**Orientation Course for Newly Elevated High Court Justices [P-1323]**
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***Rajesh Suman, Assistant Professor***
***Shruti Jane Eusebius, Research Fellow***

The National Judicial Academy (NJA) organized an "Orientation Course for Newly Elevated High Court Justices" on 7th & 8th January, 2023 at NJA, Bhopal. The participants were newly elevated High Court Justices nominated by the respective High Courts. The course facilitated deliberations among participant judges on Judicial Conduct and Behaviour; Precedent: Discordant Notes; Appellate Powers of High Court; Independence of Judiciary; and Interim Orders and Judicial Discretion. The idea was to provide participants a unique platform to share experiences and assimilate best practices. The emphasis was on enabling deliberations through clinical analysis of statutory provisions, case studies and critical consideration of the relevant judgments and minimizing the lecture format.

## Session 1: Judicial Conduct and Behaviour

### Speakers: Justice Atul Sreedharan

The session was commenced by Hon'ble Mr. Justice A.P. Sahi, Director, National Judicial Academy and the objective of the session was explained to the participants. It was opined that judges are pillars of the dispensation of justice and they should ensure that truth always triumph. This can be done by inculcating values among judges which are found in the emblem of the National Judicial Academy which implies that we have to imbibe principles of moral conduct which are necessary in the interest of public at large. It was emphasized that judges should not deviate from the path for which they have taken oath. The judges should perform their duties without fear or favor to ensure faith and confidence of the people. The strengthening of judicious conscious was emphasized to ensure uprightness in behavior. The discussion focused on Indian constitutional framework and it was opined that the separation of power does not mean separation of purpose and all organs of government should work on the enhancement of welfare of public. There should be cordial and correct relationship among judiciary and executive. It was opined that judges should overcome temptations and judicious conscious should be reaffirmed through truth and character. It was highlighted that the truthfulness of conscious should be maintained and it will ensure that the judicious discretion will never falter. The use of measured and calibrated language in the courtroom was emphasized. The judge should be free from the blindness of prejudices.

The speakers then focused on elements of judicial behavior which can inspire the confidence of people in judiciary. The Bangalore Principles of Judicial Conduct 2002 was referred and values mentioned therein were discussed. The value of judicial independence and how to ensure it was explained to the participants. The factors affecting judicial independence were discussed including financial inducement, ambition and public opinion. The limited use of social media was emphasized. It was opined that there should not be any inappropriate association of judges with executives, local administration or police. It was suggested that judges should uphold safeguards to maintain operational institutional independence so as not to influence the district judiciary. The judges of the high court should promote high standards of judicial conduct to reinforce public confidence. The due regard should be given to the case value and not to the face value in courts. The values of impartiality and fairness in proper discharge of judicial office were highlighted. The conduct of the judges should be such that

occasions to recusal should be at minimum. It was suggested that discretion must be exercised in voicing opinion which may not be part of the order. Behaviour and conduct of the judges must inspire public confidence and faith in the integrity of the judiciary. It should enhance the prestige and dignity of courts. It was emphasised that in the age of information technology and virtual hearing, the transparency in courts have increased and courtroom conduct should be exemplary and courteous. The issues relating to relationship between bench and bar were discussed. It was suggested that there should be interaction with the bar to seek input to improve the functioning of courts but no one should get preferential treatment. It was opined that judicial office should never be used for private interest and relatives should not practice in the same court. There should be respect for equality and the life of a judge involves certain self denials and sacrifices. The judges should be concerned with dispensation of justice with fairness and adherence to the principles of natural justice. The judges should practice aloofness but they should not be totally disconnected from everything.

## Session 2: Precedent: Discordant Notes

**Speakers: Mr. Arvind Datar**

The session was commenced by Hon'ble Mr. Justice A.P. Sahi, Director, National Judicial Academy and it was opined that precedent brings certainty in the decision making. Article 141 of the Constitution with regard to the binding value of judgments of the Supreme Court was referred. The Constitution of India is an organic text and changes in society affect the judicial interpretation accordingly. The issue why precedents should be followed was raised and it was suggested that guidance through precedents where the law was not laid correctly is an area which requires attention. It was opined that discussion should focus on issues such as why precedents are important and to what extent, how judges can negotiate with precedents and how judges understand the binding nature of precedents.

