

Durairaj. Vs. Venugopal

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Court : Chennai

Decided On : Jul-03-2012

Judge : G.Rajasuria, J.

Acts : [Constitution of India](#) - Articles 227

Appeal No. : C.R.P.(NPD).No.4888 of 2011 and M.P.No.1 of 2011

Appellant : Durairaj

Respondent : Venugopal

Advocate for Def. : Mr.R.Subramanian, Adv.

Advocate for Pet/Ap. : Mr.V.Lakshmi Narayanan, Adv

Judgement :

Civil Revision Petition filed under Article 227 of the [Constitution of India](#) against the order dated 22.07.2011 passed in CMA No.2 of 2010 on the file of the Principal District Judge, Perambalur.

ORDER

1. Animadverting upon the order dated 22.07.2011 passed in CMA No.2 of 2010, by the learned Principal District Judge, Perambalur, this civil revision petition is focussed.

2. Compendiously and concisely, the germane facts absolutely necessary for the disposal of this revision under Article 227 of the [Constitution of India](#) would run thus:

O.S.No.63 of 2008 was filed by the respondent/plaintiff-Venugopal as against the original defendant Krishnan Chetti. The fact remains that even during the pendency of the suit, Krishnan Chetti died and the revision petitioners 1 to 4 were impleaded as his LRs. An ex parte decree was passed on 30.07.2008.; whereupon E.P. was filed; wherein, the property of the judgment debtor was brought for sale; R2-Senthil Kumar purchased the property. So far, the sale certificate was not issued and obviously delivery of the property was not effected. Subsequently, an application under Order IX Rule 13 of CPC to get set aside the ex parte decree was presented on 27.08.2008, but it was returned on 17.10.2008. Subsequently, it was re-presented on 14.09.2009 and the delay of 316 days in re-presentation was condoned. Thereafter, the application under Order IX Rule 13 of CPC was numbered and after hearing both sides, it was dismissed on 15.07.2010. As against the said order of dismissal, CMA was filed, for nothing but to be dismissed by the appellate Court confirming the order of the lower Court.

3. Being aggrieved by and dissatisfied with the orders of both the Courts below in not giving opportunity to the defendants to participate in the original proceedings by setting aside the ex parte decree, this revision has been filed on various grounds.

4. The learned counsel for the petitioners/defendants placing reliance on the grounds of revision, would pyramid his argument, which could pithily and precisely be set out thus:

(a) D2 was authorised by the other defendants to contest the matter and owing to his ill health he could not pursue it, which consequently resulted in the decree being passed ex parte as against the defendants.

(b) The lower Court in I.A.No.28 of 2010 took an erroneous view, as though the defendants had not taken steps expeditiously to get the ex parte decree set aside, even though they participated in the E.P. proceedings. The appellate Court also

took a wrong view, similar to that of the one taken by the lower Court. The auction sale was conducted and the property was sold at the rock bottom price.

Accordingly, the learned counsel for the petitioner, would pray for setting aside the order of both the Courts below by allowing this revision petition.

5. Per contra, the learned counsel for the respondent/decree holder, would pilot his arguments, which could tersely and briefly be set out thus:

(a) The civil revision petition filed invoking Article 227 of the [Constitution of India](#), is ex facie and prima facie untenable and purely for the purpose of getting over the limitation period of 90 days for filing a CRP under Section 115 of CPC, Article 227 of the [Constitution of India](#), was invoked by the revision petitioner and as such, the revision has to be dismissed on that ground itself.

(b) Absolutely there is no perversity or illegality in the orders passed by the Courts below. The conduct of the defendants should be taken note of and the Courts below clearly without minching words, held that with an intention to dilly-dally and shilly-shally with the matter and to gain time, simply the petitioners concerned filed the application under Order IX Rule 13 of CPC initially and thereafter, failed to prosecute sincerely the same.

(c) Third party interest is also involved in this matter, as R2. for a fair price, purchased the property in the Court auction sale. What is settled should not be unsettled and that too no sympathy or leniency could be shown in favour of the revision petitioners, who had blatantly been negligent in prosecuting the application under Order IX Rule 13 of CPC.

Accordingly, the learned counsel for the respondent/decree holder, would pray for the dismissal of the civil revision petition.

