2025 INSC 928

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10047 OF 2025
[Arising out of SLP (C) No. 1842 OF 2023]

ODISHA STATE FINANCIAL CORPORATION .... APPELLANT

VERSUS

VIGYAN CHEMICAL INDUSTRIES AND OTHERS .... RESPONDENTS

J U D G M E N T

R. MAHADEVAN, J.

1. Leave granted.

2. The present appeal has been filed by the Odisha State Financial Corporation, a government corporation in the State of Odisha, against the final judgment and order dated 22.11.2022 passed by the High Court of Uttarakhand at Nainital[1] in Writ Petition (M/S) No. 2314 of 2022, whereby the High Court dismissed the writ petition filed by the appellant under Article 227 of the Constitution of India, challenging the civil proceedings and the orders passed by the Courts below regarding the computation of interest on the decretal amount and the consequential execution proceedings.

[1] Hereinafter referred to as "the High Court"

BRIEF FACTS

3. The appellant, which is a State Financial Corporation, along with Industrial Promotion & Investment Corporation of Odisha[2] jointly financed an industrial unit, namely, M/s. Manorama Chemicals Works Ltd., (Respondent No. 2 herein) on 22.11.1984 for setting up a bleaching powder unit at Ganjam, Odisha. M/s.Vigyan Chemical Industries Limited Dehradun (Respondent No.1 herein) supplied raw materials worth Rs. 66,454.65 to Respondent No. 2 on 29.07.1985. Since Respondent No. 2 defaulted in repaying the financial assistance received from the appellant and IPICOL, possession of the industry of Respondent No.2 was taken over by the appellant on 18.08.1987 under Section 29 of the State Financial Corporation Act, 1951[3].

3.1. Thereafter, Respondent No. 1 filed Recovery Suit No.103 of 1988 against Respondent Nos. 2, 3, and 4 in the Court of Second Additional Civil Judge (Senior Division), Dehradun[4], claiming Rs. 90,400/- with interest as the outstanding amount. Respondent No. 1/Plaintiff also claimed *pendente lite* and future interest at the rate of 24% per annum till realization of the amount. The appellant was sought to be impleaded in the suit on 11.02.1993, which was allowed by the trial Court on 06.12.1994, and the appellant was added as Defendant No. 4. The appellant objected to its impleadment by filing a Miscellaneous Appeal and thereafter, a Writ Petition, both of which ended in

[2] For short, "IPICOL"
[3] For short, "S.F.C. Act, 1951"
[4] For short, "the trial Court"

dismissal. The trial Court was directed to adjudicate the suit expeditiously, within one year, with the appellant as a party.

3.2. Respondent No. 1 / plaintiff also sought leave to amend and add certain paragraphs, contending that under Section 29(5) of the S.F.C. Act, 1951, the appellant / Defendant No. 4 is liable for the claimed amount, as it had taken possession of Respondent No. 2, and the said industrial concern was now to be sued through Defendant No. 4. The amendment application was allowed, and the appellant / Defendant No. 4 filed a written statement, stating that due to default in repayment of the loan, it had taken possession of industry of Respondent No.2 on 18.08.1987 under Section 29 of the S.F.C. Act, 1951 for the purpose of realization of its dues and thereafter sold the unit to one Shri T.R.K. Rao.

3.3. During the pendency of the suit, the appellant opened a bank guarantee on 27.11.1998 for a sum of Rs.6,36,243/- with Union Bank of India, Cuttack, undertaking to pay the said amount to the trial Court, on demand. Similarly, another bank guarantee was opened on 16.10.1999 for a sum of Rs.3,50,000/- with Union Bank of India, Cuttack to be deposited with the trial Court on demand with respect to Suit No.103/1988. The trial Court was accordingly informed by the Union Bank of India regarding the issuance of the bank guarantee for Rs.3,50,000/- to the credit of the suit. The appellant also instructed its lawyer *vide* letter dated 22.10.1999, to submit the said bank guarantee to the trial Court.

3.4. The suit filed by Respondent No. 1/Plaintiff was partly decreed on 20.08.2001 for an amount of Rs. 84,170/- with *pendente lite* and future interest to be calculated at 24% per annum from 01.03.1988 to 23.09.1992 and at 2% compounded monthly from 23.09.1992 till payment. Challenging the same, the appellant preferred Civil Appeal No. 182 of 2001. Respondent No.1 filed cross objection challenging the partial dismissal of the suit. Meanwhile, Respondent No. 1 also filed an application under the Limitation Act, 1963, on 11.04.2005 to treat the suit against the appellant as having been filed from 29.02.1988. By order dated 05.11.2005, the appellant was added as a defendant in the suit from 29.02.1988, and by order dated 22.03.2006, the trial Court held that the suit had been filed within limitation against the appellant. Thereafter, the appeal filed by the appellant was dismissed, and the cross-objection filed by Respondent No.1 was allowed, and consequently, the suit was decreed in its entirety, by the Additional District Judge, Fast Track Court No.VI, Dehradun[5], by judgment dated 08.08.2006.

3.5. Aggrieved by the judgment dated 08.08.2006 in First Appeal No.182 of 2001, concurring with the trial Court's order dated 22.03.2006 with the decision that the suit was filed within limitation against the appellant, and the decree dated 20.08.2001 in Suit No.103/88, the appellant preferred Second Appeal No.78 of 2006 before the High Court. By order dated 30.11.2006, the High Court stayed the judgment and decree, subject to the condition that the appellant

[5] For short, "the First Appellate Court"

deposit the decretal amount within 45 days. As stated earlier, two bank guarantees for Rs.6,36,243/- and Rs.3,50,000/- had been opened by the appellant on 27.11.1998 and 16.10.1999 respectively and were offered as deposit.

3.6. Thereafter, by judgment, dated 07.05.2007 in Second Appeal No.78 of 2006, the High Court dismissed the appeal, holding that the suit was not barred by limitation. Aggrieved, the appellant preferred SLP (Civil) CC No.10278/2007 (later Civil Appeal No.2073/2010) before this Court. By order dated 10.03.2014, this Court noted that the required bank guarantees, which exceeded the decretal amount, had already been furnished and accordingly, no further deposit was deemed necessary. Ultimately, by judgment dated 23.11.2017, this Court dismissed Civil Appeal No.2073/2010, thereby upholding the High Court's judgment on limitation.

3.7. On 01.08.2018, Respondent No. 1 filed Execution Case No.107 of 2018 in the Court of the Civil Judge (Senior Division) Dehradun[6] for recovery of the decretal amount, stated to be Rs.8,88,33,416.30 from the appellant's bank accounts and assets. *Vide* order dated 12.03.2020, the Execution Court directed Union Bank of India, Cuttack, to remit the principal amount along with interest accrued on TDR No.303/284391 and TDR No.303/284615 for payment to the decree holder.

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[6] For short, "the Execution Court"

3.8. Pursuant to the order dated 12.03.2020 passed by the Execution Court, Union Bank of India released the proceeds of the two TDRs opened by the appellant in 1998 and 1999 – Rs. 40,16,606/- and Rs. 18,00,299/-, respectively – totaling Rs. 58,16,905/- to the Execution Court towards satisfaction of the decree amount of Rs.90,400/- with accrued interest. Thereafter, by orders dated 01.09.2021, the Execution Court attached the appellant's fixed and flexi deposits in Union Bank of India, Axis Bank Limited and Odisha State Cooperative Bank in Cuttack, amounting to approximately Rs. 22 Crores. Aggrieved by the said orders of attachment dated 01.09.2021, the appellant filed Writ Petition (Civil) No.28301/2021 before the High Court of Orissa, which by order dated 16.09.2021, disposed of the writ petition with liberty to the appellant to approach the appropriate forum.

3.9. Subsequently, on 07.10.2021, the Execution Court passed two orders directing the appellant's banks, Axis Bank Ltd., and Odisha State Cooperative Bank at Cuttack to remit the total value of the attached fixed deposits, along with interest, to the Court of the Additional Civil Judge VI (Senior Division) Dehradun. Aggrieved, the appellant filed Writ Petition (C) No.1226/2021 before this Court, wherein *vide* order dated 18.11.2021, it was observed that the appellant is at liberty to pursue any other remedy available under law.

3.10. Thereafter, the appellant filed Misc. Petition No. 156/21 under Section 47 of the Code of Civil Procedure, 1908[7], seeking a stay of execution proceedings

[7] For short, "CPC"

of Execution Case No.107/2018. The said petition was dismissed on 18.04.2022. Aggrieved, the appellant preferred Civil Revision No.40/2022 before the District Judge, Dehradun, along with an application for stay of further proceedings in Execution Case No.107/2018. During its pendency, the Execution Court, by order dated 05.08.2022, directed the Odisha State Co-operative Bank to deposit the decretal amount by 30.08.2022, failing which, coercive steps would be taken against the appellant.

3.11. Aggrieved by the order dated 05.08.2022 passed in Execution Case No.107/2018, the appellant preferred Writ Petition (C) No.2069/2022 before the High Court. By order dated 30.08.2022, the High Court disposed of the writ petition with a direction to the Revisional Court to consider the stay application on 02.09.2022. However, on 02.09.2022, the Revisional Court dismissed Civil Revision No.40/2022.

3.12. Consequently, the appellant approached the High Court by filing Writ Petition No.2314/22 (M/S) for setting aside the order dated 02.09.2022 passed by the Revisional Court in Civil Revision No.40/2022 and the order dated 18.04.2022 passed by the Execution Court in Execution Case No.107/2018. However, by the impugned judgment dated 22.11.2022, the High Court dismissed the writ petition. Aggrieved thereby, the appellant has approached this Court by way of the present appeal.

CONTENTIONS OF THE PARTIES

4. Mr. Ravi Prakash Mehrotra, learned Senior Counsel for the appellant Corporation submitted that the High Court, in the facts and circumstances of the present case, was not justified in declining to exercise its supervisory jurisdiction under Article 227 of the Constitution of India, even in the face of a manifest miscarriage of justice and irretrievable harm caused to the appellant, on account of the proceedings and orders passed by the Courts below in relation to the decree and the consequent execution case, which constitute a flagrant violation of the fundamental principles of law and have resulted in grave injustice to the appellant.