The speaker then focussed on the issues related to precedential conflicts in law relating to filing review including what is the effect of dismissal of a SLP *in limine*, what happens when a SLP is dismissed with reasons or without reasons and whether the High Court can still proceed and decide a review if the notice in a SLP is pending or issued. It was opined that according to the Supreme Court, even if the notice is issued in a SLP, a review is not barred. The judgment *Kunhayammed* (2000) 6 SCC 359 and *Khoday Distilleries* (2019) 4 SCC 376 were referred in this regard. Today the law is that if a SLP is dismissed *in limine*, a review can still be filed by a litigant.

Then precedential conflict in issue relating to cases of reopening tax assessment where many High Courts have expressed divergent views was explained. Referring to the judgment *CIT v. V. Jagan Mohan Rao* (1969) 2 SCC 389 the issue that once the notice of reopening is issued then whether the whole tax assessment proceeding should start afresh was discussed. It was highlighted that some High Courts have taken the view that if the whole assessment starts then not only the department can reopen tax assessment, the assessee also can put forth his points. However other High Courts have taken the view that if assessment is reopened then reopening is only for escaped income and one cannot re-agitate everything as an assessee. It was opined that the Supreme Court has held that the assessee officer has a duty to levy the tax on the escaped income and when he is reopening the assessment then he is only dealing with the escaped income. If there are 10 issues and on 08 issues everything is closed, in reopening the

assessee cannot argue on 08 closed issues. When the whole assessment proceeding opens then that does not mean that there is fresh proceeding.

The discussion then focussed on the concept of *ratio decidendi* and *obiter dicta*. It was opined that the literal meaning of the *ratio decidendi* is reason for deciding. It was stated that whatever reasoning is necessary to come to the conclusion and to settle the controversy is *ratio decidendi* and the reasoning which is not necessary to come to the conclusion is *obiter*. Referring to Article 141 of the Constitution it was opined that the law declared is the *ratio decidendi* of the judgment and it is binding. The obiter is not the law declared by the Supreme Court and it is not binding. It was suggested that judges should provide conclusions at the end of their judgement.

The structure of a judgment was discussed and it was suggested that first the facts, then position of both sides, then issue and then there should be reasons for deciding issues. Referring to the judgment *CIT v. Sun Engineering* (1992) 4 SCC 363 it was opined that one cannot pick out a sentence or a paragraph out of context from a judgment and treat it as the *ratio decidendi*. Finding *ratio decidendi* in cases having multiple judgements was discussed. The LCM doctrine to ascertain the *ratio decidendi* from multiple judgements was discussed. The judgment *Marks v. United States* 430 US 188 (1977) was referred in this regard.

Then the concept of *per incuriam* was explained. It was opined that *per incuriam* implies that a case has been decided in ignorance of a binding precedent or a statutory provision by a high court or the Supreme Court. *Per incuriam* is an exception to the law of precedent and doctrine of stare decisis. The judgment *A.R. Antulay v. R.S. Nayak* (1988) 2 SCC 602 was referred in this regard.

Then the precedential value of the minority judgment was discussed. It was opined that the minority opinion on a particular issue can be treated as a precedent if the majority has not expressed any view on that issue. The judgments *Sudha Tiwari v. Union of India* 2011 (2) ADJ 819: 2011 (87) ALR 374, *Mahendra Bhawanji Thakar v. S.P. Pande* AIR 1964 Bom 170: 56 ITR 522, *V Padmanabha Ravi Varma Raja v. Deputy Tahsildar* AIR 1963 Ker 155 and *Narinder Batra v. Union of India* (2009) ILR 4 Delhi 280 were referred in this regard. The concept of *sub silentio* was explained and it was opined that a judgment is rendered *sub silentio* to an issue when that issue in the judgment remain unanswered.

