

NATIONAL JUDICIAL ACADEMY



National Conference for High Court Justices on Civil Law
19 – 20 April, 2024 [P-1449]

Programme Report

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The National Judicial Academy organized a **National Conference for High Court Justices on Civil Law** on **19 – 20 April, 2024**. The participants were High Court Justices nominated by respective High Courts. The conference focussed on issues including First Appeal; Second Appeal; Civil Revision; Injunction; and Stay of Suit & Res Judicata.

Session 1: First Appeal: Scope of Powers and Jurisdiction of High Court

The discussion was commenced with highlighting the historical background of the Code of Civil Procedure, 1908 [CPC] and it was stated that during the last 117 years, the Code has functioned very well and served its purpose of fair and expeditious justice to litigants. The old Code of 1859 was referred and it was stated that the 1859 Code was legislated to remove the diverse codes prevalent in the province of Bengal. The amendments subsequent to the year 1859 were discussed and it was opined that the present Code is the result of various changes that have been incorporated over the period of time to improve its effectiveness in assisting court in providing expeditious justice.

The discussion then focussed on Sections 96 and Orders 41 of the Code which deals with appeal from original decree and where both law and fact can be challenged. Then various rules of Order 41 were referred. The judgment *Yerikala Sunkalamma and Another vs. State of Andhra Pradesh, Department of Revenue and Others* 2025 SCC OnLine SC 630 dealing with issue relating to notice under Section 80 of the CPC which is a condition precedent before filing a suit against the government or against a public servant was referred.

Then the situation that how a civil dispute arises was highlighted and dispute relating to succession of property was discussed. Order 22 Rule 5, Order 21 Rules 97, 98, 99, and 103 of the Code were referred in this regard. The issues related to appointment of commissioners in civil cases were deliberated upon. The judgment *S.P. Chengalvaraya Naidu v. Jagannath*, (1994) 1 SCC 1 was referred which dealt with judgment or decree obtained by fraud. Sections 33, 13 and Order 6 Rule 5 of the Code were also referred. It was stated that such a decree should be treated as nullity and can be questioned in collateral proceedings as well. The meaning and definition of fraud in such matter were explained.

Then issues related to remand by appellate court were discussed and Order 41 Rules 23 and 23 A of the Code were referred. The points to be considered by the appellate court in such situation were highlighted. It was stated that in order to claim remand of the case to the trial court, it is necessary for the appellant to first raise such plea and then make out a case of remand on facts. The judgment *Syeda Rahimunnisa v. Malan Bi*, (2016) 10 SCC 315 was referred.

The situation where a party apply for consideration of additional evidence and remittance the case to lower court to record additional evidence was discussed. The judgment *Haryana State Industrial Development Corpn. v. Cork Mfg. Co.*, (2007) 8 SCC 120 was referred. The situation where some new facts are brought to the notice of the appellate court was discussed. The judgment *Mahender Pal Chabra and Another vs. Subhash Aggrawal* 2024 SCC OnLine SC 331 dealing with the parameters applicable for deciding a first appeal under Section 96 of the Code was referred. The judgment *Manjula v. Shyamsundar*, (2022) 3 SCC 90 was referred which deals with the issue of reasoning required to be assigned by the first appellate court and mandatory requirement of compliance of Order 41 Rule 31, CPC by the first appellate court.

Session 2: Second Appeal: Contours and Limits

The discussion commenced with the elaboration of the statutory framework dealing with second appeal and Sections 100, 100A, 102 and Order 42 Rule 2, CPC were discussed in this regard. The judgments *SBI v. S.N. Goyal*, (2008) 8 SCC 92 and *Hero Vinoth v. Seshammal* (2006) 5 SCC 545 dealing with issues related to substantial question of law were referred. It was stated that procedure prescribed under Section 100 CPC should be adhered by courts and efforts should be made to distinguish between a question of law and a substantial question of law. It was further added that the second appeal cannot be decided on merely equitable grounds and a substantial question of law has to be distinguished from a substantial question of fact.