6. The learned counsel for the second respondent would in concinnity or in consonance with the arguments advanced on the side of the respondent/plaintiff would submit, that the property was purchased for a fair price in the Court auction sale and the trial Court itemized the acts of negligence as well as the mala fide intention on the part of the defendants in protracting the matter and passed order,

warranting no interference in the revision.

7. The points for consideration are as to:

(1) Whether the proper provision of law to be invoked in filing this revision, is Section 115 of CPC or Article 227 of the [Constitution of India](#)?

(2) Whether both the Courts below were justified in holding that the defendants were not entitled to get the ex parte decree set aside and participate in the original proceedings despite the reasons found set out in the affidavit accompanying the I.A.No.28 of 2010?

8. Both these points are taken together for discussion as they are inter linked and inter woven with each other.

9. At the outset itself, I would like to fumigate my mind with the following decisions cited on the side of the revision petitioners:

(1) 2003 STPL (LE) 32107 SC [Shiv Shakti Coop. Housing Society, Nagpur v. Swaraj Developers and others]; certain excerpts from it would run thus:

"32. A plain reading of Section 115 as it stands makes it clear that the stress is on the question whether the order in favour of the party applying for revision would have given finality to suit or other proceeding. If the answer is yes then the revision is maintainable. But on the contrary, if the answer is no then the revision is not maintainable. Therefore, if the impugned order is interim in nature or does not finally decide the lis, the revision will not be maintainable. The legislative intent is crystal clear. Those orders, which are interim in nature, cannot be the subject-matter of revision under Section 115....."

(2) 2003 STPL (LE) 32172 SC [Surya Dev Rai v. Ram Chander Rai, and others]; certain excerpts from it would run thus:

"4. Section 115 of the Code of Civil Procedure, as amended, does not now permit a revision petition being filed against an order disposing of an appeal against the order of the trial court whether confirming, reversing or modifying the order of injunction granted by the trial court. The reason is that the order of the High Court

passed either way would not have the effect of finally disposing of the suit or other proceedings. The exercise of revisional jurisdiction in such a case is taken away by the proviso inserted under sub-section (1) of Section 115 CPC. The amendment is based on the Malimath Committee's recommendations. The Committee was of the opinion that the expression employed in Section 115 CPC, which enables interference in revision on the ground that the order if allowed to stand would occasion a failure of justice or cause irreparable injury to the party against whom it was made, left open wide scope for the exercise of the revisional power with all types of interlocutory orders and this was substantially contributing towards delay in the disposal of cases. The Committee did not favour denuding the High Court of the power of revision but strongly felt that the power should be suitably curtailed. The effect of the erstwhile clause (b) of the proviso, being deleted and a new proviso having been inserted, is that the revisional jurisdiction, in respect of an interlocutory order passed in a trial or other proceedings, is substantially curtailed. A revisional jurisdiction cannot be exercised unless the requirement of the proviso is satisfied.

25. Upon a review of decided cases and a survey of the occasions, wherein the High Courts have exercised jurisdiction to command a writ of certiorari or to exercise supervisory jurisdiction under Article 227 in the given facts and circumstances in a variety of cases, it seems that the distinction between the two jurisdictions stands almost obliterated in practice. Probably, this is the reason why it has become customary with the lawyers labelling their petitions as one common under Articles 226 and 227 of the Constitution, though such practice has been deprecated in some judicial pronouncement. Without entering into niceties and technicality of the subject, we venture to state the broad general difference between the two jurisdictions. Firstly, the writ of certiorari is an exercise of its original jurisdiction by the High Court; exercise of supervisory jurisdiction is not an original jurisdiction and in this sense it is akin to appellate, revisional or corrective jurisdiction. Secondly, in a writ of certiorari, the record of the proceedings having been certified and sent up by the inferior court or tribunal to the High Court, the High Court if inclined to exercise its jurisdiction, may simply annul or quash the proceedings and then do no more. In exercise of supervisory jurisdiction, the High Court may not only quash or set aside the impugned proceedings, judgment or

order but it may also make such directions as the facts and circumstances of the case may warrant, maybe, by way of guiding the inferior court or tribunal as to the manner in which it would now proceed further or afresh as commended to or guided by the High Court. In appropriate cases the High Court, while exercising supervisory jurisdiction, may substitute such a decision of its own in place of the impugned decision, as the inferior court or tribunal should have made. Lastly, the jurisdiction under Article 226 of the Constitution is capable of being exercised on a prayer made by or on behalf of the party aggrieved; the supervisory jurisdiction is capable of being exercised suo motu as well.