## Session 3: Appellate Powers of High Court

**Speakers: Justice C.V. Karthikeyan & Mr. N.L. Rajah**

The session was commenced by Hon'ble Mr. Justice A.P. Sahi, Director, National Judicial Academy and the relevance of the session to the newly elevated judges was explained. It was stated that areas concerning Sections 96, 100, 115 of the Code of Civil Procedure, 1908 [CPC], first appeal, second appeal and revision, issue relating to framing of substantial question of law and power of the High Court at the appellate side require deliberation to have an understanding of the appellate powers of the High Court. The massive backlog in the writ jurisdiction has overcrowded High Courts and litigation governed by the Civil Procedure Code is not given due attention. Further the issue of pendency of civil cases throughout different High Courts also require deliberation.

The speakers then addressed issues regarding appellate powers of the High Court and opined that order in the revision petition and judgments in first appeal and second appeal by a high court have immense value and will be considered as law for that particular state. The

observations of the High Court in appellate matter will be followed by the district judiciary and therefore responsibility of the High Court in deciding the matter is immense.

It was stated that the first appeal which is called as appeal suit is an extension of the original suit and all facts and laws are required to be re-examined by the High Court. It was stated that a trial court frames issues under Order 14, CPC on a fact state and that facts being disputed but the first appellate court i.e. High Court frames points for consideration under Order 41 Rule 31, CPC. During admission of the second appeal, the High Court should determine whether there is a substantial question of law.

It was suggested that at the first hearing date of the first appeal the High Court can dismiss the first appeal as not having any substance and it can also refuse to admit the second appeal for not having substantial question of law in order to check the pendency of the civil cases in High Court. It was stated that according to the Supreme Court if an aggrieved person was not a party to the original suit he can still file a first appeal after getting leave from the court.

Then issues relating to cross appeal and condoning delay were discussed. It was stated that a cross appeal should not be on a decree of a trial court and a cross appeal can only be on a finding of the trial court which is adverse to the respondent. If a cross appeal is filed under Order 41 Rule 22, CPC challenging a finding and the respondent to whom a notice has been issued files a cross appeal within 30 days then that 30 days are expandable in nature if he can file an application to condone. Section 5 of the Limitation Act can also be invoked in such situation.

Then the issue of remand of appeals particularly with respect to first appeals was discussed. When it is argued before the court that though issues have been framed by the trial court but all issues were not examined then the matter can be remanded to examine those particular issues. When the findings on issues are not properly given, then the whole case can be remanded by the High Court. Then the issue relating to filing of additional evidence under Order 41 Rule 27, CPC was discussed. The document must be admissible, relevant and genuine document. The difficulties in deciding such orders were discussed. Then exercise of power under Order 41 Rule 33, CPC was discussed where discretion is given to a first appellate court judge to mould the relief. Then the issue related to stay of a decree by an appellate court under Order 41 Rule 5 was discussed and the judgment *Pam Developments (P) Ltd. v. State of W.B.*, (2019) 8 SCC 112 was referred. It was stated that under Order 41 Rule 11, CPC where even though the first appeal is a continuation of the re-examination of facts and the laws on those facts, still the appellate court can dismiss the appeal at the preliminary stage itself.

The Order 41 Rule 16, CPC dealing with the hearing of the appeal and rehearing and Order 41 Rule 22, CPC dealing with cross objections were discussed. It was stated that there is a subtle difference between the necessity to file a first appeal or whether a cross objection can be sufficient. The judgement of the Calcutta High Court in *Jadunath Basak v. Mritunjoy Sett,* AIR 1986 Cal 416 was referred where it was held that in an appeal filed by the defendant, the plaintiff cannot challenge that part of the decree which granted conditional injunction without filing the cross-objection.

The relief of remanding a case in the first appeal under Order 41 Rule 23, Order 41 Rule 23 A and Order 41 Rule 25 of the CPC was discussed and the circumstances under which a case should be remanded were highlighted. The position of law for admitting additional evidence under Order 41 Rule 27, CPC was discussed and the judgment *K. Venkataramaiah v. A. Seethaama Reddy,* AIR 1963 SC 1526 was referred. The area of revision was discussed and it was stated that in the revision the High Court has to examine that whether the jurisdiction has

been properly exercised by the trial court or not. It was suggested that the revision should be decided quickly otherwise the whole trial will be delayed in the trial court.