The findings of fact of the first appellate court should be interfered in second appeal only in exceptional circumstance. Section 103, CPC dealing with power of High Court to determine issue of facts was referred. It was added that the High Court should analyse the facts of the case carefully before considering or formulating the substantial question of law. The court should not ignore the factual matrix of the case while adjudicating second appeal. It was stated that the court in second appeal must ensure that the substantial question of law has material bearing on the decision of case and rights of the parties and it should not be a question of general importance. The judgments *Sir Chunilal V. Mehta and Sons Ltd. v. Century Spg. & Mfg. Co. Ltd.* AIR 1962 SC 1314 and *Surat Singh v. Siri Bhagwan*, (2018) 4 SCC 562 were referred.

The judgment *Mehboob-Ur-Rehman v. Ahsanul Ghani*, (2019) 19 SCC 415 dealing with Section 100 (5) was discussed and it was stated that the proviso to sub-section (5) of Section 100 CPC is not intended to annul other requirements of Section 100 and it cannot be laid down as a matter of rule that irrespective of the question(s) formulated, hearing of the second appeal is open for any other substantial question of law, even if not formulated earlier. Then Order 41 Rule 27 and Order 41 Rule 3 were referred. The judgment *Chandrabhan (Deceased) Through Lrs. and Others vs. Saraswati and Others* 2022 SCC OnLine SC 1273 was referred and it was stated that the proper test for determining whether a question of law raised in the case is substantial would be that whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so then whether it is an open question which is not finally settled by the Supreme Court.

Then the discussion focused on how court can deal with the issue of limitation while adjudicating the second appeal and Section 5 of the Limitation Act, 1963 was referred. The issue of cross objection during second appeal was also discussed and Order 41 Rule 33, CPC was referred. The judgment *Santosh Hazari v. Purushottam Tiwari*, (2001) 3 SCC 179 was referred and the scope of interference in the concurrent finding of fact was discussed. It was emphasised that High Court should thoroughly check that whether the concurrent finding of fact is properly decided by lower courts or not. It was further added that when the advocate submit the substantial question of law then the High Court should not accept that mechanically and should scrutinize it to ensure that it is framed according to the established principles of law. The detailed examination of pleadings and documents should be done by High Court while adjudicating second appeal. The judgments *Gurbachan Singh v. Gurcharan Singh*, 2023 SCC

OnLine SC 875 and *Doddanarayana Reddy v. C. Jayarama Reddy*, (2020) 4 SCC were referred in this regard.

Session 3: Civil Revision: Parameters and Boundaries

The session was commenced with discussion on the statutory framework for civil revision and Section 115 CPC was referred. Various grounds for exercising the power under civil revision were highlighted. It was stated that the High Court exercising its powers under Section 115, CPC does not possess an appellate jurisdiction but a supervisory one which is meant to correct grave jurisdictional errors. The provision permits interference only in cases where the subordinate court falls prey to the situations including exceeding jurisdiction, failure to exercise jurisdiction, acting without jurisdiction, or committing material irregularity. Then the discussion focussed on the scope of terms “illegally” and “material irregularity” and the judgment *Ngaitlang Dhar v. Panna Pragati Infrastructure Pvt. Ltd.* (2022) 6 SCC 172 was referred.

Various amendments in the power of civil revision power of High Court were discussed. The 1976 Amendment which led to the introduction of proviso to Section 115(1) was referred and it was stated that the amendment was brought to curb procedural delays caused by indiscriminate revision petitions. The amendment placed limitations on the High Court's power to interfere with interlocutory orders. The discussion then focussed on the Malimath Committee's recommendations and the 1999 amendment of the Code. The Malimath Committee was constituted to address judicial delays and recommended further tightening of Section 115 and it noted that clause (b) of the 1976 proviso diluted the intent to reduce revisions. Consequently, the CPC (Amendment) Act, 1999 deleted clause (b), thereby eliminating the “failure of justice or irreparable injury” ground for revision. The new proviso, effective from July 1, 2002, allows revisions only where the impugned order, if made in favour of the applicant, would have finally disposed of the suit or proceeding. The post-2002 position which narrowed the revisional powers under Section 115 CPC was referred and it was stated that after the 1999 amendment of the Code which came into effect in 2002, the revisionary jurisdiction of High Courts was materially curtailed. After the amendment High Courts can no longer entertain revisions against interlocutory orders unless the revised conditions are satisfied. The judgment *Shiv Shakthi Co-op Housing Society vs. Swaraj Developers* 2003 (6) SCC 659 was referred in this regard. The judgments *Zahida Nizamuddin Jalal and others vs. Abidali Jafferli Syyed and others* 2002 SCC OnLine Bom 935 were also referred which dealt with the scope of Section 115 of the Code after amendment.