26. In order to safeguard against a mere appellate or revisional jurisdiction being exercised in the garb of exercise of supervisory jurisdiction under Article 227 of the Constitution, the courts have devised self-imposed rules of discipline on their power. Supervisory jurisdiction may be refused to be exercised when an alternative efficacious remedy by way of appeal or revision is available to the person aggrieved. The High Court may have regard to legislative policy formulated on experience and expressed by enactments where the legislature in exercise of its wisdom has deliberately chosen certain orders and proceedings to be kept away from exercise of appellate and revisional jurisdiction in the hope of accelerating the conclusion of the proceedings and avoiding delay and procrastination which is occasioned by subjecting every order at every stage of proceedings to judicial review by way of appeal or revision. So long as an error is capable of being corrected by a superior court in exercise of appellate or revisional jurisdiction, though available to be exercised only at the conclusion of the proceedings, it would be sound exercise of discretion on the part of the High Court to refuse to exercise the power of superintendence during the pendency of the proceedings. However, there may be cases where but for invoking the supervisory jurisdiction, the jurisdictional error committed by the inferior court or tribunal would be incapable of being remedied once the proceedings have concluded.

27. In *Chandrasekhar Singh v. Siya Ram Singh* the scope of jurisdiction under Article 227 of the Constitution came up for the consideration of this Court in the context of Sections 435 and 439 of the Criminal Procedure Code which prohibits a second revision to the High Court against decision in first revision rendered by the

Sessions Judge. On a review of earlier decisions, the three-Judge Bench summed up the position of law as under: (SCC pp. 121-22, para 11)

(i) that the powers conferred on the High Court under Article 227 of the Constitution cannot, in any way, be curtailed by the provisions of the Code of Criminal Procedure;

(ii) the scope of interference by the High Court under Article 227 is restricted. The power of superintendence conferred by Article 227 is to be exercised sparingly and only in appropriate cases, in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors;

(iii) that the power of judicial interference under Article 227 of the Constitution is not greater than the power under Article 226 of the Constitution;

(iv) that the power of superintendence under Article 227 of the Constitution cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as the court of appeal; the High Court cannot, in exercise of its jurisdiction under Article 227, convert itself into a court of appeal."

(3) 2009 STPL (LE) 41877 SC [Radhey Shyam and another v. Chhabi Nath, and others]; certain excerpts from it would run thus:

"28. Therefore, this Court unfortunately is in disagreement with the view which has been expressed in *Surya Dev Rai* (supra) insofar as correction of or any interference with judicial orders of civil court by a writ of certiorari is concerned.

29. Under Article 227 of the Constitution, the High Court does not issue a writ of certiorari. Article 227 of the Constitution vests the High Courts with a power of superintendence which is to be very sparingly exercised to keep tribunals and courts within the bounds of their authority. Under Article 227, orders of both civil and criminal courts can be examined only in very exceptional cases when manifest miscarriage of justice has been occasioned. Such power, however, is not to be exercised to correct a mistake of fact and of law. The essential distinctions in the exercise of power between Articles 226 and 227 are well known and pointed out in *Surya Dev Rai*¹ and with that we have no disagreement."

(4) 2003 STPL (LE) 32172 SC [Sanjeev Kumar v. Sweta Kumari]; certain excerpts from it would run thus:

"6. By virtue of amendment in Section 115 of the CPC, powers of the High Court to entertain a revision petition has been curtailed. The High Court cannot vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.

7. Thus, it is clear that a revision petition under Section 115 CPC is maintainable if the order in favour of the party applying for revision, would have given finality to the suit or other proceedings. If answer is in the negative, revision is not maintainable. If the impugned order is interim in nature or does not finally decide the lis, the revision is not maintainable."

(5) (2011) 12 SCC 600 [Kokkanda B.Poondacha and others v. K.D.Ganapathi and another]; certain excerpts from it would run thus:

8. In Surya Dev Rai case³, the two-Judge Bench, after a detailed analysis of the various precedents on the scope of the High Court's powers under Articles 226 and 227 of the Constitution culled out nine propositions including the following: (SCC p.695, para 38)

38. (2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning

failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When [the] subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied:

(i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and

(ii) a grave injustice or gross failure of justice has occasioned thereby.

