

The background is a deep blue gradient with a subtle pattern of white dots. Overlaid on the left side are several concentric circles and a large circular scale with tick marks and numbers ranging from 140 to 260. Some of the circles have arrows indicating a clockwise direction.

# REVISITING NORMS FOR APPELLATE REVIEW

CONSEQUENCE OF FREQUENT AND EXCESSIVE APPELLATE INTERFERENCE

# LIMIT OF CONTROL ON JUDICIAL SIDE

## On the Judicial side

### Power of judicial review

- difference between power under s 115 CPC and Art 227 of the Constituion
- Distinction between power under Art 227 and under Art 226
- (Surya Dev Rai vs Ram Chander Rai & Ors)

High Court can withdraw a case pending in a subordinate court if it involves a substantial question of law that require the interpretation of the Constitution.

High Court can then either dispose of the case itself or determine the question of law and return the case to the subordinate court with its judgement.

Law of High Court is binding on all subordinate courts functioning within its territorial jurisdiction.

Intervention when, 1. excess of jurisdiction; 2. disregard to the law of superior courts; 3. gross violation of natural justice; 4. error of law; 5. perverse findings; 6. manifest injustice etc.

## TASKS FOR APPELLATE COURTS DUTY OF LOWER COURTS TO KEEP TRACK

- Complexity of laws that require adjudication
- volume of legislation churned out by State and Centre that require constant interpretations
- It has a law development role and it may take shape over a period of time

# STRATEGIES FOR LIMITING INTERFERENCE BY HIGHER COURTS

- Keep interim orders open-ended and enable both parties to seek for modification in changed circumstances, observation that it will have no bearing in final disposal, etc
- During trial, mark documents subject to objection and state law that mere marking will not amount to admission of truth or otherwise of the document
- Allow amendments, in doubtful cases of limitation, subject to decision at the time of final disposal
- Implead parties on *suo motu* basis if the presence of any party is deemed essential instead of waiting for parties to take steps
- Be liberal in setting aside *ex parte* orders, but ensure continuation of case on the same day of restoration or setting aside *ex parte* orders
- Make a list of case laws on the subject that you are dealing through your interim order what your portfolio judge has said through his recent pronouncements and apply them in your orders.

# ASPECTS THAT SUBORDINATE COURT MAY AVOID

- Don't
  - Appoint commissioner at the end of trial except on consent of both sides; appoint commissioner only on court's own initiative for clarity and execute it within short time
  - seek for appointment of handwriting or thumb impression expert at the fag end of trial. Give liberty to parties in relevant cases to take steps immediately after framing of issues
  - frequently allow for reduction of upset price in civil executions; keep both valuations in sale papers



# REVISIONAL JURISDICTION- HC'S SCOPE OF INTERVENTIONS AGAINST INTERIM ORDERS

- Do not
  - intervene if the period that the HC could take for disposal if within that period, the suit could be disposed of.
  - Pass insipid order of status quo without declaring what is status quo
  - Interfere if the correctness of the order could be corrected in the final judgment of the trial court
  - revise order unless there is egregious error of law

## SECOND APPEALS

- Do not issue notice of motion without framing substantial question of law
- If two views are possible and one view as taken by the lower appellate court is possible, do not interfere.
- Keep track of lower appellate judge's performance in second appeals in so far as it will have relevance for that person to be considered for elevation to High Court



Stay or injunction orders will stand automatically vacated on the expiry of 6 months from the date of original order:



Jurisdiction over an order framing a charge shall not be exercised normally and that too, in rare cases. Where such challenge is entertained and stay is granted, the case must be decided on a day to day basis. It should be decided within 2-4 months and if it pending for a longer time and stay has been granted already, it will lapse in 6 months.

JUDGMENT THAT IMPACTS PERFORMANCE OF  
SUBORDINATE COURTS - *ASIAN RESURFACING OF ROAD*  
*AGENCY PVT LTD V CBI* CRL APP 1375-76 OF 2013 DT  
MARCH 28, 2018