## Session 4: Independence of Judiciary

**Speakers: Justice Atul Sreedharan & Mr. Shekhar Naphade**

In the fourth session on ***Independence of Judiciary,*** the speaker traversed the journey of the Supreme Court of India from independence till the present day; to highlight the summits and shallows of constitutional interpretation by the Supreme Court. The speaker elucidated the concept of judicial independence and its necessity. It was stated that independence of judiciary indicates that the judiciary is not under the influence of the executive and legislature and is free from pressures exerted by governmental and private agencies. Further, independence was stated to mean that judges decide cases on their own understanding without the influences of external sources. In this context, the influence of media on the judiciary was dwelt upon. It was stated that it is difficult for judges to insulate themselves from media influence and pressure. Judges need to be conscious of the indirect influence of media i.e. they may not be influenced consciously but it comes into your being without noticing. Independence was also stated to mean that judges are free to apply the law to the facts uninfluenced by external pressures.

It was stated that history reveals that the judiciary operates as the conscience of the society. However, qualitative differences do exist in the performance of this role. The judiciary plays a vital role in the maintenance of rule of law and in stabilizing society. It was stated that India as a multi-cultural, multi-lingual, multi-religious and multi-political society adheres to the rule of law due to the existence of an independent judiciary. It is therefore an axiomatic proposition that independence is necessary for stable societal order. A distinction was drawn between judicial independence and judicial activism and reference was made to the Sabarimala case in this context.

It was stated that the issue of judicial independence has arisen from time to time, and that whenever there is a strong political executive in power it invariably has led to a conflict with the judiciary. This conflict is due to the overlap in functions of the judiciary and executive. The discussion threw light on instances when the issue of judicial independence arose and instances where the judiciary stood at cross roads. The issue focused on in the course of the discussion was 'whether a strong political executive impacts the independence of the judiciary?' The judgments in *AK Gopalan v. State of Madras,* AIR 1950 SC 27; *Shankari Prasad Deo v. Union of India,* AIR 1951 SC 458; *Sajjan Singh v. State of Rajasthan,* AIR 1965 SC 845; *Golak Nath v. State of Punjab,* AIR 1967 SC 1643; *Rustom Cavasjee Cooper v. Union of India,* AIR 1970 SC 564; *Kesavananda Bharti v. State of Kerala,* AIR 1973 SC 1461; *State of UP v. Raj Narain* 1975 SCR (3) 333); *Indira Nehru Gandhi v. Raj Narain*, (1975) 2 SCC 159; *ADM Jabalpur v. Shivakant Shukla,* AIR 1976 SC 1207, *Maneka Gandhi v. Union of India,* AIR 1978 SC 597; *Minerva Mills Ltd. v. Union of India,* AIR 1980 SC 1789; *Waman Rao v. Union of India,* AIR 1981 SC 271; *S.P. Gupta v. Union of India*, AIR 1982 SC 149; *Supreme Court Advocates-on-Record Assn. v. Union of India,* AIR 1994 SC 268; *Special Reference no. 1 of 1998, Re.,* AIR 1999 SC 1; *Indian Young Lawyers Association v. State of Kerala*, (2019) 11 SCC 1; and *Shayara Bano v. Union of India,* (2017) 9 SCC 1. The trial and conviction of King Charles I

for treason and the conviction of the ruling Peshwa Raghunath Rao by Mukhya Nyayadhish Ram Shastri Prabhune for murder were highlighted as instances of judicial independence.

