Rulings of the Hon'ble
Sri Justice M. Satyanarayana Murthy

USEFUL JUDGMENTS FOR TRIAL JUDGES

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P R E F A C E

The purpose of this work is to make it more convenient and useful for judicial officers and to collect in a small compass, some useful judgments of the **Hon'ble Sri Justice M.Satyanarayana** which are found scattered through the various law-journals and in Internet. *It is strenuous attempt to present some valuable rulings of His Lordship in this tiny book for daily reference on its various facets, for benefit of all judicial officeers.*

This book is useful for enrichment of legal knowledge on civil side.

This book contains only relevant paras of the judgments on each topic and readers are requested to go through full text understand the *ratio-decidendi* laid down in the judgments. For easy reference, citations have been referred to. As some judgments are gathered from using Internet, the case numbers, names of the parties and date of judgment are also noted for easy reference. This book also contains Hon'ble Division Bench judgments wherein His Lordship is one of member of the Division Bench.

With propound sense of regret, I crave the indulgence of the learned readers for the typographical errors that might have crept in the text, notwithstanding the assiduous alertness and vigilance, having been unavoidable in the first attempt of this nature. ***All the while, I am confident that this book is very useful to all judicial officers for daily reference.***

With kind regards,
Y. Srinivasa Rao

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Date of judgment:-20-11-2014

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20. Tadikamalla Venkata Ramana Kishore and .. VERSUS Padarthi Santhakumari and others .

21. P.Saraswathi Devi vs.Andhra Pradesh State Consumer Redressal Commission, Hyderabad and seven others

22. The State of Andhra pradesh rep. by its Principal Secretary, revenue (vigilance.I) department, Secretariat, Hyderabad & anr. Verusu G.L.Ganeswara rao s/o.Markandeyulu, Inspector of Survey,
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Writ petition no.35583 of 2014, date of judgment: 27-03-2015

Pleadings in civil cases

Sham Rao and three others
versus
Mahadevi and nine others
(A.S. No. 487 of 1995), Date of judgment: 23-07-2015

HELD:- 61. In civil cases, pleadings are extremely important for ascertaining the title and possession of the property in question.

62. In order to do justice, it is necessary to direct the parties to give all details of pleadings with particulars. Once the title is prima facie established, it is for the person who is resisting the title holders claim to possession to plead with sufficient particularity on the basis of his claim to

remain in possession and place before the court all such documents as in the ordinary course of human affairs are expected to be there. Only if the pleadings are sufficient, would an issue be struck and the matter sent to trial, where the onus will be on him to prove the averred facts and documents.

> 71. Apart from these pleadings, the court must insist on documentary proof in support of the pleadings. All those documents would be relevant which come into existence after the transfer of title or possession or the encumbrance as is claimed. While dealing with the civil suits, at the threshold, the court must carefully and critically examine the pleadings and documents.

72. The Court will examine the pleadings for specificity as also the supporting material for sufficiency and then pass appropriate orders.

Without seeking relief of recovery of possession, plaintiffs are not entitled to claim relief of declaration

Boddapalli Anjaiah S/O.Yellaiah

vs

Shaik Sayeed S/O.Shaik Mohammad (2015)

APPEAL SUIT NOs.1490 of 1996 andm batch

Date of judgment:- 19-08-2015

Cases referred:- 1. 1987 (2) ALT 46 (NRC); 2. AIR 2004 AP 167

HELD:- Para 57. One of the contentions raised before the trial Court is that since defendant Nos.13 to 24 are in possession and enjoyment without seeking relief of recovery of possession, plaintiffs are not entitled to claim relief of declaration as discussed earlier in the earlier paras, defendants miserably failed to establish their possession over the property and on the other hand this Court while accepting possession of defendant No.1 directed defendants not to dispossess plaintiff No.1 from possession

of the property under Ex.A.1 after issuing notice, plaintiffs filed the present suit and undisputedly defendant Nos.5 to 11 and plaintiff Nos.1 and 2 were compromised as per orders in I.A.No.1930 of 1992. Defendants also failed to establish that they are continuing in possession of the property, consequently the contention of the defendants that plaintiff Nos.3 to 6 are not entitled to claim relief of declaration of title, without seeking relief of recovery of possession is without any substance and this contention would stand to any legal scrutiny by this Court.

Suit for declaration

2016 (3) ALT 92

G.Lalitha Bai and others vs. G.R.Jaya Rao and other

Under Section 35 of the Specific Relief Act,1963, a declaratory decree is not only binding on the parties to the suit but also the persons claiming through them as representatives in interest even though they were not parties to the suit.

ADMISSIONS:-

In para 29, it was observed as follows:

> "Admission is of two types; one is judicial admission and the other is evidentiary admission. Admissions though not conclusive proof, they estopped the person who made such admissions or representatives in interest in view of Section 31 of the Act of 1872. At the same time, judicial admissions need not be proved by adducing any evidence in view of Section 58 of the Act of 1872. Whether an admission is

> evidentiary or judicial, the party who made such admission if explained under what circumstances he made such admission, the admission can be ignored."

ESTOPPEL:

In this case, it was obsrved as follows:

" … Nagubai Ammal and others (AIR 1956 SC 593), wherein the Supreme Court, in para No. 18 of the judgment, discussing about evidentiary value of an admission, held as follows:

> "An admission is not conclusive as to the truth of the matters started therein. It is only a piece of evidence, the weight to be attached to which must depend on the circumstances under which it is made. It can be shown to be erroneous or untrue, so long as the person to whom it was made has not acted upon it to his detriment, when it might become conclusive by way of estoppel.

It was further held as follows:

"It is no doubt true that what a party himself admits to be true may reasonably be presumed to be so. But before this rule can be invoked, it must be shown that there is a clear and unambiguous statement by the opponent such as will be conclusive unless explained. A statement by a party that certain proceedings were fraudulent and not collusive in character would not, be sufficient, without more, to sustain a finding that the proceedings were collusive."

PRESEUMPTION AS TO OWNERSHIP:

Presumption as to ownership of property is in favour of the person who purchased it till it is rebutted by adducing any satisfactory evidence.

In this case, it was observed as follows:

In Valliammal (d) by L.Rs. ((2004) 7 SCC 233), the Apex Court is of the clear view that presumption as to ownership of the property is in favour of the person purchased till it is rebutted. In the present case, the general presumption of ownership of the purchaser was not rebutted by adducing any satisfactory evidence.

TESTS FOR DETERMINING BENAMI NATURE:

The source from where the purchase money came and the motive why the property was purchased benami are the most important tests for determining whether the sale standing in the name of one person is in reality for the benefit of another. Intention of the parties is the essence of benami transaction.

"In Ramarao Vs. Srikrishna Murthi , this Court laid down four tests to determine the nature of a transaction, they are as follows:

"1. Motive for taking the sale deed in the name of another.