4.1. Learned Senior Counsel further submitted that the Courts below erred in computation of interest on the decretal amount, particularly, in light of the fact that the appellant is facing coercive measures at the instance of Respondent No.l, arising out of the execution of a money decree of Rs.90,400/- passed on 20.08.2001, in respect of which the appellant had opened bank guarantees prior to the decree, and the proceeds amounting to Rs.58,16,905/- were released to Respondent No. 1 on 05.10.2020. However, based on an erroneous computation of interest at 24% per annum, compounded monthly, the amount sought is a staggering Rs. 8.89 Crores. The appellant, a government corporation, is thus facing unwarranted attachment proceedings, which gravely and adversely affect public interest.

4.2. Learned Senior Counsel also contended that the High Court was not justified in dismissing the writ petition on the ground that the appellant had not furnished the bank guarantee to secure the decretal amount. In reality, the proceeds of the bank guarantees were released to the decree holder / Respondent No.1 – not out of his own volition, but under Court's direction. Thus, it cannot be held that the bank guarantee was not a deposit under Order XXIV Rule 1 CPC. The High Court erred in holding that such a deposit must be voluntary and not under compulsion. Despite furnishing bank guarantee in excess of the decretal amount, the High Court adopted an unduly narrow view of Section 47 CPC, while exercising jurisdiction under Article 227 of the Constitution.

4.3. Learned Senior Counsel further submitted that the execution application filed by Respondent No. 1 was not maintainable before the civil Court in view of Section 15(2) of the Commercial Courts Act, 2015. Although this point may not have been specifically pleaded before the lower courts, it was raised before the High Court and hence, the same ought to have been considered by the High Court.

4.4. Learned Senior Counsel emphasized that the High Court failed to appreciate that the computation of interest on the decretal amount was not only erroneous but also exorbitant. Interest at the rate of 24% was impermissible under Section 34 CPC. Furthermore, the appellant / Defendant No. 4 did not place any orders for purchase; in fact, it had clearly pleaded in its written statement that it had no connection with the underlying transaction and hence,

no liability can be fastened on them. It was also contended that a specific plea regarding the excessive interest was also taken. The High Court ought to have considered in the petition under Article 227 that the appellant Corporation is now facing unprecedented and unjustified attachment proceedings and is saddled with a liability of Rs. 8.89 Crores – arising from a decree of merely Rs.90,400/- – based on a suit instituted in 1988. The bank guarantees furnished in 1998 and 1999 (prior to the decree), amounting to Rs.58,16,905/- were encashed and improperly released to the decree holder. Hence, further recovery, attachment, and coercive steps against the appellant are unwarranted. Moreover, the continued accrual of interest is wholly unjustified. In these circumstances, intervention by this Court is warranted in the interest of justice to bring finality to a matter that is prejudicial to the appellant and against public interest.

4.5. Learned Senior Counsel placed reliance on the judgment of this Court in ***Shaki Tubes Ltd v. State of Bihar***[8], to contend that if the purchase / supply order predates the enactment of the interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, then interest is governed by Section 34 CPC and not the Delayed Payments Act, which operates prospectively. In the present case, the supply order – i.e., the sale of raw materials to Respondent No.2 by Respondent No. 1 – was made in 1985 long before the Act came into force i.e., on 23.09.1992. Therefore, the trial Court's

[8] (2009) 7 SCC 673

decree dated 20.08.2001 awarding compound interest at 2% per month from 23.09.1992 onward under the Delayed Payments Act, was erroneous.

4.6. Learned Senior Counsel further pointed out that the amount being claimed from the appellant is grossly exaggerated and irregularly calculated. As a result, the appellant Corporation is now facing attachment of all its bank accounts and assets, plunging it into administrative disarray and financial chaos, including difficulty in disbursing salaries. It is neither fair, just, nor legally sustainable to subject a public sector corporation to such coercive measures. Therefore, the Execution Court's insistence on recovering nearly Rs. 9 crores is neither warranted nor justified.

4.7. Learned Senior Counsel further submitted that the appellant corporation had continuously contested the decree before the appellate forums from 2001 to 2017. In contrast, Respondent No. 1, the decree holder, neither invoked the bank guarantee nor initiated execution proceedings for nearly 17 years, after the decree was passed. According to the learned Senior Counsel, the decree holder received Rs.58,16,905/- on 05.10.2020 and Rs.2,34,40,654/- on 07.01.2022, thereby totaling Rs.2,92,57,559/- out of attachment and encashment of two bank guarantees and one fixed deposit of the appellant corporation.

4.8. Furthermore, reliance was placed on the decision of this Court in ***Fertilizer Corporation of India Ltd and others v. M/s. Coromandel Sacks Pvt. Ltd***[9], wherein this Court applied the principle of harmonious construction to

[9] (2024) 5 SCR 321, (rendered on 26.04.2024)

balance competing interests and safeguard the rights of judgment debtors. In that case, the Court emphasized the benefit available to the judgment debtor under Order XXIV CPC, particularly, when the bank guarantee was furnished before the decree was passed. This principle contrasts with the interest calculation under the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 which resulted in the mounting of compound interest from 23.09.1992 onwards. The learned Senior Counsel further contended that though a plea regarding maintainability was raised, no finding was given and hence, the decree is a nullity.

4.9. Accordingly, learned Senior Counsel prayed for setting aside the judgment of the High Court and for allowing the present appeal.

5. *Per contra*, Mr. Gopal Sankaranarayanan, learned Senior Counsel for the Respondent No. 1, while denying the claim of the appellant Corporation and reiterating the stand taken in the counter affidavit filed by them, *inter alia*, contended as under:

a) The present Petition for Special Leave to Appeal, invoking the extraordinary jurisdiction of this Court under Article 136 of the Constitution of India, is liable to be dismissed at the threshold itself on ground of suppression of material information.

b) The High Court has declined to grant any relief to the appellant by dismissing Writ Petition (M/S) No.2314 of 2022. The appellant -

Odisha State Financial Corporation has not approached this Court with clean hands, having knowingly and repeatedly made false and misleading statements and even filed a false affidavit in earlier proceedings before this Court.

c) The present Special Leave Petition raises no question of law, much less any substantial question of law, warranting consideration by this Court. The so-called substantial questions of law framed by the appellant - Odisha State Financial Corporation cannot be entertained by this Court.

d) Initially, the Original Suit was filed in the year 1988 and was decreed in 2001. However, the Execution Application could be filed only in 2018, due to the repeated challenges raised by the appellant before various forums including the trial Court, Appellate Courts at Dehradun, and the High Courts of Allahabad and Uttarakhand, culminating in Civil Appeal No. 2073 of 2010 before this Court, which was finally dismissed by Judgment dated 23.11.2017. In effect, 35 years have passed since the filing of the original suit and 22 years since the date of decree. It is deeply unfortunate that despite more than three decades having elapsed, the decree holder has not been able to enjoy the fruits of a decree passed in 2001.

e) The allegation of the appellant Corporation that it had furnished a bank guarantee of Rs.3,50,000/- in 1999, (prior to decree) and that the proceeds thereof along with another bank guarantee for Rs.6,36,243/-, were released to Respondent No.1 on 05.10.2020, and further, that the interest has been erroneously calculated at 24% per annum compounded monthly, is wholly incorrect, false, unsubstantiated, and specifically denied.

f) The bank guarantee furnished by the appellant Corporation was not voluntary, but given under compulsion and only pursuant to repeated directions of the Court. Moreover, the said bank guarantee had already expired in the year 2000. The amount was not paid to the Respondent on 05.10.2020, but only on 23.02.2021 – twenty years after the decree and twenty-two years after furnishing the bank guarantee. In fact, the first actual payment came through attachment proceedings pursuant to the orders of the Execution Court in 2020. The amount was deposited by the bank directly into the Court through a demand draft, which was then transferred to the Respondent. But the appellant had made all efforts to avoid payment. Furthermore, the rate of interest at 24% per annum compounded monthly was awarded by the trial Court in its judgment dated 20.08.2001 and was rightly upheld by the Appellate Court in its judgment dated 08.08.2006. However, the

appellant has failed to submit any calculation or interest sheet to establish its claim that the computation is erroneous and has merely raised vague, baseless, and misleading allegations before this Court.

g) The High Court of Uttarakhand granted ample opportunity to the appellant Corporation to establish its case and after due deliberation and application of law, passed the well-reasoned judgment on 22.11.2022, which is self-explanatory, and the High Court rightly dismissed the writ petition.

h) Order XX1 Rule 1 CPC mandates that payment or deposit made by the judgment debtor in satisfaction of the decree must be voluntary. The bank guarantee deposited by the appellant, as security under an attachment order passed under Order XXXVIII Rule 5 CPC, was conditional and would have been available to the decree holder only if the suit was decreed. Such a deposit cannot be construed as one under Order XXIV Rule 1 CPC. The High Court, after properly applying its mind and considering the facts and law applicable to the case, rightly rejected the appellant's plea on this issue.

i) The appellant has attempted to mislead this Court by selectively stating that it had filed I. A. No.141994/2021 in M. A. No. 1832/

2021 in Civil Appeal No.2073/2010, but the same was dismissed as withdrawn with costs, upon the appellant's request.

j) As far as the order dated 10.03.2014 passed in Civil Appeal No. 2073/2010 is concerned, it was merely an interim order passed by this Court in Civil Appeal No.2073/2010 and is deceptively being misused and misrepresented by the appellant, without even stating that the said order clearly stood overruled by the subsequent judgment passed in the said civil appeal, which has been deviously concealed by the appellant. The order dated 10.03.2014 was passed by this Court in I.A. No.6 in Civil Appeal No.2073 of 2010 which was filed by Respondent No. 1 requesting this Court to direct the appellant to deposit the decretal amount.

k) The appellant's objections under Section 47 CPC and the accompanying stay application were rightly dismissed by the Executing Court at Dehradun through a reasoned order dated 18.04.2022 in Execution Case No. 107/2018. Subsequent legal remedies were also dismissed – by the High Court on 30.08.2022 in WP (Civil) No. 2069/2022, by the Revisional Court on 02.09.2022 in Civil Revision No.40/2022 and finally by the High Court of Uttarakhand on 22.11.2022 in WP (M/S) 2314/2022 – the Judgment now impugned in this Special Leave Petition. All these

judicial forums have rightly rejected the appellant's objections, and hence, no interference is warranted by this Court.