Lastly, it was pondered whether it really matters who appoints a judge. The speaker opined that the judge's individual integrity rather than the mode of appointment determines judicial independence. The examples of Justice Saiyid Fazal Ali, Justice H.R. Khanna, Justice Jagmohanlal Sinha, Justice R.F. Nariman and Justice B.V. Nagarathna as role models of judicial independence were highlighted. Discussions were also undertaken on the judgement in *Vivek Narayan Sharma v. Union of India,* 2023 SCC OnLine SC 1 and the dissenting judgment by Justice B.V. Nagarathna. It was stated that every judge occupies a public office which is under a public gaze. This public gaze can be positive and also negative and accordingly, may have a positive or negative influence. If a judge decides to function according to his conscience rather than on such influences, judicial independence will be assured. Further, it was pointed out that ambition operates as a negative influence on judicial independence. It was stated that the necessary element to ensure judicial independence is the ability to rise above internal and external influences.

## Session 5: Interim Orders and Judicial Discretion

**Speakers: Justice N. Anand Venkatesh & Justice Dama Seshadri Naidu**

The fifth session on ***Interim Orders and Judicial Discretion*** commenced highlighting the fact that interim matters consume a significant portion of the courts time at all levels of the judiciary. This requires alertness and vigilance on the part of the judge to ensure the findings at the prima facie stage is capable of being sustained at the final stage, thereby requiring a judicious use of discretion at the interim stage. The concept of discretion was dwelt upon and it was stated that discretion is not a private benevolence or personal predilections on the part of the judge. Reference was made to the judgments in *Guru Nanak Dev University v. Parminder Kr. Bansal*, (1993) 4 SCC 401, and *M.I. Builders (P) Ltd v. Radhey Shyam Sahu* (1999) 6 SCC 464 to explain the concept of discretion. It was stated that discretion cannot be loose misconceived sympathy. Furthermore, the interim order passed must quickly be integrated and merged with the final order. Interim orders are regularly passed in a range of cases.

The general principles governing the grant of interim orders were explained -

- An interim relief can be granted only in aid of final relief.
- Interim relief cannot be granted if it would have the effect of granting the final relief. Exception is a case where withholding such relief would have the effect of rendering the petition infructuous. The application must, in addition, show a strong prima facie case, balance of convenience and irreparable injury.
- Where no relief is granted at the final stage or the litigant seeks to withdraw the petition after the grant of interim relief, the Court should pass orders neutralizing the effect of any interim order passed at the interlocutory stage.

- Where the petition is withdrawn the court should not continue the interim order. However, where the matter has been heard out and is then withdrawn the High Court may continue the interim order for a limited period so as to enable the petitioner to approach the appropriate forum.
- A court while exercising its judicial function would ordinarily not pass an order which would make one of the parties to the *lis* violate a lawful order passed by another court.
- The Court must not give any concrete findings on the merits of the matter at the interim stage.

Reference was made to the judgments in *State of Orissa v. Madan Gopal Rungta,* AIR 1951 SC 12, *Deoraj v. State of Maharashtra*, (2004) 4 SCC 697, *Kalabharati Advertising v. Hemant Vimalnath* 2010 9 SCC 437, *Hotel Queen Road (P) Ltd. v. Ram Parshotam Mittal*, (2014) 13 SCC 646, *Prabhjot Singh Mand (1) v. Bhagwant Singh*, (2009) 9 SCC 435, and *Union of India v. Kundan Rice Mills Ltd.*, (2009) 1 SCC 553.

The nature of interim orders passed on the original side were dwelt upon. It was stated that the interim order of attachment before judgment cannot be granted routinely and that the plaintiff must make out a strong prima facie case. Reference was made to the judgment in *Raman Tech & Process Engg. v. Solanki Traders.* 2008 2 SCC 302. The triple test of prima facie case, balance of convenience and irreparable loss or injury in case of grant of injunctions was discussed and reference was made to *Kashi Math Samsthan v. Shrimad Sudhindra Thirtha Swamy*, (2010) 1 SCC 689. Appointment of receiver is one of the harshest interim orders. The five principles for grant of this order set out in *Krishnaswamy v. Thangavelu*, AIR 1955 Mad 430 were discussed. A receiver will not be appointed when it will have the effect of depriving the defendant of de-facto possession. Discussions were also undertaken on the appointment of commissioners under Section 75 CPC & Order XXVI CPC. In interim mandatory injunctions the triple test is applicable and such injunctions are granted in rare cases. The underlying principle governing interim mandatory injunction is that you can at best only restore the last non-contested status and cannot create a new state of affairs. Reference was made to the judgment in *Samir Narain Bhojwani v. Aurora Properties & Investments*, (2018) 17 SCC 203