2. Custody of the sale deed and connected vouchers.

3. Passing of consideration; and

4. Possession of the property."

2015 (1) L.S 384
K.Satyamma (died) per L.R Vs. Smt. Bhoodevi

General principle is that in a suit for declaration of title, the plaintiff has to establish his or her case, independently, and cannot be allowed to take advantage of weakness in case of adversary.

Appointment of advocate commissioner in suit – Pre-trial decree

2016 (3) ALT 132
Sarala Jain and others vs. Sangu Ganadhar and others

Cases referred:
1.2013 (3) ALD 64 (SC)
2.2011 (2) ALD 472
3.2010 (5) ALD 83
4.2009 (5) ALD 459
5.2006 (1) ALD 372
6.2004 (2) ALD 426
7.KERLT-1966-0-86
8.MANU/MH/0871/2003
9.R.S.A.No. 258/2004 (INJ)
10 (1987) 4 SCC 71
11(2003) 6 SCC 641
12.1999 (5) ALD 113
13.(2008) 8 SCC 671
14.AIR 1990 CALCUTTA 26
15.AIR 1983 AP 214
16.AIR 1975 SC 1810
17.AIR 1967 SC 436

When the plaintiff sought for appointment of Advocate Commissioner to survey schedule property with the help of Surveyor and fix boundary stones to his land, appointment of Advocate Commissioner by trial court for demarcating schedule property and to fix boundary stones to the land of respondents amounts to granting pre-trial decree.

APPOINTMENT OF ADVOCATE COMMISSIONER:

To appoint an advocate commissioner, Court has to keep in mind the following:

(1) Total pleadings of both parties;
(2) Relief claimed in suit;
(3) Appointment of advocate commissioner for specific purpose at interlocutory stage shall not amount to grant pre-trial decree; and

(4) Necessity to appoint advocate commissioner to decide real controversy between parties.

PRE – TRIAL DECREE:-

If the suit is filed for fixing boundaries by the Court, then appointment of advocate commissioner would serve purpose to decide the real controversy between the parties but it is not even the case of the petitioner that schedule property is not demarcated. In such case, appointment of advocate commissioner is wholly unnecessary and it is beyond the scope of the suit. The trial Court did not look into the reliefs claimed in the suit; plea of the petitioner regarding survey of land and fixation of boundary stones; and the purpose for which commissioner is sought to be appointed. In those circumstances, the order passed by the trial Court cannot be sustained as it amounts to granting pre-trial decree in view of the law declared in Mohd. Mehtab Khan (1st supra) and it is, therefore, liable to be set aside. Accordingly, the point is answered in favour of the respondents and against the petitioner. .

1. Whether an appeal against an ad interim injunction is maintainable under Order 43 rule 1(r) c.p.c?

2. No injunction shall be granted to interdict the election when once the election process is started.

A.P. Arya Vysya Mahasabha rep.by its President
VS
Mutyapu Sudershan and others.

CIVIL REVISION PETITION No.1961 OF 2015
Date of judgment:- 16-06-2015

1. **Whether an appeal against an ad interim injunction is maintainable under Order 43 Rule 1(r) C.P.C**?

HELD:- From the discussions made hereinbefore, there is no manner of doubt that no appeal is maintainable in this Court under Order 43 Rule 1 of C.P.C. and there cannot be any doubt that a revision petition shall be maintainable.

The same is referred in later judgment of single judge of this Court in judgment cited (2003 (3) ALD 153) in support of his contention that the revision is maintainable under Article 227 of Constitution, when the order passed by the trial Court is illegal exercise of discretion.

> Article 227 of Constitution of India conferred power of superintendence over all the Courts and tribunals throughout the territories in relation to which it exercises jurisdiction. Under Article 227of Constitution the High Court can exercise discretion when inferior courts assumes jurisdiction erroneously in excess of power, when refuses to exercises jurisdiction, when found an error of law apparent on the face of record, when violated principles of natural justice, when inferior Court exercised its authority arbitrarily or capriciously, when arrived any finding perversely or based on no material or a patent or flagrant error in procedure, when order resulting in manifest injustice.

In the instant case, the order of the trial Court granting ex parte ad interim injunction during pendency of the petition, however limiting the same to a limited period is illegal exercise of discretion by the trial Court in flagrant violation of settled principles of law in catena of judgments. Therefore, this

Court can exercise jurisdiction under Article 226 of Constitution and since law laid down by the Division Bench of this Court in judgment cited (AIR 2004 Andhra Pradesh 310) has no direct application to the facts of the present case. On the other hand, in view of full bench Judgment of this Court, the revision under Article 227 of Constitution is maintainable.

2. No injunction shall be granted to interdict the election when once the election process is started.

OBSERVED ;

"However in the judgment of Maria Margarida Sequeria Fernades and Others v.Erasmo Jack de Sequeria (dead) through L.Rs , the Apex Court in para No.86 held as follows:

> Grant or refusal of an injunction in a civil suit is the most important stage in the civil trial. Due care, caution, diligence and attention must be bestowed by the judicial officers and judges while granting or refusing injunction. In most cases, the fate of the case is decided by grant or refusal of an injunction. Experience has shown that once an injunction is granted, getting it vacated would become a nightmare for the Defendant. In order to grant or refuse injunction, the judicial officer or the judge must carefully examine the entire pleadings and documents with utmost care and seriousness."

HELD:- The safe and better course is to give short notice on injunction application and pass an appropriate order after hearing both the sides. In case of grave urgency, if it becomes imperative to grant an exparte ad interim injunction, it should be granted for a specified period, such as, for two weeks. In those cases, the Plaintiff will have no inherent interest in delaying disposal of injunction application after obtaining an exparte ad interim injunction. The Court in order to avoid abuse process of law may

also record in the injunction order that if the suit is eventually dismissed, the plaintiff undertakes to pay restitution, actual or realistic costs. While passing the order, the Court must take into consideration the pragmatic realities and pass proper order for mesne profits. The Court must make serious endeavour to ensure that even-handed justice is given to both the parties.

If the law as declared by Apex Court is applied to the present case granting ad-interim injunction till 15-06-2015 is totally inconsonance with the principle laid down in the above judgment, by the Vacation Civil Judge, Nizamabad.

On overall consideration of entire material available on record with reference to law declared by Apex Court and this Court, it is clear that no injunction can be granted to interdict the election once the election process is started.

