this Rule, in M.M.NIRMALA VS NEW MANGALORE PORT TRUST and OTHERS - 1995(4) KLJ 660, the purpose of directing notice regarding rule is stated to be that such a recourse is adopted with an intention of hearing the other side, not merely on the question of issue of rule nisi, but more importantly for tht purposes of ascertaining whether the matter could be disposed of at that stage itself without going into the procedure and formality of admitting the petition and setting it down for hearing. The fact that there can be a whole class of cases wherein timely justice can be dispensed aftei quick assessment of the dispute, to save the time ana expenditure and above all to ensure timely justice, is rightly emphasized in the said case. This

position and the understanding of Rule 13 in this manner is followed for the last more than three decades. It is no doubt true that; the doctrine of precedent does not compel the Courts to follow the wrong path until it leads to the edge of the cliff, as observed by Lord Denning in *OSTIME (INSPECTOR OF TAXES) VS AUSTRALIAN MUTUAL PROVIDENT SOCIETY* - (1960) AC 459 (HL). The Apex Court has, in *UMED VS RAJ SINGH and OTHERS* - AIR 1973 C 43, observed that 'to perpetuate an error is no heroism. To rectify it is the compulsion of judicial conscience. A Judge ought to be wise enough to know that he is fallible.' But, we cannot ignore that the rules of procedure embodied in Rule 13 of the Rules have been understood in a certain way and at least as early as in 1995 in *DR. M.M.NIRMALA VS NEW MANGALORE PORT TRUST and OTHERS* - (1995)4 KAR.L.J. 660, proper meaning is ascribed. Later on with a degree of certainty, that understanding of the rules is followed in conducting the proceedings in this Court. In such circumstances, the danger of disturbing the basis on which the court, lawyers and litigants have perceived the procedure and the manner the proceedings are conducted throughout these years has to be borne in mind before embarking upon a different interpretation of the Rules, though such interpretation may as well appear quite plausible and accurate. A constitution bench of the Apex Court has, in *CENTRAL BOARD OF DAWOODI BOHRA COMMUNITY and ANOTHER VS STATE OF MAHARASHTRA and ANOTHER* - AIR 2005 SC 752 quoting from Dr. Alan Paterson's "Law Lords" 1982: PP. 156 157 and referring to the earlier constitution bench decision in *UNION OF INDIA and ANOTHER VS RAGHUBIR SINGH (DEAD) BY LRS. ETC.,* - (1989)2 SCC 754, referred to the construction criterion known as 'precedent merely wrong criterion' while referring to the well accepted principle that in the interest of certainty a decision ought not to be overruled merely because the Law Lords consider that it was wrongly decided. There must be some additional reasons to justify such a step.

37. We are, therefore, of the view that the understanding of Rule 13(a) and Form III-A as has been done way back in 1995 and followed subsequently need not be disturbed though the construction elaborated in Lalbi's case is quite plausible.

38. Therefore, we are clearly of the view that issue of notice regarding rule, which is the normal practice of this Court when the cases are listed for preliminary

hearing, is in aid of quick dispensation of justice, not merely to provide an opportunity to the respondent to show, cause why the case should not be admitted by issuing rule, but also to ascertain if the case can be quickly decided without admitting the same and relegating it to the hearing list to await its turn for disposal. This intent and purpose is made clear by inserting Form III-A. The insertion of Form III-A by issuing the notification on 20/22.12.1990 with effect from 27.12.1990 is aimed at notifying the respondent with all certainty and without any ambiguity that if he fails to appear, the case will be heard and decided on merit in his absence.

39. However, in order to avoid any confusion in the matter, we suggest that Rule 13(a) may be suitably amended as already observed herein.

40. Reference is answered accordingly. The Registry is directed to place the matter before the Division Bench for consideration of the matter on the merits of the case.

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