General considerations in the grant of interim order were discussed. It was stated that the object of an interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages if the case were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the "balance of convenience" lies. Further, the facts and conduct of the party are crucial factors to consider in the exercise of discretion. An injunction is granted in aid of a right. Therefore, the question of its grant does not arise when there does not exist a right to protect. Reference was made to the judgment in *Gujarat Bottling Co. Ltd.* v. *Coca Cola Co.*, (1995) 5 SCC 545.

It was stated that the general consideration differ depending on the nature of the suit. In money suit interim injunction restraining the defendant from alienating the property is not granted as the plaintiff has no right over the property. In a money suit only an order under Order 38 Rule 5 for attachment before judgment can be passed. In specific performance suit, generally the law of *lis pendens* will apply and orders of interim injunctions are not routinely passed.

However, interim order is warranted in cases where the character of the property will be changed and third party interests will become involved. Laches is a relevant consideration for withholding an interim order in a case for specific performance. Reference was made to the judgments in *Julien Educational Trust v. Sourendra Kumar Roy*, (2010) 1 SCC 379 and *Motilal Jain* v. *Ramdasi Devi*, (2000) 6 SCC 420. In partition suits, generally interim injunctions are not passed as the interim order cannot be passed against the owner of the property. However, where a person is in exclusive possession of the property, interim injunction can be granted to protect the exclusive possession of the person. Reference was made to the judgment in *Tanusree Basu v. Ishani Prasad Basu*, (2008) 4 SCC 791. In suit for possession, the general principle set out in *Maharwal Khewaji Trust (Regd.) v. Baldev Dass*, (2004) 8 SCC 488 is that the court should not permit the nature of the property being changed including alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. In case of IPR suits, a prima facie case of dishonestly attempting to pass off goods is a good ground for grant of an injunction. Mere delay in bringing the matter to the Court is not a ground to refuse interim relief in such cases. Reference was made to *Heinz Italia v. Dabur India Ltd.*, (2007) 6 SCC 1. The evolving types of injunctions – Mareva Injunctions, John Doe Orders, Anton Piller Orders, and Dynamic Injunctions were discussed. Reference was made to the judgments in *Mohit Bhargava* v. *Bharat Bhusan Bhargava* reported in [(2007) 4 SCC 795, *Bucyrus Europe Limited v. Vulcan Industries Engineering Company Private Limited*, (2005) 30 PTC 279, *R.K. Productions Pvt Ltd v. Bharat Sanchar Nigam Limited*, (2012) 5 LW 626, and *Disney Enterprise v. Ml Ltd*., (2018) SGHC 206.

The interim orders in the appellate side were discussed and reference was made to Order 43 CPC, Section 96 CPC, Section 100 CPC and Order 41 Rule 5(1) CPC. It was stated that under Order 43 CPC interference is permissible only if there is gross or palpable perversity in exercise of discretion. If the view taken by the court is a possible one, interference is not warranted just merely because the court did not take the other view. Further, Order 41 Rule 5(1) makes it clear that there is no automatic stay of the decree of the trial court upon filing a first appeal. Thus, there is no bar to the decree holder executing the decree if there is no interim order staying/suspending the operation of the decree. Stay of execution can be granted upon showing "sufficient cause". The High Court has no power to pass an interim order in a second appeal unless the appeal is admitted on a substantial question of law under Section 100 CPC. Reference was made to judgments in *Mohd Mehtab Khan v. Kushnuma Ibrahim Khan,* 2013 9 SCC 221, *Atma Ram Properties v. Federal Motors*, 2005 1 SCC 705, *Raghavendra Swami Mutt v. Uttaradi Mutt* – 2016 11 SCC 235.