1. No judicial order be passed based on memo.

2. Whether a document is admitted and marked as exhibit, it cannot be questioned?

2016 (2) ALT 557
Syed Yousuf Ali vs. Mohd. Yousuf and others

Cases referred
1.2004(2)ALD) 329
2 2010(1) ALT 448
3 2010(6)ALD 307
4 (2014) 1 SCC 618
5 2012 (6) ALT 271
6 2004(3) ALD 187
7 2010 Law Suit (AP) 445
8 2006(3) ALD 838
9 1996 Law Suit (AP) 447
10 2002 Law Suit 832
11AIR 2003 SC 4548
12AIR 1978 SC 1393
132012(6) ALT 271
14AIR 1961 SC 1655
15 AIR 2010 SC 16

1. No judicial order be passed based on memo.

HELD:-

Para 12. The first and foremost contention of the learned counsel for the respondents is that no judicial order be passed based on memo. Filing of memo is not contemplated either under Code of Civil Procedure or under Civil Rules of Practice. **The purpose of receiving memos by the Courts is only to receive certain intimation pertaining to the lis pending before it. Since filing of memo is not contemplated under Code of Civil Procedure or Civil Rules of Practice, no judicial order can be passed on memo.** But the trial Court passed a judicial order based on memo which is contrary to the established practice. Therefore, the order passed by the trail Court basing on memo dated 11.09.2015 filed before the trial Court is erroneous and it is an illegal exercise of jurisdiction which is conferred on it.

Pare 13. In view of my discussion in the earlier para, I am of the clear view that no judicial order can be passed on memo. Accordingly, Point No.1 is decided in favour of the respondents and against the petitioner.

2. Whether a document is admitted and marked as exhibit, it cannot be questioned?

Stamp duty on possessory contract of sale:-

Observed as follows:-

Para 23. In M.Narasimhulus case (9th supra) single Judge of this Court held that in view of bar underSection 36 once the document was admitted in evidence, the same cannot be questioned, at subsequent stages, but in view of law declared by Apex Court, the objection can be entertained to determine judicially at any subsequent stage.

Para 24. According to Order 13 Rule 3 CPC the Court may at any stage of the suit, reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds for such rejection. Order 13 Rule 4 CPC prescribes the endorsement to be made on the document when a document is admitted in evidence. According to it, there shall be an endorsement on every document which has been admitted in evidence containing number and title of the suit, the name of the person producing the document, the date on which it was produced and a statement of its having been so admitted and the endorsement shall be signed or initialled by the Judge.

Para 25. Here there is an endorsement on the reverse of possessory contract of sale consisting the details under Order 13 Rule 4(1)(A) to (C), 1(D) is absent. Therefore, the document cannot be said to be admitted after judicial determination, in such a case, exercising power under Order 13 Rule 3 CPC, the Court can reject any document which it considers irrelevant or in-admissible, recording reasons.

Further in para 33, it was observed as follows:

"33. By exercising power under Order XIII Rule 3 of CPC, possessory contract of sale dated 11.09.2015 which is marked as Ex.A1 is rejected as it is hit by explanation to S.No.47-A of schedule 1-A of Indian Stamp Act and inadmissible in evidence, since the document is not impounded or stamp duty and penalty is not paid.".

Service of notice: Presumption

2016 (3) ALT 363 (DB)
M.K. Tirupathi Rao
versus
Deputy General Manager, Syndicate Bank, Industrial Relations Section, Zonal Office, Hyderabad.

Under section 14 of Indian Post Office Act,1898 and under section 16 of Evidence Act,1872, when a registered letter is sent to a person and when it is returned by Postman with the endorsement 'absent', the endorsement made on the registered cover is a prima facie evidence of taking the said letter to the address of the person noted on the registered cover and that the noting thereon is prima facie proof of absenece of addressee. (See :- para 32 and 41). Presumption as to service of registered letter- in view of provisions of section 114 Illustration (f) of Evidence Act,1872 and Section27 of General Cluases Act, 1897, there is a presumption that the addressee has received the letter sent by registered post.

If the defect in election petition is curable, an opportunity shall be given to cure the defect.

2016 (3) ALT 399
M.A. Fatheem Uddin vs. Shaik Nayeem and another

CITATIONS REFERRED:

1. AIR 1986 Supreme Court 1253(1)
2. 1997(5) ALD 330
3. 2010 Law Suit (P&H) 5028
4. AIR 1996 Supreme Court 796
5. AIR 1958 Supreme Court 687
6. (2003) 1 Supreme Court Cases 289
7. 2014 (4) ALD 585
8. 2004 (3) ALT 788 (D.B)
9. AIR 1972 Andhra Pradesh 120 (V.59 C 24)
10. 2015 (4) ALT 40
11. AIR 1972 SC 515
12. AIR 1987 SC 1926
13. AIR 2002 SC 1041
14. 1982 13 SCR 318
15. (1992) 1 LLJ 281 SC
16. AIR 1963 Cal 218
17. AIR 1969 Bombay 177
18. AIR 2013 SC1549
19. (2001) 4 SCC 428
20. (2004) 11 SCC 196
21. (2008) 11 SCC 740
22. AIR 2012 SC 2638

23. (1999) 2 SCC 217
24. AIR 1969 SC 677
25. AIR 1976 SC 744
26. 1978 WLN 161

HELD:-

A close analysis of legal position in plethora of decisions referred above makes it clear that if the defect in election petition is curable, an opportunity shall be given to cure defect, if failed to cure, the petition shall be dismissed as per Order VII Rule 11 or strike out the pleadings as per Order VI Rule 16 of C.P.C; the defect of non joinder of other candidate is incurable defect, even otherwise the petition filed by the 1st respondent/Election Petitioner under Order I Rule 10 of C.P.C was dismissed by the tribunal and the same was confirmed by this Court in C.R.P No. 5024 of 2014 dated 30-12-2014 and attained finality. Therefore by applying law declared by various Courts, referred above, this Court has no option except to reject the contention of 1st respondent/Election Petitioner, holding that the election petition is not maintainable for non-compliance with Section 72 read with 74 (b) of the Act.

Reservation in promotions of members of schedule castes and schedule tribes

2016 (2) ALT 367 (DB)
Union of India rep., by the Secretary (Establishment),

Ministry of Railways,Railway Board, New Delhi. And others.
vs. B. Lakxmi Narayana,

Referred Citations:

1) (2006 (8) SCC 212
2) (2011) 1 SCC 467
3) (2012 (7) SCC 1
4) (2011) 12 SCC 695: (2011) 12 SCC 695
5) (1987)2 SCC 555
6) (2008) 17 SCC 491
7) (2012) 5 SCC 370
8) 167 L Ed 2d 929 : 127 S Ct 1955
9) (2013) 5 SCC 427)
10) AIR 1953 SC 235
11) (2010) 4 SCC 518
12) (2011) 11 SCC 786
13) (2010) 2 SCC 733
14) (2010) 9 SCC 157
15) 1993 Suppl (1) SCC 594
16) (1999) 7 SCC 303
17) (2001) 8 SCC 133
18) (2006) 6 SCC 666
19) (2009) 14 SCC 406
20) (2007) 5 SCC 447
21) (2012) 3 SCC 442
22) (2008) 9 SCC 242
23) (1975) 4 SCC 285
24) (1976) 2 SCC 895
25) (2000) 2 SCC 48
26) (2001) 6 SCC 637
27) (2007) 9 SCC 274
28) (2008) 1 SCC 210
29) (2009) 1 SCC 168
30) (2010) 12 SCC 471
31) (1974) 1 SCC 317
32) (1969) 1 SCC 110
33) 1995 Supl. (3) SCC 231
34) (1996) 6 SCC 267
35) (1995) 5 SCC 680
36) (2013) 12 SCC 489
37) (2014) 1 SCC 144