The judgment *Major S.S. Khanna v. Brig. F.J. Dillon*, AIR 1964 SC 497 was referred wherein the Supreme Court held that the term “case decided” under Section 115 CPC is of wide import and will include interlocutory orders. It was stated that this interpretation led to an explosion of revision petitions against interim orders, causing significant delays in the disposal of civil suits. The judgment effectively expanded the scope of revisionary jurisdiction and necessitated statutory intervention to limit its misuse.

The discussion then focussed on the scope of interference by the High Court in the concurrent finding of facts in exercise of its revisional jurisdiction. The judgment *Ambadas Khanduji Shinde v. Ashok Sadashiv Mamurkar*, (2017) 14 SCC 132 was referred in this regard. The judgment *Gandhe Vijay Kumar v. Mulji*, (2018) 12 SCC 576 was also referred and it was stated that the High Court should rehear the issues raised in the original proceedings and the High Court is only expected to see that whether the findings are illegal or perverse. It was further added that the expression “revision” is meant to convey the idea of a much narrower jurisdiction than that conveyed by the expression “appeal”. The judgment *Surya Dev Rai v. Ram Chander Rai*, (2003) 6 SCC 675 was referred and the issue as to what is the impact of the amendment in Section 115 CPC brought in by Act 46 of 1999 w.e.f. 1-7-2002, on the power and jurisdiction of the High Court to entertain petitions under Article 226 or 227 was deliberated upon. The judgment *Radhey Shyam v. Chhabi Nath*, (2015) 5 SCC 423 which considered the correctness of the law laid down in *Surya Dev Rai v. Ram Chander Rai*, (2003) 6 SCC 675 that an order of the civil court was amenable to writ jurisdiction under Article 226 of the Constitution was also referred. Then the judgment *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai v. Tuticorin Educational Society*, (2019) 9 SCC 538 was referred and it was stated that the writ jurisdiction should not be allowed to be misused by litigants to redress the disputes of purely civil in nature and involving private parties.

Various judgments were referred further in the session including *Major S.S. Khanna v. Brig. F.J. Dillon*, 1963 SCC OnLine SC 72, *Housing Society v. Swaraj Developers*, (2003) 6 SCC 659, *Hari Shankar v. Rao Girdhari Lal Chowdhury*, 1961 SCC OnLine SC 109, AIR 1963 SC 698, *Bhudev Mallick alias Bhudeb Mallick and Another vs. Ranajit Ghoshal and Others* 2025 SCC OnLine SC 360, *Periyammal (Dead) through Lrs. and Others vs. V. Rajamani and Another* 2025 SCC OnLine SC 507, *Central Bank of India v. Shanmugavelu*, (2024) 6 SCC 641 and *Frost (International) Ltd. v. Milan Developers & Builders (P) Ltd.*, (2022) 8 SCC 633.