With regard to interim orders in petitions under Article 227 of the Constitution, the High Court can interfere with interim orders passed by trial courts if a case of perversity or error of jurisdiction is made out. High Courts can not only set aside the order but can also pass appropriate orders which the trial court ought to have passed in the given set of facts. It was stated that interim orders passed by the trial court can be interfered with on case of jurisdictional errors as well as for correction of errors within jurisdiction. Reference was made to *Industrial Credit and Investment Corpn. of India Ltd. v. Grapco Industries Ltd.*, (1999) 4 SCC 710, *Kishore Kumar Khaitan v. Praveen Kumar Singh*, (2006) 3 SCC 312.

In arbitration matters, the arbitral tribunal can grant an interim order and Section 17 is as efficacious as Section 9(1) of the Arbitration and Conciliation Act, 1996. In *Arcelor Mittal*

*Nippon Steel (India) Ltd. v. Essar Bulk Terminal Ltd*., (2022) 1 SCC 712 the Supreme Court has stated that The Court should not continue to take up applications for interim relief, once the Arbitral Tribunal is constituted and the proceedings are pending before it, unless the parties have some impediment in approaching the Arbitral Tribunal, or the interim relief sought cannot expeditiously be obtained from the Arbitral Tribunal. Further, the power of the Court under Section 9 is not strictly circumscribed by the provisions of the CPC and the technical requirements of pleadings under Order 38 Rule 5 cannot be imported into Section 9. (*Essar House Private Limited v. Arcellor Mittal,* 2022 SCC Online SC 1219) In cases relating to Sections 34 and 37 of the Arbitration and Conciliation Act, 1996 the earlier rule of automatic stay of the arbitral award upon filing of the petition under Section 34 has been done away. The amended Section 36 now makes it mandatory for the Court to pass a reasoned order granting stay. The 2015 amendment to Section 36 has been enacted with retrospective effect and is applicable on all petitions pending on the date the amendment comes into force. It was also stated that unconditional stay cannot be granted in an arbitral award for payment of money even if the appellant is the government. Further the exception under Order 27 Rule 8A is not applicable to appeals under the Arbitration Act. Reference was made to *Kochi Cricket v. BCCI,* 2018 6 SCC 287 and *Pam Developments Private Limited v. State of West Bengal,* 2019 8 SCC 112.

In case of writ petitions the same tests are applicable (prima facie case, balance of convenience and irreparable injury), but an additional element of public interest is involved in these cases. Besides the standards applicable to determine necessity of interim order the court must also see if the public interest overrides the individual interests. Reference was made to *Prabhjot Singh Mand (1) v. Bhagwant Singh*, (2009) 9 SCC 435. The interim order merges with the final order and ceases to exist. (*BPL v. Sudhakar,* 2004 7 SCC 219) Further, interim orders cannot be passed where the writ petition is held to be not maintainable. (*Bharat Coking Coal Ltd. v. Indian Newspaper Society*, (2011) 14 SCC 140). In a constitutional challenge to a legislation, an order of stay can be granted if the enactment is ex-facie unconstitutional and public interest requires such a course. Reference was made to *Jaishri Laxmanrao Patil v. State of Maharashtra*, (2021) 2 SCC 785.

In revenue matters and tax recoveries, blanket interim orders are not to be passed under a clear case of illegality is made out. (*State of M.P. v. M.V. Vyavsaya & Co*., (1997) 1 SCC 156). In contractual matters, generally writ petitions are not entertained and in cases where the writ petition is entertained it is to be seen if there is a public interest behind it. In such cases the court should not generally grant interim orders as it would impact public interest. (*Rajasthan State Warehousing Corpn v. Star Agriwarehousing*, 2020 SCC Online SC 538) In election matters, interim orders staying the matter should ordinarily not be granted and writ petitions are generally not to be entertained in election matters as alternative remedies are usually available in these cases. (*Ravi Yashwant Bhoir v. District Collector, Raigad,* (2012) 4 SCC 407) It was opined that while interim orders which stall the election process should not be granted but interim orders which aid the election process can be considered.