38) (2011) 6 SCC 570
39) (1984) 4 SCC 251
40) (2009) 1 SCC 768
41) (1974) 4 SCC 335
42) (1983) 3 SCC 601
43) AIR 1993 SC 477
44) (1995) 2 SCC 745
45) (1999) 7 SCC 209
46) (2012) 7 SCC 41
47) (2008) 6 SCC 1
48) (Judgment in Civil Appeal No.209 of 2015 dated 09.01.2015)
49) (2015) 1 SCC 347
50) 1991 Supp (2) SCC 497

HELD:

As the Tribunal has merely followed the law laid down by the Supreme Court in M. Nagaraj1, in allowing the O.As, the orders of the Tribunal, to the extent it declared the action of the Railways in providing reservation in promotion without fulfilling the parameters laid down in M. Nagaraj1 to be illegal, do not necessitate interference. **The fact however remains that, despite the amendment to the Constitution by insertion of Articles 16(4-A) and (4-B) nearly fourteen years ago, the members of the Scheduled Castes and the Scheduled Tribes still face uncertainty on whether or not they are entitled for reservation in promotion, and to be extended the benefit of consequential seniority.** This predicament, they find themselves in, is for no fault of theirs but is on account of the failure of the Union of India to gather data, and form its opinion, on the parameters laid down by the Supreme Court in M. Nagaraj1. The prevailing uncertainty can only be put an end to if the petitioner-Railway is directed to undertake the aforesaid exercise, and take a decision, within a specified time frame.

The Writ Petitions are, accordingly, disposed of directing the petitioner-Railways to undertake and complete the exercise of gathering data, and forming its opinion on the parameters laid down by the Supreme Court in M. Nagaraj1, with utmost expedition and, in any event, not later than six months from the date of receipt of a copy of this Order. As this stalemate cannot be permitted to effect railway administration, and the services it renders to the public at large, it is open to the petitioner-Railways to make in-charge arrangements in the interregnum, making it clear to those, who are given charge of the posts, that this arrangement is temporary and would continue only till the exercise of formation of opinion, on the need to provide reservation in promotion, is completed. The miscellaneous petitions pending, if any, shall also stand disposed of. No costs.

Admission in written statement
Secondary evidence
Termination of contract

2016 (2) ALT 14 (DB)

Tamilnadu Mercentile Bank Ltd., rep. By its Branch Manager

Versus

M/s Sunita Industries, rep., its Propretor, Laxminarayana Goel (died) per Lrs and others

Held:- Admission in written statement:-

Admission made in written statement are judicial admissions. They are conclusive in nature in view of Section 58 of Evidence Act and therefore need noo further proof.

Secondary evidence:-

> When, in the absence of any objection by otherside, photostat copies of documents are received and admitted in evidence assigning exhibit number by Court, it amounts to applying mind by Court and impliedly permitting thparty to adduce secondary evidence even though no specific order is passed permitting to adduce secondary evidence.

Termination of contract:-

Contract of insurance is contract of indemnity as defined under section 124 of Contract Act and when once contract is terminated, liability under the contract ceases to exist.

Natural family property
Composite family
Family custom
Adverse possession

2016 (1) ALT 394
Angalakurthy Venkata Narayanamma
vs.
Molakapalli Lakshmamma and others

Natural family property:

A person adopted by another family, ceases to be manner of his natural family, and unless any property is already vested prior to his

adoption either in partition or otherwise, he cannot claim a share in the natural family property.

Composite family:-

In order to constitute a composite family, there must be a custom or an agreement between two families.

Family custom:-

A family custom is a category of special custom, and it should have the attributes of antiquity, certainty and uniformity.

Adverse possession:-

Payment of land revenue would not constitute adverse possession. Entries in revenue records are only for fiscal purpose.

Appreciation of documentary evidence in civil case:-

P.Madhusudhan Rao
vs
Lt.Col.Ravi Manan

THE HONBLE SRI JUSTICE RAMESH RANGANATHAN AND HONBLE SRI JUSTICE M.SATYANARAYANA MURTHY, in **P.Madhusudhan Rao vs Lt.Col.Ravi Manan,** CIVIL REVISION PETITION NO.4515 OF 2014, Date of judgment on12-03-2015, clearly illustrated the rules for interpretation of a document with an aid of rulings of the Hon'ble Supreme Court of India.

The Supreme Court in **Delhi Development of Authority Vs. Durga Chand, 1973 AIR 2609** has also noticed Odgers Rules and quoted them with approval and as the observation of the Supreme Court have the force of law of the land, it may be taken Odgers Rules (known as golden rules of interpretation) have been judicially recognized and may be adopted as Rules for interpretation of the documents in India. These Rules are listed hereunder:

1. The meaning of the document or of a particular part of it is therefore to be sought for in the document itself.

2. The intention may prevail over the words used

3. words are to be taken in their literal meaning

4. literal meaning depends on the circumstances of the parties

5. When is extrinsic evidence admissible to translate the language?

6. Technical legal terms will have their legal meaning.

7. Therefore the deed is to be construed as a whole. Apart from the said seven rules listed by Odger, it would be convenient to list the following rules for the sake of convenience are called additional rules and given number in continuation:

8. Same words to be given the same meaning in the same contract.

9. Harmonious construction must be placed on the contract as far as possible. However, in case of conflict between earlier or later clauses in a contract, later clauses are to be preferred to the earlier; while in a will, earlier clause is to be preferred to the later.

10. Contra Proferendum Rule-If two interpretations are possible, the one favourable to the party who has drafted the contract and the other against him, the interpretation against that party has to be preferred.

11. If two interpretation of a contract are possible the one which helps to make the contract operative to be preferred to the other

which tends to make it inoperative

12. In case of conflict between printed clauses and typed clauses, type clauses are to be preferred. Similarly, in conflict between printed and hand written clauses, hand written clauses are to be preferred and in the event of conflict between typed and hand written clauses, the hand written calluses are to be preferred

13. the special will exclude the general

14. Rule of expression unius est exclusion alterius

15. Rule of noscitus a sociss

16. Ejusdem generic rule will apply both the contract and statute

17. place of Punctuation in interpretation of documents

From the Rules stated above, when the language used in a document is unambiguous conveying clear meaning, the Court has to interpret the document or any condition therein taking into consideration of the literal meaning of the words in the document. When there is ambiguity, the intention of the parties has to be looked into. Ordinarily the parties use apt words to express their intention but often they do not. The cardinal rule again is that, clear and unambiguous words prevail over the intention. But if the words used are not clear or ambiguous, intention will prevail. The most essential thing is to collect the intention of the parties from the expressions they have used in the deed itself. What if, the intention is so collected will not secure with the words used. The answer is the intention prevails. Therefore, if the language used in the document is unambiguous, the words used in the document itself will prevail but not the intention.