9. In *Shalini Shyam Shetty v. Rajendra Shankar Patil*¹ the Court again examined the scope of the High Court's power under Article 227 of the Constitution and laid down the following proposition: (SCC pp.331-32)

Article 227 can be invoked by the High Court suo motu as a custodian of justice. An improper and a frequent exercise of this power will be counterproductive and will divest this extraordinary power of its strength and vitality. The power is discretionary and has to be exercised very sparingly on equitable principle. This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievances. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline. The object of superintendence under Article 227, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any

disrepute. The power of interference under Article 227 is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

(6) In *Bandaru Satyanarayana v. Imandi Anasuya and others*, reported in (2011) 12 SCC 650, the same view is found reiterated.

10. I would also like to extract hereunder Section 115 of CPC as well as Article 227 of the [Constitution of India](#) for ready reference:

SECTION 115 OF CPC:"[(1)] The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit:

*[Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision would have finally disposed of the suit or other proceedings.]

**[(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

***[(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.]

Explanation. In this section, the expression "any case which has been decided" includes any order made, or any order deciding an issue in the course of a suit or

other proceeding.]"

* Inserted by Act 104 of 1976 and substituted by Act 46 of 1999 w.e.f.1.7.2002.

** Inserted by Act 104 of 1976.

***[Inserted by Act 46 of 1999 w.e.f. 1.7.2002]"

ARTICLE 227 OF THE CONSTITUTION OF INDIA:

"227. Power of superintendence over all courts by the High Court.

[(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.]

(2) Without prejudice to the generality of the foregoing provision, the High Court may-

(a) Call for returns from such courts;

(b) Make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) Prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces."

11. The learned counsel for the respondent/plaintiff would submit that as against the order of dismissal passed by the appellate Court in CMA, if at all any remedy was available, it was only the one under Section 115 of CPC and not under Article 227 of the [Constitution of India](#); whereas, the learned counsel for the petitioners/defendants would submit that once appeal remedy is contemplated under the law, after exhausting such appeal remedy, Section 115 of CPC cannot be invoked and if done so it would amount to rendering the very purpose of restrictions contemplated under Section 115 of CPC otiose; as such, the only remedy open for the revision petitioners was to invoke Article 227 of the [Constitution of India](#) and accordingly, it was invoked appropriately and appositely.

12. I would like to refer to sub section (2) of Section 115 of CPC, which would unambiguously and unequivocally highlight and spotlight the fact that if appeal lies in respect of a matter, then no revision could be entertained under Section 115 of CPC.

13. The warp and woof of the contention of the learned counsel for the respondent/plaintiff is to the effect that as against the order passed in the CMA, inasmuch as no further appeal is contemplated, the only remedy could be the one under Section 115 of CPC. I cannot countenance such a view for the reason, that had the legislators thought that that should be the legal position as canvassed by the learned counsel for the respondent/plaintiff, the legislators would have spelt out thus: "the revision under this Section [S.115 of CPC] shall not lie without exhausting the appeal remedy, if any," but that is not the legislative language and that was not the intention of the legislators as well. In Surya Devi's case (supra), the Hon'ble Apex Court glaringly and pellucidly shed light on the point that no revision under Section 115 of CPC would lie as against the order in Appeal. The legislators in their wisdom thought that in respect of certain matters appeal remedy if provided under law, then the parties concerned should get themselves satisfied with that remedy and once again, they cannot carve out their own dubious way of approaching the High Court under Section 115 of CPC. The mischief sought to be suppressed by the amendment of Section 115 of the Code of Civil Procedure is axiomatic and obvious and if the view of the counsel for the respondent/plaintiff is accepted, it would amount to opening the flood gate throwing to winds the spirit

and essence of Section 115 of the Code of Civil Procedure.

14. The learned counsel for the respondent/plaintiff also inviting the attention of this Court to the proviso appended to sub Section (1) of Section 115 of CPC, would try to buttress and fortify his view, but an analysis of the said proviso would reveal and demonstrate that it is against his case. To maintain a revision under the said proviso, hypothetically the impugned interim order should be visualized thus: Gramatically "unreal past" situation in the said proviso is contemplated. If such order had been passed in his favour, whether it would have the effect of finally disposing of the suit or the proceedings before the lower court. Here, it is crystal clear that if the said order had been passed under Order IX Rule 13 of the Code of Civil Procedure by allowing the interlocutory application, the main suit itself would have got revived and the proceedings in the main suit would be in progress. The same position would be if the CMA had been allowed. Hence the said proviso cannot be pressed into service by the respondent/plaintiff in support of his proposition that only a revision under Section 115 of the Code of Civil Procedure would lie.