In intra court appeals, the court exercises the power of a court of error and is called a court of correction. In such cases the court is required to see if the order passes the test of all and is not perverse. The threshold in such appeals is very high Reference was made to *Baddula Lakshmaiah v. Sri Anjaneya Swami Temple*, (1996) 3 SCC 52, *Mohd. Mehtab Khan* v. *Khushnuma Ibrahim*, (2013) 9 SCC 221. In execution petitions, reference was made

to the judgment in *Rahul S. Shah v. Jinendra Kumar Gandhi*, (2021) 6 SCC 418 wherein the Supreme Court took into consideration the difficulties faced by the litigant in executing decrees and passed some direction which would have the force of law under Article 141. The guideline of the court mandate that the executing court dispose the execution proceedings within 6 months from the date of filing.

It was also emphasised that an interim order cannot be granted in an appeal filed with delay without condoning the delay (*State of W.B v. Somdeb Bandyopadhyay*, 2009 2 SCC 694). Further, it was pointed out that Article 226(3) states that interim orders which is not decided within 14 days it is vacated. In this regard it has been ruled in *Dr. T. Gnanasambanthan v. The Director*, 2014 2 CTC 549 that Article 226 (3) is directory and interim orders would not cease to operate on the expiry of the said period of 14 days. Further in cases when a case is dismissed for default and is later revived; in such cases the interim order also is revived with the revival of the case unless the order of restoration expressly or by implication excludes the operation of the interim order. However, the order for attachment before judgment does not get revived. (*Vareed Jacob v. Sosamma Geevarghese*, 2004 6 SCC 378). It was also highlighted that in some cases, non-grant of the interim relief would amount to dismissal of the case itself, and judges should be vigilant to ensure the cause is not defeated by the grant or non-grant of the interim relief. Reference was made to the judgement in *Deoraj v. State of Maharashtra*, (2004) 4 SCC 697 wherein the factors to be considered in exercise of discretion in the grant of interim relief was stated. The concepts of discretion and judicious discretion were touched upon and reference was made to the judgment in *Reliance Airport Developers (P) Ltd. v. Airports Authority of India, (*2006) 10 SCC 1. The concept of certiorarified mandamus was also alluded to in the discussion. It was also emphasised that extraordinary situation require extraordinary remedies.

The discussions dwelt on the emerging interim injunctions including Mareva Injunctions, Anton Piller Order, and John Doe Order. Discussions were undertaken on Super Injunctions as a recent innovation in law. The concept of 'Black Hole Injunction" was explained as an injunction which is granted to ensure no reporting of the case in any media until the final outcome of the case. It was pointed out that this injunction also covers the order which grants the black hole injunction. This injunction uniquely applies to itself.

It was stated that the jurisprudence of interim relief is limitless and is continuously developing and evolving. It was stated that the limitations upon constitutional authorities are self-imposed rather than super-imposed. The courts have circumscribed the limits to their judicial discretion and are guided by the Constitution and the notions of conscience. The criticisms levelled against the exercise of discretion by judges were highlighted. It was emphasized that judicial discretion is necessary to ensure that judges do not become automatons and apply law in its letter as well as its spirit. Discretion is necessary to prevent mechanical functioning of the judge. It was stated that the exercise of discretion by judges will be subject to criticism. However, it must be kept in mind that over adherence to the letter of law leads to subvertence of the cause of justice. It was stated that under common law tradition a judge cannot address the public to explain his judgment unlike the other wings of state, and this poses a challenge for the judiciary when subject to criticism for exercise of discretion. It was stated that discretion, equity and common law are measures to ensure certainty and justice; and are employed to adapt the judicial outcomes to ensure justice and satisfaction for the litigant. The contrast between 'rule of law' and 'rule by law' was highlighted. Rule of law was stated to be a form of constitutional morality. The constitutional morality was emphasized as the basis for

judicial interpretation and the exercise of discretion. It was stated that the exercise of discretion by judges leads to the growth and evolution of law. It was stated that every statute has a core and a penumbral meaning. It is the interpretation and application of judicial mind to the penumbral meaning leads to the development of law. The significance of interim relief as a measure to ensure justice was underscored. The programme concluded emphasizing on the role of judges as the conscience keeper of the Constitution.

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