Session 4: Nature of Relief: Final and Interlocutory

The session was commenced by highlighting the difference between specific performance and damages. It was stated that specific performance ensures contracts are honoured and prevents unjust enrichment and damages provide a compensatory remedy when performance is impractical or unfair. It was added that courts must balance fairness, feasibility, and economic impact in granting relief and forcing unwilling performance may disrupt commercial stability and create operational inefficiencies. Then the issue that whether specific performance be preferred only when damages are inadequate was discussed and it was opined that it should be preferred because damages are the primary remedy in commercial transactions, ensuring contractual predictability. It was further added that specific performance can create administrative burdens on courts to monitor compliance and courts should not micromanage contractual relationships unless damages is an insufficient remedy. The judgment *Indian Oil Corporation Ltd. v. Amritsar Gas Service*, (1991) 1 SCC 533 was referred in this regard. The discussion then focussed on other circumstance when the specific performance should be preferred. It was opined that certain contracts i.e. real estate, intellectual property, unique assets require non-monetary enforcement and damages may not adequately restore trust, reputation, or exclusivity in contractual relationships. It was further added that allowing only damages

may encourage strategic breaches, undermining contract sanctity. The judgments *K.K. Modi v. K.N. Modi*, (1998) 3 SCC 573 and *Adcon Electronics Pvt. Ltd. v. Daulat*, (2001) 7 SCC 698 were referred.

The need of judicial balance was emphasised and it was stated that courts must weigh economic efficiency, legal fairness, and feasibility of enforcement and judgment *K. Narendra v. Riviera Apartments (P) Ltd.* (1999) 5 SCC 77 was referred. The issue that should courts allow preventive damages to deter future breaches was discussed and it was opined that preventive damages discourage opportunistic breaches and reinforces contractual discipline. It also reduces the litigation burden, as parties are disincentivized from breaching contracts and protects weaker parties in asymmetrical bargaining relationships.

The discussion then focussed on conditions for granting relief & exercise of judicial discretion in grant of relief. The issue that should judicial discretion in relief-granting be codified for consistency was discussed and arguments for and against codification of judicial discretion were highlighted. Various considerations regarding granting and denial of relief were deliberated upon. The three tests while granting injunction i.e. Prima Facie Test, Balance of Convenience Test and Irreparable Injury Test were explained and the judgment *M. Gurudas v. Rasaranjan* (2006) 8 SCC 367 was referred. Then issues related to appeals against interlocutory orders in arbitration were discussed and the judgment *VRS Natarajan v. OYO Hotels and Homes Pvt. Ltd.*, 2022 SCC OnLine Del 2755 was referred. Section 37 of the Arbitration and Conciliation Act, 1996 was referred and the scope of appeals was deliberated upon.

The discussion then focussed on specialized injunctions and key categories of specialized injunctions were explained. Mareva Injunction (Freezing Orders) was explained and the judgment *Mareva Compania Naviera SA v. International Bulkcarriers SA* [1975] 2 Lloyd's Rep 509 (UK) was referred. Anton Piller Injunction (Search & Seizure Orders) was explained and the judgment *Anton Piller KG v. Manufacturing Processes Ltd.* [1976] Ch 55 (UK) was referred. Then John Doe Injunction was explained and the judgment *Dendrite International, Inc. v. Doe No. 3* 775 A.2d 756 (N.J. Super. Ct. App. Div. 2001) (USA) was referred. Then Anti-Suit Injunction was explained and the judgment *Airbus Industry GIE v. Patel* [1999] 1 AC 119 (UK) was referred. Then Dynamic Injunctions was explained and the judgment *Cartier International AG v. British Sky Broadcasting Ltd.* [2016] EWCA Civ 658 (UK) was explained. The differences between granting injunctions in High Court and in Trial Courts were highlighted. The judgments *Universal City Studios Productions LLLP v. Movies 123.LA*, 2024 SCC OnLine Del 3852 and *Cruz City 1 Mauritius Holdings v. Unitech Limited*, 2017 SCC OnLineDel 7810 were referred.