5.1. Thus, the learned Senior Counsel submitted that the decree dated 20.08.2001 passed in the suit has attained finality in 2017, and Respondent No.1 is entitled to the interest awarded in terms of the Interest on Delayed Payments to Small scale and Ancillary Industrial Undertakings Act, 1993, which comes to Rs.35,94,02,420.75 as on 10.02.2025. However, the appellant has acted without *bona fides* and has attempted to obstruct execution of the decree by initiating and pursuing frivolous proceedings. Therefore, this appeal deserves to be dismissed.

6. Mr. Shubhranshu Padhi, learned Counsel for Respondent No. 3 - IPICOL, while adopting and supporting the arguments advanced by the learned Senior Counsel for the appellant*, inter alia*, contended as under:

6.1. Both the appellant (OSFC) and Respondent No. 3 (IPICOL) are Public Sector Undertakings that extended financial assistance to the original borrower, Respondent No. 2 and hence the suit itself is not maintainable.

6.2. Respondent No. 1 filed Civil Suit No.103/88 before the trial Court, alleging that it had supplied raw materials (Hydrated Lime worth Rs.66,454/-) to Respondent No. 2. At that time, Respondent No. 1 sought to proceed against the appellant and Respondent No. 3, instead of pursuing the Directors/Promoters of the original borrower, to whom the supplies were

actually made. There exists no privity of contract or any commercial dealings between Respondent No. 1 and either the appellant or Respondent No. 3. The appellant and Respondent No.3 being State Financial Corporations, cannot be burdened with such unjust and excessive liability, as it would result in gross injustice and impose a significant financial strain on the public Exchequer.

6.3. Respondent No. 1 filed Execution Case No. 107/2018 before the Civil Judge (Senior Division), Dehradun, 17 years after the decree was passed. Despite the passage of time, Respondent No. 1 is now claiming exorbitant interest, inflating the original decretal amount of Rs.90,400/- to an unreasonable sum of Rs.35,94,02,420.75 as on 10.02.2025, as per the calculation chart provided by Respondent No.1. As elucidated by the appellant, although the original claimed debt was Rs.90,400/-, Respondent No. 1 has already received the following payments: Rs.58,16,905/- on 05.10.2020 and Rs.2,34,40,654/- on 07.01.2022, thereby totaling Rs.2,92,57,559/-. Furthermore, Respondent No. 3 (IPICOL) had not even taken over Respondent No. 2 under Section 29 of the S.F.C Act, 1951, yet it is being wrongfully saddled with excessive liabilities claimed by Respondent No.1.

6.4. Therefore, this is a fit case for this Court to pass appropriate orders to deliver substantial justice to the concerned parties. The impugned judgment deserves to be set aside, and the present appeal filed by the appellant ought to be allowed. Consequently, both the appellant (OSFC) and Respondent No. 3

(IPICOL) ought to be fully discharged from liability as claimed by Respondent No. 1.

DISCUSSION & FINDINGS

7. We have heard the learned Senior Counsel appearing for the parties and perused the materials available on record.

8. It is not in dispute that the appellant is a State Financial Corporation having its office at Cuttack, Odisha, and had extended financial assistance to Respondent No. 2, for the purpose of setting up a bleaching powder unit. Respondent No.1 had, in the course of business, supplied raw materials worth Rs.66,454.65 to the said unit. Due to persistent default in repayment of the loan by Respondent No.2, the appellant in exercise of its statutory powers under section 29 of the S.F.C. Act, 1951, took over possession of the industrial unit of Respondent No. 2 in the year 1987 for realization of its dues. Subsequently, on 29.02.1988, Respondent No. 1 filed Civil Suit No. 103/1988 before the trial Court seeking recovery of Rs.90,400/- with interest from the said unit. Initially, the appellant was not made a party to the suit, nor was any relief claimed against it.

8.1. Thereafter, the appellant was impleaded as a defendant in the said suit on 06.02.1994 by Respondent No. 1, nearly, six years after the date of institution of the suit. Despite the objections raised by the appellant regarding its impleadment, liability and maintainability, the suit was decreed against the

appellant on 20.08.2001 for an amount of Rs. 90,400/- with simple interest at 24% per annum from 01.03.1988 to 23.09.1992, and 2% monthly compound interest from 23.09.1992 until payment, in light of the enforcement of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993. The appellant challenged the said decree by filing Civil Appeal No. 182/2001 both on merits and on the ground of limitation regarding its impleadment, however, the said appeal was dismissed by the First Appellate Court, on 08.08.2006.

8.2. Challenging the dismissal of the appeal, the appellant filed Second Appeal No.78/2006 before the High Court. The original decree dated 20.08.2001 and the judgment dated 08.08.2006 in the First Appeal were stayed by the High Court on 30.11.2006, and the stay remained in force until the dismissal of the Second Appeal on 07.05.2007. Thereafter, the appellant preferred Civil Appeal No. 2073/2010 before this Court, which came to be dismissed by judgment dated 23.11.2017, with the decision limited to the question of limitation.

8.3. After a period of 17 years from the date of the decree, Respondent No.1 / Decree Holder filed Execution Case No. 107/18 claiming an amount of Rs.8,88,33,416.30, before the Civil Judge, Dehradun (Uttarakhand). The appellant filed objections under Section 47 CPC, which were dismissed on 18.04.2022. The Civil Revision filed by the appellant before the Additional District Judge, was dismissed on 02.09.2022 and Writ Petition No. 2314/22

preferred by the appellant was also dismissed by the impugned judgment dated 22.11.2022. Aggrieved thereby, the appellant has filed the instant appeal.

9. On 01.02.2023, when the matter was taken up for consideration, the counsel appearing for the respondents stated that no further steps shall be taken in the execution proceedings till the disposal of this appeal, which was recorded by this Court in its proceedings.

10. It is the case of the appellant that it had opened a bank guarantee on 16.10.1999 with Union Bank of India, Cuttack, as directed by the court, for Rs.3.5 lakhs payable to the trial Court, on demand. This was within the knowledge of Respondent No.1. The said bank guarantee was extended from time to time, and was eventually attached and encashed on 16.12.2020 along with another bank guarantee furnished by the appellant for Rs.6,36,243/-, thereby totaling Rs.58,16,905/- received by Respondent No. 1. According to the appellant, the opening of the said bank guarantee on 16.10.1999 – prior to the passing of the decree – was intended to cover the decretal amount and is squarely covered by the provisions of Order XXIV Rules 1 – 3 CPC, which aim to ensure that interest stops accruing once a deposit has been made. Therefore, the appellant contends that due to the opening and subsequent encashment of the bank guarantee, the claim for accrual of interest itself is bad in law.

11. The appellant further contends that the decree holder, Respondent No. 1 did not make any attempt to encash the said bank guarantee immediately after the suit was decreed, or initiate execution proceedings for over 17 years, thereby allowing the interest to accumulate unduly. On the other hand, the appellant had pursued remedies in good faith under the belief that interest would freeze once a deposit was made under Order XXIV Rule 3 CPC. The respondent's delay in executing the decree unjustly enabled them to claim exorbitant interest, thereby facilitating unjust enrichment. Such delay should not impose an undue interest burden on the appellant. Notably, Respondent No.1 has already received Rs.58,16,905/- on 05.10.2020 and Rs.2,34,40,654/- on 07.01.2022, thereby totaling Rs.2,92,57,559/- through bank guarantees and fixed deposits furnished by the appellant. As such, it is unjust, unfair, and legally untenable to subject the appellant Corporation to coercive measures, which are inappropriate and gravely prejudicial to the public interest.

12. Undoubtedly, Respondent No. 1 instituted a money suit for recovery of dues from Respondent No. 2 on account of default in payment for the supply of goods. Initially, the appellant was not a party to the suit. Subsequently, Respondent No. 1 impleaded the appellant, a State Financial Corporation, which took action under Section 29 of the S.F.C Act, 1951 against Respondent No. 2. The suit was decreed on 20.08.2001. Thereafter, Respondent No. 1 filed an application under Section 21 of the Limitation Act, 1963 before the trial Court,

pending appeal. The trial Court allowed the application holding that the suit against the appellant was deemed to be initiated from the original date of filing the suit. By a subsequent order, it was held by the trial Court that the suit was not barred by limitation as against the appellant. The finding of the appellate court and the High Court on limitation alone, was upheld by this Court on 23.11.2017 in Civil Appeal No.2073/2010. It is pertinent to mention here that this Court confined its decision only to the issue of limitation and remained silent on all other material questions raised.

Doctrine of 'Sub silentio'

13. It is a settled principle that a judgment is an authority only for what it decides. When a judgment fails to address other issues raised, it is said to be '*sub silentio'*, and cannot be held as a binding precedent on those undecided issues. From the records, it is very clear that in the earlier judgment of this Court challenging the original decree, only the issue of limitation was adjudicated. Critical issues such as (i) the jurisdiction of the trial Court to entertain the suit against the appellant in the absence of a notice under Section 80 CPC, (ii) the maintainability of the suit, (iii) the power of the Court to modify the decree by entertaining an application under Section 21 of the Limitation Act, 1963, and (iv) the applicability of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, were

not adjudicated. This is where the concept of *'sub silentio'* assumes significance. It refers to a situation, where a rule or principle on a particular point of law is applied or passed upon by a court silently, without any consideration of the applicable law or without argument, and the judgment is rendered on another question of law or fact. According to the Black's Law Dictionary, "the precedents that pass *sub silentio* are of little or no authority". Literally, it means 'in silence' and is used to refer to something that is not expressly stated. Therefore, it can safely be concluded that the judgment of this Court in Civil Appeal No.2073/2010 is silent on the issues now under consideration. When the judgment of a Court is silent on questions of law either raised earlier but not decided, or raised in the subsequent proceedings, it is settled law that constitutional courts are empowered to decide such questions of law independently and the earlier judgment cannot be cited as a binding precedent or conclusive. It will be useful to refer to the following judgments of this Court on this aspect.

