



DOCTRINE OF PRECEDENTS

By

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Doctrine of Merger

1. **Logic:** Only one decree/operative order on the subject matter at any given point of time.
2. ***Kunhayammed (2000) 6 SCC 359***
 - (i) SLP dismissed – no reasons – no *res judicata*, no merger
 - (ii) SLP dismissed – with reason – no merger, but Article 141 applies, and rule of discipline applies
 - (iii) Leave granted – appeal dismissed – with or without reason – merger applies

SLP and Review

1. Review filed first - SLP later - Leave granted - Review maintainable – High Court ordering review – Supreme Court appeal infructuous
2. (i) *Abbai Maligai Partnership* – (3 judges) (1998) 7 SCC 386
SLP dismissed – review improper
- (ii) *Kunhayammed* – (3 judges) – (2000) 6 SCC 359
- SLP dismissed - *in limine* -- no merger -
Review before High Court maintainable
- (iii) No conflict between (i) and (ii)

Contd.

3. *Khoday Distilleries* - (2019) 4 SCC 376

Appeal preferred - leave granted - review not maintainable

SLP - notice issued ?? // SLP merely filed ??

SUN ENGINEERING – OBSERVATIONS - IMPACT

(I) → CIT v. V. Jagan Mohan Rao (1969) 2 SCC 389 : 75 ITR 373

→ Reopening of assessment – escaped income

→ Observation - “*whole assessment proceedings start afresh*”

→ Next sentence - “Duty to levy tax on escaped income”

→ Conclusion - reopening - only escaped income
entire amount cannot be redone

Ratio decidendi / Obiter dicta

(i) *Mohandass Issandas v A.N. Sattanathan* AIR 1955 Bom 113

Points for determination



(ii) Any and every expression of Privy Council or Supreme Court
not binding

Plurality of opinions

- The Marks Doctrine- *Marks v. United States* 430 US 188 (1977)
 - *Narrowest grounds*
- “When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.”
- See Linas E. Ledebur, *Plurality Rule: Concurring Opinions and a Divided Supreme Court*, 113 Penn. St. L. Rev. 899.

Sub-silentio

- Salmond on Jurisprudence- p 153.

“A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio.”

- Cited with approval in *Municipal Corporation of Delhi v. Gurnam Kaur* (1989) 1 SCC 101.

Doctrine of per incuriam

- *A.R. Antulay v. R.S. Nayak* (1988) 2 SCC 602.

- “42. ... ‘*Per incuriam*’ are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong.”
- “47. ... It is a settled rule that if a decision has been given *per incuriam* the court can ignore it.”

Minority judgment- precedential value

- Minority opinion on a particular issue can be treated as a precedent if the majority have not expressed any view on that issue
- *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
- *Narinder Batra v. Union of India* (2009) ILR 4 Delhi 280

Binding nature - reference to larger Bench pending

- (i) *India Cements* (1990) 1 SCC 12
- (ii) *State of West Bengal v Kesoram Industries Ltd.* (2004) 10 SCC 201
- (iii) Reference to nine-judge bench
- (iv) Decision referred still binding: *M.S. Bhati v National Insurance Company Ltd.*
(2019) 12 SCC 248

Precedents – *res judicata* – taxation

- (i) Each assessment year is distinct
 - (ii) *Res judicata – estoppel ??*
 - (iii) ***J.K. Synthetics Ltd. v Union of India*** 1981 (8) ELT 328 (Del)
 - a) Facts are different / new facts discovered
 - b) Manufacturing process has changed (central-excise)
 - (taxable events)
 - c) Statutory changes
 - d) Subsequent Supreme Court/High Court decision
- [case-law discussed]

Precedents - Miscellaneous

(i) *Abbai Maligai* (1998) 7 SCC 386

→ Review order - reversed

→ Only on facts- 221 delay- no *ratio decidendi*

→ Example of “logically follows”

(ii) *Mumbai Kamgar Sabha v Abdulbhai Faizullabhai*

(1976) 3 SCC 832 : AIR 1976 SC 1455

→ Doctrine of precedents cannot be exalted into a prisonhouse of bigotry, regardless of *varying circumstances* and *myriad developments*

(iii) *GVK Industries*

(iv) *Ramana Shetty / Maneka Gandhi*

(v) Privy Council - Article 372 - *Azadi Bachao Andolan* (2004) 10 SCC 1

(vi) *Keshav Mills v CIT* AIR 1965 SC 1636

THANK YOU