Admissibility of document

Sham Rao and three others
versus
Mahadevi and nine others
(A.S. No. 487 of 1995), Date of judgment: 23-07-2015

HELD:- 'A Division Bench of this Court in IVRCL Assents & Holdings Ltd., Hyderabad V. A.P. State Consumer Disputes Redressal Commission, Hyderabad and another , wherein this Court held that admissibility of document can be questioned at any time placing reliance on the earlier judgments of Apex Court reported in R.V.E. Venkatachala Gounder V. Arulmigu Viswesaraswami and V.P. Temple and another , wherein the Apex Court held as under:

Ordinarily an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes:- (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as 'an exhibit', an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any

stage subsequent to the marking of the document as an exhibit. The later proposition is a rule of fair play.

The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the later case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in superior Court.

Preventive detention

2016 (3) ALT 418 (DB),
Angoth Renuka @ Rena
vs.
State of Telangana through its Principal Secretary,Prohibition and Excise Department

Held:-

"To enable the detenu to exercise his right to make an effective representation against his detention, it is imperative that all relevant material, including copies of the bail orders, are furnished to him. The contention that the detenu was aware of the bail order, even if accepted as true, would not justify failure of the detaining authority to furnish these copies to the detenu when he has no access to these documents when he is in preventive custody. Failure to furnish copies of the orders granting bail to the detenu vitiates the order of detention. (Vasanthu Sumalatha, 2016 (1) ALT 738 (DB)). As the detenu has been denied his right to make an effective representation thereby, his continued detention is rendered illegal.

> As the order of detention is liable to be set aside on grounds that the orders granting bail to the detenu were not placed before the detaining authority when he passed the order of detention, and copies of the bail orders were not furnished to the detenu along with the grounds of detention which resulted in the denial of his right to make an effective representation, it is unnecessary for us to examine whether the order of detention should also be set aside for the other grounds urged by Sri B.Vijayasen Reddy, Learned Counsel for the petitioner, for it is well settled that even if one of the grounds or reasons, which led to the subjective satisfaction of the detaining authority, is non-existent or misconceived or irrelevant, the order of detention would be rendered invalid. (Dwarika Prasad Sahu v. State of Bihar ; Shibban Lal Saxena v. State of U.P. ; Ram Manohar Lohia

v. The State of Bihar ; Pushkar Mukherjee v. State of W.B ; and Biram Chand v. State of U.P.). One irrelevant ground is sufficient to vitiate the order as it is not possible to assess, in what manner and to what extent, that irrelevant ground operated on the mind of the detaining authority, and contributed to his satisfaction that it was necessary to detain the detenu in order to prevent him from acting in any manner prejudicial to the maintenance of public order. (Mohd. Yousuf Rather v. State of J&K ; Keshav Talpade v. King- Emperor ; Tarapada De v. State of W.B. ; Shibban Lal Saxena32; Pushkar Mukherjee34; Satya Brata Ghose v. Mr Arif Ali, District Magistrate, Sibasagar, Jorhat ; K. Yadava Reddy v. Commissioner of Police, Andhra Pradesh).

The detention order, and the continued detention of the detenu, stand vitiated for the failure of the detaining authority to consider the orders whereby bail was granted to the detenu, and in not furnishing copies thereof to the detenu along with the grounds of detention respectively. The Writ Petition is allowed, the order of detention is set aside, and the detenu shall be set at liberty forthwith provided he is not required to be kept in custody in connection with any other case/cases registered against him. The miscellaneous petitions pending, if any, shall also stand disposed of. No costs."

Order of preventive detention

2016 (3) ALT 519 (DB)
Samala Dhana Laxmi
vs.
State of Telangana through its Principal Secretary, Revenue Department

HELD:- The personal liberty of an individual is the most precious and prized right guaranteed under Part III of the Constitution. The State has been granted the power to curb such rights under criminal laws, as also under the laws of preventive detention, which should be exercised with due caution, and on proper appreciation of the facts as to whether such acts seek to disturb public order, warranting the issuance of an order of detention. (Munagala Yadamma, 2012 (2) ALT (Crl) 385 = 2012 (2) SCJ 32; Yamman Ongbi Lembi Leima vs. State of Manipur).

> Preventive detention is a serious invasion of personal liberty and such meagre safeguards as the Constitution has provided, against the improper exercise of the power, must be zealously watched and enforced by the Court. (Ram Krishan Bhardwaj v. State of Delhi). Article 22(3)(b) of the Constitution of India, which permits preventive detention, is an exception to Article 21 of the Constitution. An exception cannot, ordinarily, nullify the full force of the main rule, which is the right to liberty guaranteed under Article 21 of the Constitution. An exception can apply only in rare cases. The imposition of what is, in effect, a substantial term of imprisonment by the exercise of executive discretion, without trial, lies uneasily with the ordinary concept of the rule of law. (Rekha3; R. v. Secy. of State for the Home Deptt., ex p Stafford). The law of preventive detention can only be justified by striking the right balance between individual liberty on the one hand and the needs of an orderly society on the other. (Commr. of Police v. C. Anita ; Union of India v. Amrit Lal Manchanda).
>
> **The Constitutional imperatives of Article 22 (5)**, and the dual obligation imposed on the authority making the order of preventive detention, are twofold: (1) The detaining authority must, as soon as may be, i.e. as soon as practicable, after the detention order is passed, communicate to the detenu the grounds on which the order of detention has been made, and (2) the detaining authority must afford the detenu the earliest

opportunity of making the representation against the order of detention, (M. Ahamedkutty;Mangalbhai Motiram Patel v. State of Maharashtra ;Kamleshkumar Ishwardas Patel v. Union of India), i.e., to be furnished with sufficient particulars to enable him to make a representation which, on being considered, may obtain relief to him.