13.1. In ***Municipal Corpn. of Delhi v. Gurnam Kaur***[10]*,* while considering the exercise of power by the Commissioner of the Delhi Corporation to remove encroachments, this Court referred to an earlier decision relied upon by the High Court (in the matter of pavement dwellers) and observed that the earlier decision did not consciously deal with the legal issue of right to encroach upon

[10] (1989) 1 SCC 101

public streets. Therefore, it lacked precedential value as that point was decided *sub silentio*. The following paragraphs are relevant in this regard:

> *"11. Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in Jamna Das's case [Writ Petitions Nos. 981-82 of 1984] and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P.J. Fitzgerald, editor of the Salmond on Jurisprudence, 12th Edn. explains the concept of sub silentio at p. 153 in these words:*
>
> *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.*
>
> *12. In Gerard v. Worth of Paris Ltd. (k). [(1936) 2 All ER 905 (CA)], the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in Lancaster Motor Co. (London) Ltd. v. Bremith Ltd. [(1941) 1 KB 675], the court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to*

say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided "without argument, without reference to the crucial words of the rule, and without any citation of authority", it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed. One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority."

13.2. In **the *State of U.P. v. Synthetics and Chemicals Ltd.***[11] the challenge was to the amendment made to sub-section (1) of Section 3 of the United Provinces Sales of Motor Spirit, Diesel Oil and Alcohol Taxation Act, 1939 by the Uttar Pradesh Sales of Motor Spirit, Diesel Oil and Alcohol Taxation (Amendment) Act, 1976, for the purpose of levying purchase tax on industrial alcohol. Relying upon the decision of a Constitution Bench of this Court in ***Synthetics and Chemicals Ltd and others v. State of U.P. and others***[12], the respondents / opposite parties contended that the State Legislature was incompetent to levy tax on industrial alcohol, because of the operation of the Ethyl Alcohol (Price Control) Orders made by the Central Government under Section 18G of the Industries (Development and Regulation) Act, 1951. The appellant / State, however, contended that the power of the State to levy taxes on the sale or purchase of goods was not the subject of consideration in the decision relied upon by the respondents. The High Court allowed the writ petition and declared

[11] (1991) 4 SCC 139 : (1992) 87 STC 289 : 1991 SCC OnLine SC 17
[12] (1990) 1 SCC 109

the U.P. Act 8 of 1976 to be null and void. This Court was of the view that the decision in *Synthetics* is not an authority for the proposition canvassed by the assessee, and that the Court had not – and could not have – intended to hold that the Price Control Orders made by the Central Government under the IDR Act imposed a fetter on the legislative power of the State under Entry 54 of List II to levy taxes on the sale or purchase of goods. The reference to sales tax in paragraph 86 of that judgment was found to be merely accidental or *per incuriam,* and therefore, had no bearing on the validity of the impugned levy. This Court further noted that the abrupt observation in *Synthetics* was without a preceding discussion and was inconsistent with the reasoning adopted in earlier decisions, from which no dissent had been expressed on that point. Accordingly, this Court applied the concept of *'sub silentio'* and declined to uphold the order of the High Court. The relevant paragraph is extracted below for ready reference:

> *"41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. "A decision passed 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." (Salmond on Jurisprudence 12th Edn., p. 153). In Lancaster Motor Company (London) Ltd. v. Bremith Ltd. [(1941) 1 KB 675, 677 : (1941) 2 All ER 11] the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in Municipal Corporation of Delhi v. Gurnam Kaur [(1989) 1 SCC 101]. The bench held that, 'precedents sub-silentio and without argument are of no moment'. The courts thus have taken recourse to this principle for relieving*

from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In B. Shama Rao v. Union Territory of Pondicherry [AIR 1967 SC 1480 : (1967) 2 SCR 650 : 20 STC 215] it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law."

13.3. In ***Most Rev. P.M.A. Metropolitan v. Moran Mar Marthoma***[13], this Court was dealing with whether an earlier decision could be treated as a binding precedent, and in that context, it examined the doctrine of *sub silentio*, which refers to a situation where a point of law passes unnoticed or is not consciously decided in a judgment. The following paragraph is relevant:

"57. Even assuming, although there appears no doubt, that the finding recorded by the High Court in its earlier judgment on the authenticity of the canon survived, there is yet another reason to disregard it. If the excommunication of Dionysius was invalid for violation of principles of natural justice, as was found by the Bench reviewing the order, then the findings on earlier issues were rendered unnecessary and it is fairly settled that the finding on an issue in the earlier suit to operate as res judicata should not have been only directly and substantially in issue but it should have been necessary to be decided as well. For instance, when a decision is taken in appeal the rule is that it is the appellate decision and not the decision of the trial court that operates as res judicata. Consequently where a suit is decided both on merits and on technical grounds by the trial court, and the appellate court maintains it on technical ground of limitation or suit being not properly constituted then the decision rendered on merits by the trial court ceases to have finality. In Abdullah Ashgar Ali Khan v. Ganesh Dass [AIR 1917 PC 201: 45 Cal 442 : 19 Bom LR 972] the Court while considering the expression, "heard and finally decided" in Section 10 of the British Baluchistan Regulation IX of 1896 held that where the suit was

[13] 1995 Supp (4) SCC 286

dismissed by two courts on merits but the decree was maintained in second appeal because the suit was not properly constituted then the finality on merits stood destroyed. In Sheosagar Singh v. Sitaram Singh [ILR (1897) 24 Cal 616 : 24 IA 50 : 1 CWN 297] where parentage of defendant was decided in his favour by the trial court but the High Court maintained the order as the suit was defective the claim of the defendant in the latter suit that the finding on parentage operated as res judicata was repelled and it was held that the question of parentage had not been heard and finally decided in the suit of 1885. The appeal in that suit had put an end to any finality in the decision of the first court, and had not led to a decision on the merits.

58. The rationale of these decisions is founded on the principle that if the suit was disposed of in appeal not on merits but for want of jurisdiction or for being barred by time or for being defectively constituted then the finality of the findings recorded by the trial court on merits stands destroyed as the suit having been found to be bad for technical reasons it becomes operative from the date the decision was given by the trial court thus rendering any adjudication on merits impliedly unnecessary. On the same rationale, once the Royal Court of Appeal allowed the review petition and dismissed the appeal as the excommunication of Dionysius was contrary to principles of natural justice and he had not become heretic then the finding on authenticity of the canon etc. rendered in the original order was rendered unnecessary. Therefore, the finding recorded on the authenticity of the canon and power of the Patriarch etc. recorded in the earlier order could not operate as res judicata in subsequent proceedings."

13.4. In ***Arnit Das v. State of Bihar***[14]*,* while dealing with the determination of the age of an accused under the Juvenile Justice Act, 1986, for the purpose of trial, this Court clarified that the earlier ruling in *Arnit Das (1)* was rendered *sub silentio*, as the relevant provision of law had not been brought to the court's attention. Accordingly, the Court overruled the said decision and held that the relevant date for determining whether an accused is a juvenile is the date of the offence, not the date of production. The following paragraphs are pertinent in this regard:

[14] (2000) 5 SCC 488 : 2000 SCC (Cri) 962 : 2000 SCC OnLine SC 936

> *"19. Generally speaking these cases are authorities for the propositions that: (i) the technicality of the accused having not claimed the benefit of the provisions of the Juvenile Justice Act at the earliest opportunity or before any of the courts below should not, keeping in view the intendment of the legislation, come in the way of the benefit being extended to the accused-appellant even if the plea was raised for the first time before this Court; (ii) a hypertechnical approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea that he was a juvenile and if two views may be possible on the same evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases; and (iii) the provisions of the Act are mandatory and while implementing the provisions of the Act, those charged with responsibilities of implementation should show sensitivity and concern for a juvenile. However, in none of the cases the specific issue — by reference to which date (the date of the offence or the date of production of the person before the competent authority), the court shall determine whether the person was a juvenile or not, was neither raised nor decided.*
>
> *20. A decision not expressed, not accompanied by reasons and not proceeding on a conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not the ratio decidendi. This is the rule of sub silentio, in the technical sense when a particular point of law was not consciously determined. (See State of U.P. v. Synthetics & Chemicals Ltd. [(1991) 4 SCC 139, para 41] SCC, para 41.)"*

13.5. In **the *State of W.B. v. Kesoram Industries Ltd.***[15], this Court made an important and elaborate observation on the doctrine of *sub silentio* while discussing the binding nature of precedents under Article 141 of the Constitution. The central issue was whether the cess levied by the State of West Bengal on coal-bearing land was in the nature of a tax on land (Entry 49 of List II – State List) or a tax on mineral rights (Entry 50 of List II or Entry 54 of List I – Union List). While addressing this, the Court reinforced that courts should exercise caution in blindly following precedents, and that only reasoned

[15] (2004) 10 SCC 201: (2004) 266 ITR 721: 2004 SCC OnLine SC 70 (5-Judge Bench)

decisions involving conscious deliberation on the issues raised can be treated as law declared by this Court. The relevant paragraphs are extracted below:

> *"485. In Goodricke Group [1995 Supp (1) SCC 707] it has, thus, wrongly been recorded that generally speaking no tea estate markets green tea leaves. The writ petitioners have stated that there are about fifty bought-leaf factories in West Bengal. Bought-leaf factories function within a statutory scheme viz. the Tea (Marketing) Control Order, 2003.*
>
> *486. Furthermore, once it is found that the definition of "tea" both in the Tea Act, 1953 and the impugned Acts is the same, the Court cannot keep the effect of Sections 25 and 30 of the Tea Act, 1953 out of its consideration for the purpose of ascertaining the true scope and purport thereof.*
>
> *487. It is relevant to note that in Goodricke Group [1995 Supp (1) SCC 707] no opinion was expressed on Section 25 of the Act or the notification dated 30-10-1986 issued thereunder. Once it is conceded that green tea leaves would come within the purview of the definition of "tea", it is inconceivable as to how impost of excise duty on tea in terms of sub-section (2) of Section 25 of the Tea Act will have no bearing on the subject. By reason of sub-section (2) of Section 25, additional excise duty is levied. Excise duty in terms of the Central Excise Act, it is trite, can not only be levied on finished products but also the products at intermediary stages.*
>
> *488. Unfortunately, in Goodricke case [1995 Supp (1) SCC 707] the learned Judges did not consider the matter from this angle.*
>
> *489.Goodricke [1995 Supp (1) SCC 707] also runs counter to India Cement [(1990) 1 SCC 12 : 1989 Supp (1) SCR 692 : AIR 1990 SC 85] as also Kannadasan [(1996) 5 SCC 670] . Effect of the expression "immovable property" in the Cess Act, 1880 was also not brought to its notice and had the same been done, there would not have been a conclusion that tea estate would be treated as a unit as therefrom the standing crops and structures were required to be excluded. Goodricke Group case [1995 Supp (1) SCC 707] does not, therefore, lay down a good law and should be overruled.*
>
> ***Summary of our findings***
>
> ***…***
>
> *(viii) Tax on lands and buildings in terms of Entry 49 of List II of the Seventh Schedule of the Constitution of India can be levied on land as a unit and not otherwise.*

(ix) As green tea leaves are marketable, the decision in Goodricke Group [1995 Supp (1) SCC 707] having mainly been rendered on the premise that green tea leaves are not marketable must be held to have passed sub silentio and, thus, does not lay down correct legal position.