15. Needless to point out, that before 1976 amendment of CPC the position was different and the objects and reasons relating to amendment of Section 115 of the Code of Civil Procedure is worthy of being reproduced here under:

[Report of the Joint Committee Gazette of India, Ext., dt.1-4-1976, Pt.II, S.2, p.804/10-11]

"Amendments: Objects and Reasons.- Clause 43 (Original clause 45).- By clause 45 of the Bill, section 115 of the Code was proposed to be omitted. The question whether it is at all necessary to retain section 115 was carefully considered by the Committee. The Law Commission has expressed the view that, in view of article 227 of the Constitution, section 115 of the Code is no longer necessary. The Committee, however, feel that the remedy provided by article 227 of the Constitution is likely to cause more delay and involve more expenditure. The remedy provided in section 115 is on the other hand, cheap and easy. The Committee, therefore, feel that section 115, which serves a useful purpose, need not be altogether omitted particularly on the ground that an alternative remedy is

available under article 227 of the Constitution.

The Committee feel that the expression "case decided" should be defined so that the doubt as to whether section 115 applies to an interlocutory order may be set at rest. Accordingly, the Committee have added a proviso and an Explanation to section 115.

[Statement of Objects and Reasons (Bill 1999).]

Amendments: Objects and Reasons.-Clause 12.- Section 115 of the Code provides for revision by the High Court or an order or decision of any Court subordinate to such High Court. The Malimath Committee noticed that often the records of the lower Courts are sent to the High Court in the revisional proceedings. It is imperative that records of proceedings pending in the subordinate Court should not be sent unless High Court so desires and revision should not operate as stay of proceedings before the trial Court. The Committee while agreeing in principle that scope of interference against interlocutory orders should be restricted, felt that the object can be achieved more effectively without demanding the High Court of the power of revision. Clause 12 seeks to achieve the above object by suitable amendments to section 115.

16. Wherefore, if the view of the learned counsel for the respondent/plaintiff is accepted, it would amount to rendering the very restrictive scope found embedded in Section 115 of CPC nugatory and otiose. As such, I am of the considered view that once appeal remedy is contemplated in respect of an order and the appeal remedy itself has been exhausted, then the question of invoking Section 115 of CPC would be a well-nigh impossibility.

17. My mind is redolent and reminiscent of the following maxim:

Verba generalia generaliter sunt intelligenda General words are to be understood generally.

18. At this juncture, I would like to refer to the famous treatise 'Maxwell on the interpretation of Statutes 12th Edition' by P.St.J.Langan and certain excerpts from it would run thus:

"The mischief rule:

In Heydon's Case, in 1584, it was resolved by the Barons of the Exchequer (at p.7b) "that for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered: (1st). What was the common law before the making of the Act. (2nd). What was the mischief and defect for which the common law did not provide. (3rd). What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth. And, (4th). The true reason of the remedy; and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono public." In 1898, Lindley M.R.said: "In order properly to interpret any statute it is as necessary now as it was when Lord Coke reported Heydon's Case to consider how the law stood when the statute to be construed was passed, what the mischief was for which the old law did not provide, and the remedy provided by the statute to cure that mischief." Although judges are unlikely to propound formally in their judgements the four questions in Heydon's Case, consideration of the "mischief" or object of the enactment is common, and will often provide the solution to a problem of interpretation.

"The golden rule:

The so-called "golden rule" is really a modification of the literal rule. It was stated in this way by Parke B.: "It is a very useful rule, in the construction of a statute, to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified, so as to avoid such inconvenience, but no further." "If," said Brett L.J., "the inconvenience is not only great, but what I may call an absurd inconvenience, by reading an enactment in its ordinary sense, whereas if you read it in a manner in which it is capable, though not its ordinary sense, there would not be any inconvenience at all, there would

be reason why you should not read it according to its ordinary grammatical meaning." The application of this rule, and its limits, will be seen in the parts of this work devoted to construction with reference to the consequences, and construction to avoid inconvenience and injustice, and to prevent evasion. Here, a few recent examples of the application of the golden rule will be given.