The inclusion of an irrelevant or non-existent ground, among other relevant grounds, is an infringement of the first of the rights and the inclusion of an obscure or vague ground, among other clear and definite grounds, is an infringement of the second of the rights. In either case there is an invasion of the constitutional rights of the detenu which would entitle him to approach the Court for relief. The reason why the inclusion of even a simple irrelevant or obscure ground, among several relevant and clear grounds, is an invasion of the detenus constitutional right is that the Court is precluded from adjudicating upon the sufficiency of the grounds, and it cannot substitute its objective decision for the subjective satisfaction of the detaining authority. (Mohd. Yousuf Rather v. State of J&K)

Suit for partition

Pasagadugula Narayana Rao
versus
Pasagadugula Rama Murty
in A.S.No. 1685 OF 1994, Date of judgment: 21-08-2015

Cases referred:
1. AIR 1973 SC 2609
2. AIR 1959 SC 24
3. (1976) 3 SCC 119
4. AIR 1955 SC 481
5. AIR 1966 SC 1836
6. AIR 1958 AP 147
7. 2008 (5) ALLMR 671
8. AIR 1967 SC 1395
9. AIR 1986 AP 42
10. AIR 1965 AP 177

11. AIR 2012 AP 129
12. AIR 2012 AP 1
13. 1993 (1) A.P.L.J. 79

HELD:- **Settlement:-** Para 20. Section 2 (24) of Indian Stamp Act, 1899 ('the Act of 1899' for brevity), defines the word 'settlement' as follows:

> "Any non-testamentary disposition, in writing, of movable or immovable property [whether by way of declaration of trust or otherwise] made
>
> (a) in consideration of marriage;
>
> (b) for the purposes of distributing property of the settler among his family or those for whom he desires to provide, or for the purpose of providing for some person dependent on him, or
>
> (c) for any religious or charitable purpose; and includes an agreement in writing to make such a disposition and, where any such disposition has not been made in writing, any instrument recording, whether by way of declaration of trust or otherwise, the terms of any such disposition.

Para 21. The definition under Section 2 (b) of the Specific Relief Act, 1963 (for short, 'the Act of 1963'), is exhaustive and wider. According to it, **settlement means** "An instrument (other than a will or codicil as defined by the Indian Succession Act, 1925) whereby the destination or devolution of successive interests in movable or immovable property is disposed of or is agreed to be disposed of."

It is a document by which a property is transferred or agreed to be transferred inter vivos as such it may be either executory or executed and takes effect during the life of the executor. The literal meaning connotes the idea to secure by gift or legal act or to create successive interests in use or income going to one person while the corpus of the property remains another's thus giving possession by legal sanction. Even if the definition of the word settlement either under Section 2(24) of the Act of 1899 or under Section 2 (b) of the Act of 1963 is applied to the present facts of the case, it is difficult to hold that Ex.B4 is family settlement deed or deed of family arrangement. The trial Court, accepting the contention of

the parties, held that Ex.B4 is settlement deed and not required to be registered and, therefore, admitted in evidence. A bare look at the contents of Ex.B4, it is only a release deed which is not defined either under the Act of 1899 or under the Act of 1963. As defined in West's Legal Thesaurus/Dictionary, release means:

"To set free; to discharge a claim that one has against another (the settlement released him from liability). Discharge, relinquish, liberate, clear, unburden, spare, acquit, dissolve, extricate, emancipate, exempt, relieve, disengage, unbind, undo, rescue, franchise, exonerate, redeem, unchain, remit, forgive, vindicate, unite.

To allow something to be communicated (release the information). The giving up of a right, claim, or privilege (she signed the release). Relinquishment, discharge, concession, abandonment, waiver, liberation, dismissal, yielding, deliverance, acquittal, clearance, freedom, emancipation, exculpation, loosing, clearing, salvation, indemnity, pardon, exoneration, disengagement, amnesty, letting go, exemption, redemption, absolution, severance."

Para 22. In Kuppuswami Chettiar Vs. A.S.P.A.Arumugam Chettiar and another , the Supreme Court, while drawing distinction between release deed and gift, held as follows:

> "A release deed can only feed title but cannot transfer title. Renunciation must be in favour of a person, who had already title to the estate, the effect of which is only to enlarge the right. Renunciation does not vest in person a title where it did not exist. Now, it cannot be disputed that a release can be usefully employed as a form of conveyance by a person having some right or interest to another having a limited estate, e.g., by a remainderman to a tenant for life, and the release then operates as an enlargement of the limited estate."

From the principle laid down in the above judgment, releasing right means a person, who had interest in property along with others, giving up his right in the property which enlarges the right of others who had same right in the property. If release in favour of a third person having no right in property, it cannot be said to be release and, at best, it may amount to gift as defined under the Transfer of Property Act, 1882 (for short, 'the Act of 1882').

Dissolution of marriage under Section 13(1)(ia) of the Hindu Marriage Act, 1955. Section 25 of the Hindu Marriage Act, 1955 – for grant of permanent alimony:

K. Narasinga Rao vs K. Neeraja @ Rajini (2015)
C.M.A.No. 1056 OF 2006
Date of judgment:- 01-06-2015

Bench: THE HONBLE SRI JUSTICE RAMESH RANGANATHAN AND THE HONBLE SRI JUSTICE M.SATYANARAYANA MURTHY
Case referred:-
1) AIR 2011 SC 2748 = (2011) 13 SCC 112
2) 1994 (3) ALT 332 (D.B.)
3) (1991) 4 SCC 312
4) (2005) 3 SCC 313
5) (2009) 1 SCC 398
6) (2005) 2 SCC 22
7) AIR 2012 SC 2586
8) (2013) 2 SCC 114
9) AIR 1978 AP 6 = 1977 (2) APLJ 103 (NRC)
10) AIR 2013 SC 2176
11) AIR 2005 SC 3297
12) AIR 1940 Madras 929
13) (1996) 4 SCC 479
14) AIR 1971 P & H 141

Observed:-

Divorce is the termination of matrimonial relationship, and brings to an end the status of a wife as such. On the status of a wife being terminated, by a decree for divorce under the Hindu Marriage Act, the rights of the divorced wife seem to be cribbed, confined and cabined by the provisions of the Hindu Marriage Act and to the rights available under Sections 25 and 27 of the Act. (Kirtikant D. Vadodaria v. State of Gujarat). Section 25 of the Act confers power on the Court to secure payment of permanent alimony, if necessary, by a charge of the immovable property of the respondent. The said provision confers a discretion on the Court, and enables exercise of the power to create a charge on immovable properties if the Court considers it necessary to do so.

HELD:-

It is no doubt true that gratuity, provident fund and other retiral benefits, are not immovable property. Section 100 of the Transfer of Property Act, 1882 (for short, 'the 1882 Act) enables a charge to be created on the immovable property of one person by the act of parties, or by operation of law to secure the payment of money to another. Section 25 of the Act, which enables a charge to be created on immovable property, does not explicitly provide for a charge being created on movable property. Ordinarily conferment of power, by a specific statutory provision, is a pre-requisite for its exercise. However, exceptional circumstances may justify exercise of power in the absence of any statutory prohibition. In Durga Das v. Tara Rani , after noting that the learned single judge had secured the payment of permanent alimony, by a charge on the moveable and immovable properties of the appellant, a Division Bench of the Punjab and Haryana High Court held that such a charge is inadmissible in so far as the provident fund amount of the appellant is concerned, in view of Section 3 of the Provident Fund Act, 1925. The order of the learned single Judge was modified by the Division Bench holding that the charge created, on the movable and immovable property of the appellant, for securing the permanent alimony allowed to the respondent, would not include his provident fund amount. This modification by the Division Bench of the Punjab and Haryana High Court, of the order of the Learned Single Judge, was necessitated because of the statutory prohibition under Section 3 of the Provident Fund Act, 1925. In the absence of any prohibition in Section 25 of the Act, and as held by the Punjab and Haryana High Court in Durga

Das14, we direct that the permanent alimony, payable by the respondent to the petitioner in terms of the order now passed by this Court, shall be secured by way of a charge over the retiral/terminal benefits of the respondent. The charge shall, however, be limited only to such of those retiral benefits for which there is no statutory prohibition for creation of a charge or attachment.