Session 5: Stay of Suit & Res Judicata

The discussion in the session began by referring to Section 10, CPC dealing with stay of suit. The object of Section 10 was explained to participants and the judgment *National Institute*

of Mental Health v. C. Parameshwara, (2005) 2 SCC 256 was referred. The essential conditions for the application of Section 10 were discussed and judgments *Aspi Jal v. Khushroo Rustom Dadyburjor*, (2013) 4 SCC 333 and *Pukhraj D. Jain v. G. Gopalakrishna*, (2004) 7 SCC 251 were referred. Further judgments *Aspi Jal v. Khushroo Rustom Dadyburjor*, (2013) 4 SCC 333 and *National Institute of Mental Health v. C. Parameshwara*, (2005) 2 SCC 256 were also referred. Then the tests to determine the applicability of Section 10 were also discussed. The first test is to check whether the decision in the previously instituted suit would operate as *res judicata* in the subsequently instituted suit and the judgment *National Institute of Mental Health v. C. Parameshwara*, (2005) 2 SCC 256 was referred. The second test is to examine whether, if both suits are decreed, and can the decrees lawfully and logically co-exist and the judgment *Aspi Jal v. Khushroo Rustom Dadyburjor*, (2013) 4 SCC 333 was referred. The third test is to determine whether the plaint in one suit would effectively serve as the written statement in the other and the judgment *Raja Ram Estate v. Niharmoni Law*, 2006 SCC OnLine Cal 240 was referred. Then the landmark judgments on stay of suit were referred including *Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal*, 1961 SCC OnLine SC 17, *National Institute of Mental Health & Neuro Sciences v. C. Parameshwara*, (2005) 2 SCC 256 and *Indian Bank v. Maharashtra State Coop. Marketing Federation Ltd.*, (1998) 5 SCC 69.

The discussion then focussed on *res judicata* and the objectives of *res judicata* were explained. The maxims on which *res judicata* works were discussed. These included *Nemo Debet Bis Vexari Pro Una Et Eadem Causa* i.e. no person should be vexed twice for the same cause, *Interest Reipublicae Ut Sit Finis Litium* i.e. it is in the interest of the State that there should be an end to litigation and *Res Judicata Pro Veritate Accipitur* i.e. a judicial decision must be accepted as true and binding. The judgment *State of Karnataka v. All India Manufacturers Organisation*, (2006) 4 SCC 683 was referred in this regard.

The prerequisites for the application of the principle of *res judicata* were discussed. It was stated that the term "matter in issue" refers to the precise point of law or fact in dispute, and not merely the subject matter or relief. It must relate to a specific legal claim involving identical parties, title, and issue. The subsequent suit must involve the same parties, or those claiming under them, such as legal representatives or assignees. The parties must be litigating in the same legal capacity in both suits. "Same title" refers to legal status or character, not the cause of action or subject matter. The court that decided the former suit must have had jurisdiction to try the subsequent suit. Explanation II to Section 11 clarifies that competency is determined irrespective of the right of appeal. The judgment *Ram Gobinda Dawan & Ors vs Smt. Bhaktabala* (1971) 1 SCC 387 was referred. The expression "heard and finally decided" implies that the court must have exercised its judicial mind and rendered a decision on the matter in issue after following due process of law. A mere dismissal on technical grounds, without adjudication on merits, would not satisfy this requirement.

The discussion then focussed on kinds of res judicata and it included direct res judicata and constructive res judicata. The direct res judicata applies when a matter has been directly and substantially decided by a competent court. The same issue cannot be reopened in any subsequent suit between the same parties. The constructive res judicata applies when a party could have raised a plea in earlier proceedings but failed to do so. That plea is deemed to have been decided and cannot be raised later in subsequent litigation. The situations where the res judicata cannot be applied were explained. It was stated that the principle of res judicata does not apply to petitions for writs of habeas corpus, as personal liberty may be challenged repeatedly. A judgment obtained by fraud or collusion is not conclusive and cannot operate as res judicata. The judgment *Beli Ram & Brothers v. Mohammad Afzal*, 1948 SCC OnLine PC 32 was referred in this regard. Another situation is where the substantial new evidence, not available despite due diligence in the earlier proceeding, may justify reopening the issue. The non-applicability of res judicata in taxation matter was also discussed. The judgments *S.C. Garg vs. State of Uttar Pradesh*, (2025 INSC 493), *Daryao v. State of U.P.*, 1961 SCC OnLine SC 21, *State of U.P. v. Nawab Hussain*, (1977) 2 SCC 806 and *Asgar v. Mohan Varma*, (2020) 16 SCC 230 were also referred.