Construction of words "in Bonam Partem":

Words are prima facie to be taken in their lawful and rightful sense. Where an Act, for instance, gave a certain efficacy to a fine levied on land, it referred only to a fine lawfully levied. The landlord's claim to recover arrears of rent out of goods seized in execution by the bailiff of a county court under section 160 of the County Courts Act 1888 depended upon whether the seizure was lawful: if the goods did not belong to the debtor, and the seizure was consequently unlawful, the claim under the section could not arise. A similar principle was applied to the construction of a covenant by a tenant to pay all parliamentary taxes: it included only such as he might lawfully pay, and not the landlord's property tax which it would have been illegal for him to agree to pay."

In Chapter 5-Restrictive construction, it is stated thus:

Before adopting any proposed construction of a passage susceptible of more than one meaning, it is important to consider the effects or consequences which would result from it, for they often point out the real meaning of the words. There are certain objects which the legislature is presumed not to intend, and a construction which would lead to any of them is therefore to be avoided. It is not infrequently necessary, therefore, to limit the effect of the words contained in an enactment (especially general words), and sometimes to depart, not only from their primary and literal meaning, but also from the rules of grammatical construction in cases where it seems highly improbable that the words in their wide primary or grammatical meaning actually express the real intention of the legislature. It is regarded as more reasonable to hold that the legislature expressed its intention in a slovenly manner, than that a meaning should be given to them which could not have been intended."

20. It is quite obvious and axiomatic that when appeal remedy is contemplated, revision under Section 115 of CPC would not lie. Then the core question arises as to what would happen to a litigant who is really having some grievance if there is any gross perversity in the impugned order. At this juncture, I recollect certain excerpts from the decision of the Hon'ble Apex Court reported in 2005 (6) SCC 344 [Salem Advocate Bar Assn., T.N. v. Union of India]; certain excerpts from it would run thus:

"40. Section 115 of the Code vests power of revision in the High Court over courts subordinate to it. Proviso to Section 115(1) of the Code before the amendment by Act 46 of 1999 read as under:

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where

(a) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding, or

(b) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

(emphasis supplied)

Now, the aforesaid proviso has been substituted by the following proviso:

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.

The aforesaid clause (b) stands omitted. The question is about the constitutional powers of the High Courts under Article 227 on account of omission made in Section 115 of the Code. The question stands settled by a decision of this Court in *Surya Dev Rai v. Ram Chander Rai* holding that the power of the High Court under Articles 226 and 227 of the Constitution is always in addition to the revisional

jurisdiction conferred on it. Curtailment of revisional jurisdiction of the High Court under Section 115 of the Code does not take away and could not have taken away the constitutional jurisdiction of the High Court. The power exists, untrammelled by the amendment in Section 115 and is available to be exercised subject to rules of self-discipline and practice which are as well settled."

As such in certain circumstances, if at all the party concerned could make out a case under Article 227 of the [Constitution of India](#), then he could petition the High Court invoking the said provision of law.

22. In this case, the petitioner approached this Court invoking Article 227 of the [Constitution of India](#), because despite condoning the delay in representing the I.A.No.28 of 2010 under Order IX Rule 13 of CPC no opportunity was given to the petitioner to contest the suit, by allowing the said I.A. and setting aside the ex parte decree. No doubt, both the Courts below, very much concentrated on the fact that after filing the application under Order IX Rule 13 of CPC and obtaining return of it, re-presentation was not made diligently, even though the defendants participated in the E.P. proceedings; wherefore the Court below held that the defendants were disentitled to get the ex parte decree set aside. Such a narrow view need not have been taken in this case. The suit is one for recovery of money and the defendants by way of showing their bona fides filed an application under Order IX Rule 13 of CPC also without any delay initially.

23. The learned counsel for the second respondent would submit that the said application filed under Order IX Rule 13 of CPC was returned mainly on the ground that the copy of that application was not served to the other side and that it should be served. It was not carried out immediately by the petitioners/defendants. I would like to observe that before numbering the application, the lower Courts cannot mandate that the application should be served on the other side and there is no back up of the law to that effect.