Is the subject contract a grant of a profit a prendre?

The State of Andhra Pradesh rep.,
by the State Representative before STAT..
Versus
M/s.ITC Bhadrachalam Paper Boards Division, Khammam District..Respondent T.R.C.Nos.13 of 2008 and batch

Date of judgment:-20-11-2014

Held:- A profit a prendre is a right to take something off another person's land. It is a right to enter another's land and to take some profit of the soil, or a portion of the soil itself, for the use of the owner of the right. The term "profit a prendre" is used in contra- distinction to the term "profit a rendre" which signified a benefit which has to be rendered by the possessor of the land after it had come into his possession. A profit a prendre is a servitude, and an interest in land, and for this reason any disposition of it must be in writing. A profit a prendre, which gives a right to participate in a portion only of some specified produce of the land, is just as much an interest in the land as a right to take the whole of that produce. (Titaghur Paper Mills Co. Ltd.1; Halsbury's Laws of England, Fourth Edition, Volume 14, paragraphs 240 to 242 at pages 115 to 117).

A profit a prendre is a servitude for it burdens the land, or rather a person's ownership of land, by separating, from the rest, certain portions or fragments of the right of ownership to be enjoyed by persons other than the Owner. 'Servitude' is a wider term and includes both easements and profits a prendre (Titaghur Paper Mills Co. Ltd.1; Halsbury's Laws of England, Fourth Edition, paragraph 43 at pages 21 to 22). An easement is

defined by Section 4 of the Indian Easement Act, 1882 as being "a right which the owner or occupier of certain land possesses, as such for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done in, or upon, or in respect of, certain other land not his own". The distinction between a profit a prendre and an easement is that while an easement only confers a right to utilise the servient tenement in a particular manner, or to prevent the commission of some act on that tenement, a profit a prendre confers a right to take from the servient tenement some part of the soil of that tenement or minerals under it or some part of its natural produce existing upon it. What is taken must be capable of ownership, for otherwise the right amounts to a mere easement. (Titaghur Paper Mills Co. Ltd.1; Halsburys Laws of England, Fourth Edition, paragraph 43 of pages 21 and 22). A profit a prendre is a benefit arising out of land, an interest in the land, and, in view of Section 3(26) of the General Clauses Act, it is immovable property within the meaning of the Transfer of Property Act. (Titaghur Paper Mills Co. Ltd.1; Anand Behera v. State of Orissa).

Divorce and permanent alimony:

K. Narasinga Rao

vs

K. Neeraja @ Rajini (2015).

C.M.A.No. 1056 OF 2006 Date of judgment:- 01-06-2015

Citations:

1) AIR 2011 SC 2748 = (2011) 13 SCC 112
2) 1994 (3) ALT 332 (D.B.)
3) (1991) 4 SCC 312
4) (2005) 3 SCC 313
5) (2009) 1 SCC 398
6) (2005) 2 SCC 22
7) AIR 2012 SC 2586
8) (2013) 2 SCC 114
9) AIR 1978 AP 6 = 1977 (2) APLJ 103 (NRC)
10) AIR 2013 SC 2176
11) AIR 2005 SC 3297
12) AIR 1940 Madras 929
13) (1996) 4 SCC 479
14) AIR 1971 P & H 141

HELD:-

The conduct of the parties to the petition is one of the factors to be taken into consideration by the Court in determining whether or not permanent alimony should be granted. In N. Varalalakshmi Vs. N.V. Hanumantha Rao , a Division Bench of this Court held that, even after a decree of divorce, permanent alimony can be granted to the spouse who has applied for it unless the conduct of the spouse is abominable; and that mere desertion of the spouse would not amount to abominable conduct. It is only if the conduct of the petitioner is abominable, would this Court be required to consider whether, and to what extent, such conduct would have an effect on the grant of permanent alimony. The word abominable means odious,

offensive. The conduct of both the parties before, during the pendency of proceedings, and after filing the present petition is relevant. The material on record does show that the petitioner has made serious allegations against her husband. She filed a criminal case against him for the offence punishable underSection 498-A I.P.C. She also threatened to commit suicide. While her conduct is not beyond reproach, is it such as to disentitle her from being granted permanent alimony?

> Divorce is the termination of matrimonial relationship, and brings to an end the status of a wife as such. On the status of a wife being terminated, by a decree for divorce under the Hindu Marriage Act, the rights of the divorced wife seem to be cribbed, confined and cabined by the provisions of the Hindu Marriage Act and to the rights available under Sections 25 and 27 of the Act. (Kirtikant D. Vadodaria v. State of Gujarat). Section 25 of the Act confers power on the Court to secure payment of permanent alimony, if necessary, by a charge of the immovable property of the respondent. The said provision confers a discretion on the Court, and enables exercise of the power to create a charge on immovable properties if the Court considers it necessary to do so.

1. Whether a single creditor can file a petition under section 9 of the act? And

2. Whether a debtor can be declared as insolvent without proving that the alienation is to defeat and delay the claim of general body of the creditors?

Tadikamalla Venkata Ramana Kishore and ..
VERSUS
Padarthi Santhakumari and others .
CIVIL MISCELLANEOUS SECOND APPEAL No.29 OF 2011
DATE OF JUDGMENT:- 24-06-2015

CASES REFERRED:
1. AIR 1969 AP 318
2. 2011 (4) ALT 171
3. AIR 1977 AP 346
4. AIR 1968 Madras 216
5. AIR 1983 A.P.13
6. AIR 1967 A.P.243

1. Whether a single creditor can file a petition under Section 9 of the Act?

HELD:-15. The trial Court placing reliance in K.D.Nagappa v. Sannakka , held that a single creditor can maintain an insolvency petition under Section 9 of the Act. In the said judgment, the single judge of this Court relied on both Division Bench judgments of this Court and the judgment of Division Bench of Madras High Court.