(x) In view of the definitions of "land" and "immovable property" contained in the Bengal Cess Act, 1880, as no road cess or public works cess can be imposed on standing crops or any kind of structures, houses, shops or other buildings which would include factories and workshops for processing tea, no levy by way of cess can be imposed by reason of the impugned Acts either on the mining leasehold or the tea estate containing standing crops as also houses and buildings."

13.6. In ***Zee Telefilms Ltd. v. Union of India***[16], the question for consideration was whether the Board of Control for Cricket in India (BCCI) is a "State" within the meaning of Article 12 of the Constitution, and therefore amenable to writ jurisdiction under Article 32. Ruling that a prior judgment cannot be treated as binding on a point of law that was not consciously examined or discussed, the Constitutional Bench of this Court clarified that BCCI cannot be held to be a "State" for the purpose of Article 12. The following paragraph is pertinent in this connection:

"256. It is further well settled that a decision is not an authority for a proposition which did not fall for its consideration. It is also a trite law that a point not raised before a court would not be an authority on the said question. In A-One Granites v. State of U.P. [(2001) 3 SCC 537] it is stated as follows: (SCC p. 543, para 11)

"11. This question was considered by the Court of Appeal in Lancaster Motor Co. (London) Ltd. v. Bremith Ltd. [(1941) 1 KB 675 : (1941) 2 All ER 11 (CA)] and it was laid down that when no consideration was given to the question, the decision cannot be said to be binding and precedents sub silentio and without arguments are of no moment."

[16] (2005) 4 SCC 649 : 2005 SCC OnLine SC 213

13.7. In ***Delhi Airtech Services (P) Ltd v. State of U.P.***[17], this Court directly addressed the doctrine of *sub silentio* while clarifying the limits of binding precedent, to the effect that when a point does not fall for decision of a court but incidentally arises for its consideration and is not necessary to be decided for the ultimate decision of the case, such a decision does not form part of the ratio, but is treated as a decision passed *sub silentio*. It may also be noted that a point in respect of which no argument was advanced, no citation or authority was cited, and no discussion or adjudication is made, is not binding and would not be followed. The relevant paragraphs read as under:

> *"42. It has been held in the decision of this Court in MCD v. Gurnam Kaur [(1989) 1 SCC 101 : AIR 1989 SC 38] that when a point does not fall for decision of a court but incidentally arises for its consideration and is not necessary to be decided for the ultimate decision of the case, such a decision does not form a part of the ratio of the case but the same is treated as a decision passed sub silentio.*
>
> *43. The concept of "sub silentio" has been explained by Salmond on Jurisprudence, 12th Edn. as follows: (Gurnam Kaur case [(1989) 1 SCC 101 : AIR 1989 SC 38], SCC pp. 110-11, para 11)*
>
> > *"11. ...'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.'" (AIR p. 43, para 11)*
>
> *44. The aforesaid passage has been quoted with approval by the three-Judge Bench in Gurnam Kaur [(1989) 1 SCC 101 : AIR 1989 SC 38]. This Court in*

[17] (2011) 9 SCC 354 : (2011) 4 SCC (Civ) 673: 2011 SCC OnLine SC 1115

Gurnam Kaur [(1989) 1 SCC 101 : AIR 1989 SC 38], in order to illustrate the aforesaid proposition further relied on the decision of the English Court in Gerard v. Worth of Paris Ltd. [(1936) 2 All ER 905 (CA)] In Gerard [(1936) 2 All ER 905 (CA)], the only point argued was on the question of priority of the claimant's debt. The Court found that no consideration was given to the question whether a garnishee order could be passed. Therefore, a point in respect of which no argument was advanced and no citation of authority was made is not binding and would not be followed. This Court held that such decisions, which are treated having been passed sub silentio and without argument, are of no moment. The Court further explained the position by saying that one of the chief reasons behind the doctrine of precedent is that once a matter is fully argued and decided the same should not be reopened and mere casual expressions carry no weight."

13.8. In a recent decision in ***NBCC (India) Ltd v. The State of West Bengal and Ors***[18], this Court addressed the issue of *sub silentio* in its discussion on how and when its own earlier judgments serve as binding precedent. The following paragraphs are relevant in this regard:

"27. A decision where the issue was neither raised nor preceded by any consideration, in State of U.P. v. Synthetics and Chemicals Ltd. MANU/SC/0616/1991 : 1991:INSC:159 : (1991) 4 SCC 139 this Court held, "the Court did not feel bound by earlier decision as it was rendered without any argument, without reference to the crucial words of the Rule and without any citation of the authority". Further, approving the decision of this Court in Municipal Corporation of Delhi v. Gurnam Kaur MANU/SC/0323/1988 : 1988:INSC:267 : (1989) 1 SCC 101 which held that "precedents sub-silentio and without argument are of no moment" this Court held that, "a decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141". The same approach was adopted in Arnit Das v. State of Bihar MANU/SC/0376/2000 : (2000) 5 SCC 488 where it was held that "a decision not expressed, not accompanied by reasons and not proceeding on a conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not the ratio decidendi. This is the Rule of sub- silentio, in the technical sense when a particular point of law was not consciously determined".

[18] MANU/SC/0061/2025 : 2025 3 SCC 440

> *28. In this context, it is also important to note that, as an institution, our Supreme Court performs the twin functions of decision-making and precedent-making. A substantial portion of our jurisdiction under Article 136 is reflective of regular appellate disposition of decision making. Every judgment or order made by this Court in disposing of these appeals is not intended to be a binding precedent under Article 141. Though the arrival of a dispute for this Court's consideration, either for decision-making or precedent-making is at the same tarmac, every judgment or order which departs from this Court lands at the doorstep of the High Courts and the subordinate courts as a binding precedent. We are aware of the difficulties that High Courts and the subordinate courts face in determining whether the judgment is in the process of decision-making or precedent-making, particularly when we have also declared that even an obiter of this Court must be treated as a binding precedent for the High Courts and the courts below. In the process of decision making, this Court takes care to indicate the instances where the decision of the Supreme Court is not to be treated as precedent. It is therefore necessary to be cautious in our dispensation and state whether a particular decision is to resolve the dispute between the parties and provide finality or whether the judgment is intended to and in fact declares the law under Article 141."*

14. Thus, it is settled legal position, applying the doctrine of *sub silentio,* that a decision is not an authority on a point that has not been argued or decided. In the instant case, the trial Court had not framed any issues regarding the maintainability of the suit filed by Respondent No. 1 against the appellant, for the alleged default committed by Respondent No. 2, despite a plea in the written statement. Without any issue having been framed on maintainability, the matter reached up to this Court, and the decision was rendered solely on the issue of limitation. Therefore, the issues that remained undecided, but go to the root of jurisdiction and maintainability, can still be raised at the stage of execution under Section 47 CPC.

Scope of Section 47 CPC

15. Before analysing the facts, it must be acknowledged that the present appeal arises out of a challenge to the order of the High Court under Article 227, whereby the High Court refused to set aside the dismissal of the application filed under Section 47 CPC. The scope of interference at the stage of execution is limited to certain exceptions. As per Section 47, the Executing Court is empowered to examine the questions relating to execution, discharge, or satisfaction of the decree. It cannot go beyond the decree; but at the same time, when a plea is raised that the decree is a nullity and hence, unenforceable, the executing court is bound to examine and decide such an application on its merits.

16. It is a settled position of law that a court executing a decree cannot go behind the decree passed between the parties or their representatives, unless the decree is a nullity. The court must execute the decree according to its tenor, and cannot entertain objections on the ground that the decree is erroneous in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree, even if erroneous, remains binding on the parties. A decree may, however, be challenged in execution proceedings, if it is a nullity – for instance, if it is passed without bringing on record the legal representative of a person who was dead at the time the decree was passed, or where the cause of action was not maintainable, or if it was passed against a ruling prince without a

certificate. An objection in that behalf may be raised in the execution proceedings. Similarly, when the decree is made by a court that has no inherent jurisdiction to pass it, an objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record.

17. While dealing with the scope of interference of the Executing Court in modifying a decree or award, this Court in ***Brakewel Automotive Components (India) (P) Ltd. v. P.R. Selvam Alagappan***[19], held as follows:

> ***"23.*** *Though this view has echoed time out of number in similar pronouncements of this Court, in Dhurandhar Prasad Singh v. Jai Prakash University [Dhurandhar Prasad Singh v. Jai Prakash University, (2001) 6 SCC 534 : AIR 2001 SC 2552], while dwelling on the scope of Section 47 of the Code, it was ruled that the powers of the court thereunder are quite different and much narrower than those in appeal/revision or review. It was reiterated that the exercise of power under Section 47 of the Code is microscopic and lies in a very narrow inspection hole and an executing court can allow objection to the executability of the decree if it is found that the same is void ab initio and is a nullity, apart from the ground that it is not capable of execution under the law, either because the same was passed in ignorance of such provision of law or the law was promulgated making a decree unexecutable after its passing."*

18. The validity of a decree can be challenged in execution proceedings on the ground that the Court which passed the decree, was lacking in inherent jurisdiction in the sense that it could not have seized of the case because the subject-matter was wholly foreign to its jurisdiction, or that the defendant was dead at the time the suit was instituted or the decree was passed, or on some such other ground which would have the effect of rendering the court entirely

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[19] (2017) 5 SCC 371 : (2017) 3 SCC (Civ) 152 : 2017 SCC OnLine SC 265 at page 379

lacking in jurisdiction over the subject-matter of the suit or over the parties to it. [Vide: ***Hira Lal Patni v. Kali Nath***[20]]