24. In this connection, Sub Rule (1) of Rule 31 of the Civil Rules of Practice, could be fruitfully referred to and the same is extracted hereunder for ready reference:

"31. Notice:- (1) Unless the Court otherwise orders, notice of an interlocutory Application shall be given to the other parties to the suit, matter or proceeding or their pleader not less than three days before the day appointed for the hearing of the application."

(emphasis supplied)

There is no knowing of the fact also as to why then at the time of re-presenting the application itself the Court did not simply reject the application on the ground of laches. Admittedly, having condoned the re-presentation delay of 316 days, I could see no rhyme or reason on the part of the trial Court in simply rejecting the application under Order IX Rule 13 of CPC. In the interest of audi alteram partem, an opportunity could have been given to the defendant to contest the matter.

25. At this juncture, I would like to refer to the following decisions of the Hon'ble Apex Court:

(i) 2010(2) Supreme 115 (Oriental Aroma Chemical Industries Ltd., vs. Gujarat Industrial Development Corporation and another) and an excerpt from it would run thus:

"8.The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and other similar statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate -

Collector, Land Acquisition, Anantnag v. Mst.Katiji, (1987) 2 SCC 107, N.Balakrishnan v. M.Krishnamurthy, (1998) 7 SCC 123 and Vedabai v. Shantaram Baburao Patil, (2001) 9 SCC 106."

(ii) AIR 2002 SC 1201 (Ram Nath Sao alias Ram Nath Sahu and aothers v. Gobardhan Sao and others) also could fruitfully be cited; certain excerpts from it would run thus:

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

(iii) 2000 STPL(LE) 27621 SC [G.P. Srivastava v. R.K. Raizada and others]; certain excerpts from it would run thus:

"7. Under Order 9 Rule 13 CPC an ex parte decree passed against a defendant can be set aside upon satisfaction of the Court that either the summons were not duly served upon the defendant or he was prevented by any sufficient cause from appearing when the suit was called on for hearing. Unless sufficient cause is shown for non-appearance of the defendant in the case on the date of hearing, the court has no power to set aside an ex parte decree. The words was prevented by any sufficient cause from appearing must be liberally construed to enable the court to do complete justice between the parties particularly when no negligence or inaction is imputable to the erring party. Sufficient cause for the purpose of Order 9 Rule 13 has to be construed as an elastic expression for which no hard and fast guidelines can be prescribed. The courts have a wide discretion in deciding the sufficient cause keeping in view the peculiar facts and circumstances of each case. The sufficient cause for non-appearance refers to the date on

which the absence was made a ground for proceeding ex parte and cannot be stretched to rely upon other circumstances anterior in time. If sufficient cause is made out for non-appearance of the defendant on the date fixed for hearing when ex parte proceedings were initiated against him, he cannot be penalised for his previous negligence which had been overlooked and thereby condoned earlier. In a case where the defendant approaches the court immediately and within the statutory time specified, the discretion is normally exercised in his favour, provided the absence was not mala fide or intentional. For the absence of a party in the case the other side can be compensated by adequate costs and the lis decided on merits."

The ratiocination set out in those precedents is applicable mutatis- mutandis in adjudicating the I.A under Order IX Rule 13 of the Code of Civil Procedure. Hence taking into consideration the aforesaid precedents in this factual matrix and in the interest of audi alteram partem, I am of the view that one more opportunity could be given to the petitioners, subject to certain conditions.

26. The learned counsel for the revision petitioners/defendants, would submit that his clients are ready to deposit the decretal amount calculated up to this date, in the trial court. Hence, I am of the view that the revision has to be allowed and accordingly it is allowed setting aside the orders of both the Courts below and allowing the I.A.No.28 of 2010. Consequently, the ex parte decree is set aside subject to the condition that the petitioners deposit in Court the decretal amount calculated as on date, including the cost of the suit within a period of four weeks from the date of receipt of a copy of this order. The amount so deposited, shall not be withdrawn without the permission of this Court. The final adjudication in the suit would have its impact on the post decretal proceedings which emerged so far and the trial court shall do well to see that the suit is disposed of by the end of September 2012.

27. It is high time to frame rules to regulate proceedings under Article 227 of the [Constitution of India](#), even though as of now the rules to regulate proceedings under Article 227 of the [Constitution of India](#) are in vogue.

With the above observation, this civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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