16. Learned counsel for respondent Nos.2 and 3 (appellants) drawn the attention of this Court to the judgment of this Court in Pydimarri Venkateswarlus case (supra 1), where the single judge of this Court held that unless the creditor proved that the alienation was made to delay and defeat the claims of general body of creditors, the debtor cannot be adjudged as insolvent placing reliance on the judgment in Sanjeeva Reddy v. Ellappa Reddy . Further, this Court, in a recent judgment in Gutta Nirmalas case (supra 2) reiterated the same principle. But in both the judgments, the Division Bench judgment of this Court in G.Ramachanders case (supra 4) was not referred. Similarly, the judgment of the Madras High Court was also not brought to the notice of this Court. Therefore, these two judgments can be said to be per incurium. Hence, the principle laid down in Gutta Nirmalas case (supra 2) is not a precedent, in view of the Division Bench judgment of this Court. If the interpretation of the word

creditor and creditors laid down in the judgment of Division Bench of this Court is accepted, a single creditor can maintain a petition under Section 9 of the Act and even if transfer of property is made to defeat the claim, a single creditor can maintain a petition for the reason that the plural creditors and debts has no significance in insolvency law as held by the Division Bench of this Court. Even according toSection 13 (2) of the General Clauses Act, a singular includes plural and vice versa. For better appreciation of the facts Section 13 of the General Clauses Act, 1897 is extracted hereunder:

13 Gender and number. In all (Central Acts) and Regulations, unless there is anything repugnant in the subject or context, (1) words importing the masculine gender shall be taken to include females; and (2) words in the singular shall include the plural, and vice versa.

> Even if this principle is applied to the present facts of the case, **i have no hesitation to hold that the single creditor can maintain a petition under section 9 of the act though the transfer of property is to defeat the claim of a single creditor.** Hence, i find no substance in the contention of the learned counsel for respondent nos.2 and 3.

2. Whether a debtor can be declared as insolvent without proving that the alienation is to defeat and delay the claim of general body of the creditors?

HELD:-

24. Part-III of the Act from Sections 45 to 50 laid down procedure for proof of debts. Following of such procedure under Sections 45 to 50 of the Act would arise only after adjudging the debtor as insolvent. But here, the relief under Sections 53, 54 of the Act was claimed simultaneously with the relief

of adjudging the debtor as insolvent. The conditions laid down under Section 54-A of the Act, were not complied by the petitioner to get the transaction covered by sale deeds dated 10.03.2004 annulled. A perusal of language used under Sections 53, 54 and 54-A of the Act and the mode of proof of debt under Part-III of the Act (From Sections 45 to 50), it is clear that before moving an insolvency Court to annul transfer of property, a creditor has to satisfy the following conditions:

1) The debtor must be adjudged as insolvent.

2) The creditor should prove his debt by following the procedure contemplated under Part-III of the Act

3) He should have made a request to the Official Receiver for moving insolvency Court for annulling fraudulent transaction and that the Official Receiver refused to move such petition for annulment.

25. In the instant case, by the date of filing the petition, seeking annulment under Section 53 or 54 of the Act, the petitioner was not even adjudged as insolvent. So, the first condition was not satisfied. The petitioner did not approach the Official Receiver and proved his debt as contemplated under Part-III of the Act and complied Section 54-A of the Act. Thereby, the order annulling the sale transaction covered by sale deeds dated 10.03.2004 vide document Nos.2605 of 2004 and 2606 of 2004 passed by the trial Court as confirmed by the appellate Court, is erroneous ex facie and contrary to provisions of Act. Hence, the orders of the trial Court and the appellate Court to the extent of annulling the sale deeds dated 10.03.2004 vide document Nos.2605 of 2004 and 2606 of 2004, is illegal and the same is liable to be set aside. However, the petitioner is at liberty to move an application after compliance of Sections 45 to 50 and 54-Aof the Act to

annul the transfer of immovable property under Sections 53, 54 or 4 of the Act.

26. In view of my foregoing discussion, I find no grounds to interfere with the findings of the trial Court and the appellate Court except to the extent indicated above in para 23 of this judgment.

Through a circular dated 24-06-2010, the State Commission insisted that in any complaint filed under the Consumer Protection Act, 1986 (for short the Act) against any firm or company, the complainant shall file a certificate from the Registrar of Firms or the Registrar of Companies, as the case may be, showing the names of partners or directors as well as the memorandum of association and the articles of association.

P.Saraswathi Devi

vs

Andhra Pradesh State Consumer Redressal Commission, Hyderabad and seven others

WRIT PETITION No. 33214 OF 2010
Date of Judgment:- 31-07-2014

Bench: HONBLE SRI JUSTICE L. NARASIMHA REDDY HONBLE SRI JUSTICE RAMESH RANGANATHAN HONBLE SRI JUSTICE M.SATYANARAYANA MURTHY

Held:-

When such is the simplicity of the procedure stipulated under the Act, there cannot be any justification to place restrictions and burden upon the

complainants through the circular. When a plaintiff in a suit is not placed under obligation to furnish the details as to the composition or registration of a firm or company that is shown as a defendant, it is just unimaginable as to how a complainant in a proceedings under the Act can be required to furnish such details in respect of a firm or company that is shown as a respondent in the complaint. The circular runs contrary to the letter and spirit of the Act which is reflected in Clause 4 of the Statement of Objects and Reasons that has been extracted in the preceding paragraphs.

In Writ Petition No. 2545 of 2011, this very circular was challenged. A Division Bench of this Court which heard the matter did not undertake any discussion with reference to the relevant provision of law. After taking note of the contentions advanced by the petitioner on the one hand and the learned Government Pleader on the other hand, the following observation was made:

The State Commission issued the impugned circular for production of certain certificates specifying the names of the Partners and the Directors in order to ascertain the particulars of the persons to be sued or sued. Therefore, **the State Commission in exercise of its administrative powers issued the same for effective functioning of the internal mechanism.** With regard to the matters pertaining to the Partnership firm or Company, the names of Partners and the Directors are required for the purpose of adjudication. Therefore, we are not inclined to interfere with the impugned circular.

The principles relating to (i) departmental proceedings and proceedings in a criminal case:-

The State of Andhra Pradesh rep. by its Principal Secretary, Revenue (Vigilance.I) Department, Secretariat, Hyderabad & Anr.
VERUSU
G.L.Ganeswara Rao S/o.Markandeyulu, Inspector of Survey Training Academy, Gachibowli, Hyderabad,
WRIT PETITION NO.35583 OF 2014, Date of judgment: 27-03-2015

HELD:-

The principles, applicable in this regard, are:

(i) departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately;

(ii) if the departmental proceedings and the criminal case are based on identical and similar set of facts, and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case;

(iii) whether the nature of a charge in a criminal case is grave, and whether complicated questions of fact and law are involved in that case, will depend upon the nature of the offence, the nature of the case launched against the

employee on the basis of evidence, and material collected against him during investigation or as reflected in the charge sheet;

(iv) the factors, mentioned at (ii) and (iii) above, cannot be considered in isolation to stay the departmental proceedings, but due regard has to be given to the fact that departmental proceedings cannot be unduly delayed;

(v) if the criminal case does not proceed, or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that, if the employee is found not guilty, his honour may be vindicated and, in case he is found guilty, the administration may get rid of him at the earliest. (Mohd. Yousuf Miya,(1996) 6 SCC 417; M.Paul Anthony,(1999) 3 SCC 679; Sarvesh Berry,(2005) 10 SCC 471).