19. From the above pronouncements of this Court, it is amply clear that at the stage of execution proceedings, objections regarding the maintainability of the suit as well as the jurisdiction of the trial Court can be raised for consideration, and the executing court is well within its powers to deal with such objections in accordance with law, if such objections, from the face of the records, do not require adjudication by trial. However, in the case on hand, the objections raised by the appellant regarding the maintainability and the execution proceedings have been rejected by the Executing Court at the threshold, without going into the contentions. This court in a recent judgment in ***Celir LLP v. Mr. Sumati Prasad Bafna and others***[21]**,** while dealing with a contempt petition and underscoring the importance of bringing finality to concluded litigations, applying the Henderson's rule, refused to accept the contentions against the original order, holding that a defence, which ought to have been raised, if not raised, is deemed to have been raised and overruled. The said judgment arises in a contempt matter, where the law that a court hearing the contempt case can neither expand the scope of original order nor modify it is well settled [See: ***Midnapore Peoples Co-operative Bank Ltd and others v. Chunilal Nanda and others***[22]]. However, the case on hand is completely different, and the scope of

[20] 1961 SCC OnLine SC 42 : (1962) 2 SCR 147 : AIR 1962 SC 199 : (1961) 2 SCJ 592
[21] 2024 LiveLaw (SC) 991
[22] (2006) 5 SCC 399

interference by the execution court is to be understood in the light of the power conferred upon it by Section 47 and the settled position that the executing court can refuse to execute the decree if it is a nullity. In addition to the settled position that a decree obtained by fraud or against the wrong person is a nullity, there are other circumstances which can render a decree to be a nullity.

Jurisdiction

20. A decree passed without jurisdiction is null and void. A court is said to lack jurisdiction if it has no territorial jurisdiction, or if it has no pecuniary jurisdiction, or if its jurisdiction over the subject matter is circumscribed by any law. Such laws may be either substantive or procedural and may, by express provision or necessary implication, take away the jurisdiction of a court to deal with a matter, leaving no room for any judicial discretion. These provisions may either impose a total bar on the court from dealing with certain subject matters or impose any pre-conditions, non-compliance with which may prevent the court from entertaining the suit, even if it otherwise has jurisdiction over the subject matter. A plea questioning the jurisdiction of the court can be raised at any stage, including before the High Court or this Court, particularly when it involves a pure question of law.

21. A "Judgment", as defined under Section 2(9) CPC, to be valid, must satisfy the requirements under Order XX Rule 4 (2) CPC. It should not only

trace, record, consider and decide all the points of disputes but should also reflect the same. The decision must be based on reasons reflected in the judgment. Once the issue of maintainability is raised, or if the facts as pleaded by themselves create a cloud over the jurisdiction of the court or the maintainability of the proceedings, the same will have to be addressed, failing which the judgment will be unsustainable and a nullity. It will be useful to refer to the following judgments that discuss the effect of a "Judgment" rendered without jurisdiction. In ***Harshad Chiman Lal Modi v. DLF Universal and Ors.***[23] , this Court addressed the question of territorial jurisdiction in the context of a suit for specific performance of a real estate agreement and observed as under:

> *"27. Ms. Malhotra, then contended that Section 21 of the Code, requires that the objection to the jurisdiction must be taken by the party at the earliest possible opportunity and in any case where the issues are settled at or before settlement of such issues. In the instant case, the suit was filed by the plaintiff in 1988 and written statement was filed by the defendants in 1989 wherein jurisdiction of the court was 'admitted'. On the basis of the pleadings of the parties, issues were framed by the court in February, 1997. In view of the admission of jurisdiction of court, no issue as to jurisdiction of the court was framed. It was only in 1998 that an application for amendment of written statement was filed raising a plea as to absence of jurisdiction of the court. Both the courts were wholly wrong in allowing the amendment and in ignoring Section 21 of the Code. Our attention in this connection was invited by the learned counsel to Hira Lal v. Kali Nath MANU/SC/0041/1961 : [1962]2 SCR 747 and Bahrein Petroleum Co. v. Pappu MANU/SC/0012/1965 : (1966) II LLJ 144 SC.*
>
> *28. We are unable to uphold the contention.*
>
> *The jurisdiction of a court may be classified into several categories. The important categories are (i) Territorial or local jurisdiction; (ii) Pecuniary*

[23] (2005) 7 SCC 791: MANU/SC/0710/2005

jurisdiction; and (iii) Jurisdiction over the subject matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is nullity.

29. In Halsbury's Laws of England, (4th edn.), Reissue, Vol. 10; para 317; it is stated;

> *"317. Consent and waiver. Where, by reason of any limitation imposed by statute, charter or commission, a court is without jurisdiction to entertain any particular claim or matter, neither the acquiescence nor the express consent of the parties can confer jurisdiction upon the court, nor can consent give a court jurisdiction if a condition which goes to the jurisdiction has not been performed or fulfilled. Where the court has jurisdiction over the particular subject matter of the claim or the particular parties and the only objection is whether, in the circumstances of the case, the court ought to exercise jurisdiction, the parties may agree to give jurisdiction in their particular case; or a defendant by entering an appearance without protest, or by taking steps in the proceedings, may waive his right to object to the court taking cognizance of the proceedings. No appearance or answer, however, can give jurisdiction to a limited court, nor can a private individual impose on a judge the jurisdiction or duty to adjudicate on a matter. A statute limiting the jurisdiction of a court may contain provisions enabling the parties to extend the jurisdiction by consent."*

30. In Bahrein Petroleum Co., this Court also held that neither consent nor waiver nor acquiescence can confer jurisdiction upon a court, otherwise incompetent to try the suit. It is well-settled and needs no authority that 'where a court takes upon itself to exercise a jurisdiction it does not possess, its decision amounts to nothing.' A decree passed by a court having no jurisdiction is non-est and its validity can be set up whenever it is sought to be enforced as a foundation for a right, even at the stage of execution or in collateral proceedings. A decree passed by a court without jurisdiction is a coram non judice.

31. In Kiran Singh v. Chaman Paswan MANU/SC/0116/1954 : [1955] 1 SCR 117, this Court declared;

"It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity and that its invalidity could be set up whenever and it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties."

21.1. In ***Jagmittar Sain Bhagat v. Dir. Health Services, Haryana and Others***[24], this Court dealt with the issue of jurisdiction in the context of a government servant seeking retiral benefits under the Consumer Protection Act, 1986 and held that a decree passed without statutory jurisdiction is null and void, and this defect can be challenged at any stage including execution. The relevant paragraphs are extracted below:

"7. Indisputably, it is a settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior Court, and if the Court passes a decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the roots of the cause. Such an issue can be raised at any stage of the proceedings. The finding of a Court or Tribunal becomes irrelevant and unenforceable/in executable once the forum is found to have no jurisdiction. Similarly, if a Court/Tribunal inherently lacks jurisdiction, acquiescence of party equally should not be permitted to perpetuate and perpetrate, defeating the legislative animation. The Court cannot derive jurisdiction apart from the Statute. In such eventuality the doctrine of waiver also does not apply. (Vide: United Commercial Bank Ltd. v. Their Workmen MANU/SC/0067/1951 : AIR 1951 SC 230; Smt. Nai Bahu v. Lal Ramnarayan and Ors. MANU/SC/0367/1977 : AIR 1978 SC 22; Natraj Studios (P) Ltd. v. Navrang Studios and Anr. MANU/SC/0477/1981 : AIR 1981 SC 537; and Kondiba Dagadu Kadam v. Savitribai Sopan Gujar and Ors. MANU/SC/0278/1999 : AIR 1999 SC 2213).

8. In Sushil Kumar Mehta v. Gobind Ram Bohra (Dead) thr. L.Rs. MANU/SC/0593/1989 : (1990) 1 SCC 193, this Court, after placing reliance on large number of its earlier judgments particularly in Premier Automobiles Ltd. v. K.S. Wadke and Ors. MANU/SC/0369/1975 : (1976) 1 SCC 496; Kiran Singh v. Chaman Paswan MANU/SC/0116/1954 : AIR 1954 SC 340; and Chandrika

[24] MANU/SC/0703/2013: 2013 10 SCC 136

Misir and Anr. v. Bhaiyalal MANU/SC/0328/1973 : AIR 1973 SC 2391 held, that a decree without jurisdiction is a nullity. It is a coram non judice; when a special statute gives a right and also provides for a forum for adjudication of rights, remedy has to be sought only under the provisions of that Act and the Common Law Court has no jurisdiction; where an Act creates an obligation and enforces the performance in specified manner, "performance cannot be forced in any other manner."

9. Law does not permit any court/tribunal/authority/forum to usurp jurisdiction on any ground whatsoever, in case, such an authority does not have jurisdiction on the subject matter. For the reason that it is not an objection as to the place of suing; "it is an objection going to the nullity of the order on the ground of want of jurisdiction". Thus, for assumption of jurisdiction by a court or a tribunal, existence of jurisdictional fact is a condition precedent. But once such jurisdictional fact is found to exist, the court or tribunal has power to decide on the adjudicatory facts or facts in issue. (Vide: Setrucharlu Ramabhadra Raju Bahadur v. Maharaja of Jeypore MANU/PR/0093/1919 : AIR 1919 PC 150; State of Gujarat v. Rajesh Kumar Chimanlal Barot and Anr. MANU/SC/0672/1996 : AIR 1996 SC 2664; Harshad Chiman Lal Modi v. D.L.F. Universal Ltd. and Anr. MANU/SC/0710/2005 : AIR 2005 SC 4446; and Carona Ltd. v. Parvathy Swaminathan and Sons MANU/SC/3938/2007 : AIR 2008 SC 187)."

21.2. In ***Shri Saurav Jain and another v. M/s. A.B.P Design & another***[25], this Court discussed the issue of territorial jurisdiction in respect of a property dispute involving cancellation of a sale deed and possession and held as under:

"29. With regard to new grounds being raised before this Court in a special leave petition Under Article 136, we note that Under Order 21 Rule 3(c) of the Supreme Court Rules 2013, SLPs are to be confined to the pleadings before the court whose order is challenged. However, with the leave of the Court, additional grounds can be urged at the time of the hearing.

30.This Court in Bharat Kala Bhandar (P) Ltd. v. Municipal Committee MANU/SC/0267/1965 : AIR 1966 SC 249 dealt with a civil appeal where a contention had not been raised in the suit or in the grounds of appeal before the High Court, and was advanced before this Court for the first time. Although the Court noted that the scope of the appeal cannot be broadened at the instance of the parties, if a plea raises a question of considerable importance, it can be entertained by this Court. In a similar vein, this Court in

[25] MANU/SC/0509/2021 : 2022 18 SCC 633

Vasant Kumar Radhakisan Vora v. Board of Trustees of the Port of Bombay MANU/SC/0005/1991 : (1991) 1 SCC 761, noted that pure questions of law which go to the root of the jurisdiction in a case can be raised for the first time in an appeal under Article 136 of the Constitution.

31. In Chandrika Misir v. Bhaiya Lal MANU/SC/0328/1973 : (1973) 2 SCC 474, this Court was hearing a special leave petition concerning the possession of parties over the suit property which was the subject of the U.P. Zamindari Abolition and Land Reforms Act (Act 1 of 1951). While adjudicating on whether the suit was barred by limitation, Justice DG Palekar, speaking for a two Judge bench, observed that the civil court did not have jurisdiction to entertain the suit at all. Although the plea of bar on jurisdiction had not been raised in the courts below, the Court held that:

> *"6. It is from this order that the present appeal has been filed by special leave. It is to be noticed that the suit had been filed in a civil court for possession and the Limitation Act will be the Act which will govern such a suit. It is not the case that U.P. Act 1 of 1951 authorises the filing of the suit in a civil court and prescribes a period of limitation for granting the relief of possession superseding the one prescribed by the Limitation Act. It was, therefore, perfectly arguable that if the suit is one properly entertainable by the civil court the period of limitation must be governed by the provisions of the Limitation Act and no other. In that case there would have been no alternative but to pass a decree for possession in favour of the Plaintiffs.* ***But the unfortunate part of the whole case is that the civil court had no jurisdiction at all to entertain the suit. It is true that such a contention with regard to the jurisdiction had not been raised by the Defendant in the trial court but where the court is inherently lacking in jurisdiction the plea may be raised at any stage, and, it is conceded by Mr. Yogeshwar Prasad, even in execution proceedings on the ground that the decree was a nullity.*** *If one reads Sections 209 and 331 of the U.P. Act 1 of 1951 together one finds that a suit like the one before us has to be filed before a Special Court created under the Act within a period of limitation specially prescribed under the Rules made under the Act and the jurisdiction of the ordinary civil court is absolutely barred."*

22. In ***Most Rev. P.M.A. Metropolitan v. Moran Mar Marthoma*** [26] as well, a three Judge Bench of this Court entertained an objection as to maintainability of

[26] MANU/SC/0407/1995 : 1995 Supp (4) SCC 286

the suit under Section 9 of the Code of Civil Procedure, despite the plea not having been raised before the courts below. The Court observed that the plea of a bar or lack of jurisdiction can be entertained at any stage, since an order or decree passed without jurisdiction is *non est* in law.

23. The position of law has been consistently applied even in criminal proceedings under Article 136 of the Constitution. In ***Masalti v. State of Uttar Pradesh***[27] , the confirmation of the death sentence of a number of accused persons by the High Court was under challenge before this Court. Chief Justice Gajendragadkar, speaking for a four judge Bench of this Court, observed that:

> *"11. We are not prepared to accept Mr. Sawhney's argument that even if this point was not raised by the Appellants before the High Court, they are entitled to ask us to consider that point having regard to the fact that 10 persons have been ordered to be hanged.* ***It may be conceded that if a point of fact which plainly arises on the record, or a point of law which is relevant and material and can be argued without any further evidence being taken, was urged before the trial court and after it was rejected by it was not repeated before the High Court, it may, in a proper case, be permissible to the Appellants to ask this Court to consider that point in an appeal Under Article 136 of the Constitution; after all in criminal proceedings of this character where sentences of death are imposed on the Appellants, it may not be appropriate to refuse to consider relevant and material pleas of fact and law only on the ground that they were not urged before the High Court.*** *If it is shown that the pleas were actually urged before the High Court and had not been considered by it, then, of course, the party is entitled as a matter of right to obtain a decision on those pleas from this Court. But even otherwise no hard and fast Rule can be laid down prohibiting such pleas being raised in appeals under Article 136."*

24. Based on this settled legal position, we find it just to allow the appellant to raise the ground of jurisdiction before us. Consideration of the question

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[27] MANU/SC/0074/1964 : AIR 1965 SC 202

would not require any additional evidence, since it involves a pure question of law and strikes at the heart of the matter. We shall now turn to the merits of this argument.

Section 80 CPC

25. As seen from the above judgments, a defect in jurisdiction vitiates the decree and renders it unenforceable. The Civil Procedure Code, though considered to be procedural law, encompasses within it, certain provisions that take away or circumscribe the right to sue, which are deemed to be substantive. One such provision is Section 80 CPC which reads as follows:

> *"**Section 80 – Notice**. (1)[Save as otherwise provided in sub-section (2), no suits [shall be instituted] against the Government (including the Government of the State of Jammu and Kashmir)] or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been [delivered to, or left at the office of]*
> *(a) in the case of a suit against the Central Government, [except where it relates to a railway] a Secretary to that Government;*
> *[(b)] in the case of a suit against the Central Government where it relates to railway, the General Manager of that railway;*
> *[(bb) in the case of a suit against the Government of the State of Jammu and Kashmir, the Chief Secretary to that Government or any other officer authorized by that Government in this behalf;]*
> *(c) in the case of a suit against [any other State Government], a Secretary to that Government or the Collector of the district;*
> *and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.*
>
> *(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving*

any notice as required by sub-section (I); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be , a reasonable opportunity of showing cause in respect of the relief prayed for in the suit:
Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1).

(3) No suit instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity shall be dismissed merely by reason of any error or defect in the notice referred to in sub-section (1), if in such notice
(a) the name, description and the residence of the plaintiff had been so given as to enable the appropriate authority or the public officer to identify the person serving the notice and such notice had been delivered or left at the office of the appropriate authority specified in sub-section (1), and
(b) the cause of action and the relief claimed by the plaintiff had been substantially indicated."

25.1. A plain reading of the above provision makes it explicit that no suit can be instituted against the State, an instrumentality of the State, or a public officer acting in his official capacity, without issuance of a notice under Section 80 CPC. It is not to be forgotten that when a notice is to be given, it must also be given on the appropriate party. The object of this section is to ensure that public funds and judicial time are not wasted on unwarranted litigation. The requirement of notice provides the Government an opportunity to examine the claim, reconsider its position, and potentially resolve the dispute out of Court, thereby avoiding unnecessary proceedings. There is an express bar on a civil court from entertaining a suit against the government or its instrumentalities, without compliance with the said provision. Section 80 (2) further provides that notice under Section 80(1) may be dispensed with, but only with the leave of

the court. This Court has consistently held that the requirement of notice under Section 80 is mandatory and must be strictly complied with. Failure to do so renders the suit liable to be dismissed at the threshold. The absence of such notice is treated as a formal defect, and the Court is duty bound to reject the plaint under Order VII Rule 11(d) CPC, if it discloses non-compliance with Section 80 CPC.

26. In cases such as the one under consideration, the State, which was not originally a party, could be impleaded and the plaint could be amended by inclusion of pleadings, cause of action and relief against the State. In such cases also, the plaintiff, immediately upon becoming aware of the necessity to implead the State, is duty bound to either issue a notice as contemplated under Section 80(1) CPC or obtain leave under Section 80(2) CPC before an application for impleadment is taken out. Failure to do so will bar the civil court from exercising jurisdiction against the State, and the court will have no option but to dismiss the suit. This is so because when a state government or its instrumentality is impleaded in a pending suit, a new or fresh cause of action is introduced. Similarly, if the amendment sought by the plaintiff introduces a new cause of action within the period of limitation and with the court's leave, a fresh notice under Section 80(1) CPC must still be issued. This Court in ***Gangappa Gurupadappa Gugwad Gulbarga v. Rachawwa and Ors.***[28] held in the

[28] AIR 1971 SC 442: MANU/SC/0351/1970

following terms that it is the duty of the court to reject the plaint if a notice under Section 80 is not issued:

> *"No doubt it would be open to a court not to decide all the issues which may arise on the pleadings before it if it finds that the plaint on the face of it is barred by any law. If for instance the plaintiff's cause of action is against a Government and the plaint does not show that notice under Section 80 of the CPC claiming relief was served in terms of the said section, it would be the duty of the court to reject the plaint recording an order to that effect with reason for the order. In such a case the court should not embark upon a trial of all the issues involved and such rejection would not preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action."*

27. In ***Bihari Chaudhari v. State of Bihar***[29]*,* this Court, considering the object of Section 80 CPC and various other judgments, held as under:

> *"3. We are concerned in this case with Section 80 C.P.C. as it stood prior to its amendment, by Act 104 of 1976 (Even under the amended provision, the position remains unaltered insofar as a suit of this nature is concerned). We shall extract the Section as it stood at the material time:*
>
> > *"80. No suit shall be instituted against the Government (including the Government of the State of Jammu and Kashmir) or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice an writing has been delivered to, or left at the office of-*
> > *(a) in the case of a suit against the Central Government, except where it relates to a railway, a Secretary to that Government ;*
> > *(b) in the case of a suit against the Central Government where it relates to a railway, the General Manager of that railway ;*
> > *(c) in the case of a suit against the Government of the State of Jammu and Kashmir, the Secretary to that Government or any other officer authorised by that Government in this behalf ;*
> > *(d) in the case of a suit against any other Government, a Secretary to that Government or the Collector of the district;*
> > ** * * and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and relief which he claims; and plaint shall contain a statement that such notice has been so delivered or left."*

[29] AIR 1984 SC 1043 : 1984 (2) SCC 627

4. The effect of the Section is clearly to impose a bar against the institution of a suit against the Government or a public officer in respect of any act purported to be done by him in his official capacity until the expiration of two months after notice in writing has been delivered to or left at the office of the Secretary to Government or Collector of the concerned district and in the case of a public officer delivered to him or left at his office, stating the particulars enumerated in the last part of Sub-section (1) of the Section. When we examine the scheme of the Section it becomes obvious that the Section has been enacted as a measure of public policy with the object of ensuring that before a suit is instituted against the Government or a public officer, the Government or the officer concerned is afforded an opportunity to scrutinise the claim in respect of which the suit is proposed to be filed and if it be found to be a just claim, to take immediate action and thereby avoid unnecessary litigation and save public time and money by settling the claim without driving the person, who has issued the notice, to institute the suit involving considerable expenditure and delay. The Government, unlike private parties, is expected to consider the matter covered by the notice in a most objective manner, after obtaining such legal advice as they may think fit, and take a decision in public interest within the period of two months allowed by the Section as to whether the claim is just and reasonable and the contemplated suit should, therefore, be avoided by speedy negotiations and settlement or whether the claim should be resisted by fighting out the suit if and when it is instituted. There is clearly a public purpose underlying the mandatory provision contained in the Section insisting on the issuance of a notice setting out the particulars of the proposed suit and giving two months time to Government or a public officer before a suit can be instituted against them. The object of the Section is the advancement of justice and the securing of public good by avoidance of unnecessary litigation.

5. When the language used in the Statute is clear and unambiguous, it is the plain duty of the Court to give effect to it and considerations of hardship will not be a legitimate ground for not faithfully implementing the mandate of the legislature.

6. The Judicial Committee of the Privy Council had occasion to consider the scope and effect of Section 80 C.P.C. in an almost similar situation in Bhagchand Dagadusa and Ors. v. Secretary of State for India in Council and Ors. 54 I.A. 338 In that case, though a notice had been issued by the plaintiffs under Section 80 C.P.C. on 26th June 1922, the suit was instituted before the expiry of the period of two months from the said date. It was contended before the Privy Council, relying on some early decisions of High Court of Bombay, that because one of the reliefs claimed in the suit was the grant of a perpetual injunction and the claim for the said relief would have become infructuous if the plaintiffs were to wait for the statutory period of two months prescribed in Section 80 C.P.C. before they filed the suit, the rigour of the Section should be

relaxed by implication of a suitable exception or a qualification in respect of a suit for emergent relief, such as one for injunction. That contention did not find favour with the Privy Council and it was held that Section 80 is express, explicit and mandatory aid it admits no implications or exceptions. The Judicial Committee observed:

To argue as appellants did, that the plaintiffs had a right urgently calling for a remedy, while Section 80 is mere procedure, is fallacious, for Section 80 imposes a statutory and unqualified obligation upon the Court.

7. This decision was subsequently followed by the Judicial Committee in Vellayan v. Madras Province. 74 I.A. 223 The dictum laid down by the Judicial Committee in Bhagchand Dogadusa v. Secretary of State for India. 54 I.A. 333 was cited with approval and followed by a Bench of five Judges of this Court in Sawai Singhai Nirmal Chand v. Union of India. [1966] (1) SCR 956

8. It must now be regarded as settled law that a suit against the Government or a public officer, to which the requirement of a prior notice under Section 80 C.P.C. is attracted, cannot be validly instituted until the expiration of the period of two months next after the notice in writing has been delivered to the authorities concerned in the manner prescribed for in the Section and if filed before the expiry of the said period, the suit has to be dismissed as not maintainable."

28. This Court in ***Bishandayal and Sons v. State of Orissa and Ors***[30] again reiterated the settled position and has held as under:

"16. There can be no dispute to the proposition that a notice under Section 80 can be waived. But the question is whether merely because in the amended written statement such a plea is not taken it amounts to waiver. This contention was argued before the Appellate Court. Even otherwise we find that in the suit itself Issue No. 4 had been raised as to whether or not there was a valid and appropriate notice under Section 80. Such a point having been taken in the original written statement and an issue having been raised, it was not necessary that in the amended written statement such a plea be again taken. On behalf of the Respondents, reliance has been placed on the case of Gangappa Gurupadappa Gugwad v. Rachawwa and Ors. Reported in MANU/SC/0351/1970: [1971] 2 SCR 691, wherein it has been held that where the plaintiffs cause of action is against a Government and the plaint does not show that notice under Section 80 was served, it would be duty of the Court to reject the plaint. In this case the original notice was only in respect of a claim

[30] AIR 2001 SC 544/MANU/SC/0773/2000

under the plaint as it originally stood. That claim was on the basis that there was a concluded contract and that the Appellants had already acquired rights in the mill and the lands. As has been fairly conceded those reliefs were not maintainable and were given up before the Appellate Court. The amended plaint was on an entirely new cause of action. It was based on facts and events which took place after the filing of the original plant(sic). It was a fresh case. Now the claim was for specific performance of the agreement alleged to have been entered into on 29th December, 1978. Admittedly no notice under Section 80 CPC was given for this case. As there was an Issue pertaining to Notice under Section 80, the trial court should have dealt with this aspect. The trial court failed to do so. It was then pressed before the Appellate Court. In our view the finding in the impugned Judgment that the suit based on this claim was not maintainable is correct and requires no interference. If a new cause of action is being introduced a fresh notice under Section 80 CPC would be required to be given. The same not having been given, the suit on this cause of action was not maintainable."

29. In the present case, the appellant/4th defendant has not pleaded directly that no notice under Section 80 was issued, but the plea of maintainability of the suit was raised. It is not in dispute that the appellant/4th defendant is an instrumentality of the Odisha State, created in pursuance of a requirement under the specific enactment of the parliament, State Financial Corporations Act, 1951, requiring every State to facilitate and encourage industrial development by creating institutions to fund the Micro, Small, and Medium Scale Enterprises. A reading of the provisions clearly indicate that not only is the appellant/4th defendant, a mandatory creation under a statute but also is substantially controlled by the State to perform a public duty of great importance, the object of which is to promote regional, social and economical empowerment, which in turn is expected to contribute at national level. Therefore, we are of the opinion that the appellant/4th defendant satisfies the

following tests laid down by the Constitutional Bench of this Court in ***Ajay Hasia and Others v. Khalid Mujib Sehravardi and others***[31] to be classified as a "State" as defined under Article 12 of the Constitution of India. The relevant paragraphs are extracted below for ready reference:

> *"8. We may point out that this very question as to when a corporation can be regarded as an 'authority' within the meaning of Article 12 arose for consideration before this Court in R.D. Shetty v. The International Airport Authority of India and Ors. [1979] 1 S.C.R.1042. There, in a unanimous judgment of three Judges delivered by one of us (Bhagwati, J) this Court pointed out :*
>
> *"So far as India is concerned, the genesis of the emergence of corporations as instrumentalities or agencies of Government is to be found in the Government of India Resolution on Industrial Policy dated 6th April, 1948 where it was stated inter alia that "management of State enterprises will as a rule be through the medium of public corporation under the statutory control of the Central Government who will assume such powers as may be necessary to ensure this."*
>
> *It was in pursuance of the policy envisaged in this and subsequent resolutions on Industrial policy that corporations were created by Government for setting up and management of public enterprises and carrying out other public functions. Ordinarily these functions could have been carried out by Government departmentally through its service personnel but the instrumentality or agency of the corporation was resorted to in these cases having regard to the nature of the task to be performed. The corporations acting as instrumentality or agency of Government would obviously be subject to the same limitations in the field of constitutional and administrative law as Government itself, though in the eye of the law, they would be distinct and independent legal entities. If Government acting through its officers is subject to certain constitutional and public law limitations, it must follow a fortiori that Government acting through instrumentality or agency of corporations should equally be subject to the same limitations. The Court then addressed itself to the question as to how to determine whether a corporation is acting as an instrumentality or agency of the Government and dealing with that question, observed:*
>
> *"A corporation may be created in one of two ways. It may be either established by statute or incorporated under a law such as the Companies Act 1956 or the*

[31] (1981) 1 SCC 722: MANU/SC/0498/1980

Societies Registration Act 1860. Where a Corporation is wholly controlled by Government not only in its policy making but also in carrying out the functions entrusted to it by the law establishing it or by the Charter of its incorporation, there can be no doubt that it would be an instrumentality or agency of Government. But ordinarily where a corporation is established by statute, it is autonomous in its working, subject only to a provision, often times made, that it shall be bound by any directions that may be issued from time to time by Government in respect of policy matters. So also a corporation incorporated under law is managed by a board of directors or committee of management in accordance with the provisions of the statute under which it is incorporated. When does such a corporation become an instrumentality or agency of Government? Is the holding of the entire share capital of the Corporation by Government enough or is it necessary that in addition there should be a certain amount of direct control exercised by Government and, if so what should be the nature of such control? Should the functions which the Corporation is charged to carry out possess any particular characteristic or feature, or is the nature of the functions immaterial? Now, one thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. But, as is quite often the case, a corporation established by statute may have no shares or shareholders, in which case it would be a relevant factor to consider whether the administration is in the hands of a board of directors appointed by Government though this consideration also may not be determinative, because even where the directors are appointed by Government, they may be completely free from governmental control in the discharge of their functions. What then are tests to determine whether a corporation established by statute or incorporated under law is an instrumentality or agency of Government? It is not possible to formulate an inclusive or exhaustive test which would adequately answer this question. There is no cut and dried formula, which would provide the correct division of corporations into those which are instrumentalities or agencies of Government and those which are not"

The Court then proceeded to indicate the different tests, apart from ownership of the entire share capital:

"...if extensive and unusual financial assistance is given and the purpose of the Government in giving such assistance coincides with the purpose for which the corporation is expected to' use the assistance and such purpose is of public character, it may be a relevant circumstance supporting an inference that the corporation is an instrumentality or agency of Government.... It may therefore be possible to say that where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.... But a finding of State financial support plus an unusual degree of control over

the management and policies might lead one to characterise an operation as State action - Vide Sukhdev v. Bhagatram MANU/SC/0667/1975 : (1975) ILLJ 399 SC. So also the existence of deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality. It may also be a relevant factor to consider whether the corporation enjoys monopoly status which is State conferred or State protected. There can be little doubt that State conferred or State protected monopoly status would be highly relevant in assessing the aggregate weight of the corporation's ties to the State."

There is also another factor which may be regarded as having a bearing on this issue and it is whether the operation of the corporation is an important public function. It has been held in the United States in a number of cases that the concept of private action must yield to a conception of State action where public functions are being performed. Vide Arthur S. Miller: "The Constitutional Law of the Security State" (Stanford Law Review 620 at 664).

"It may be noted that besides the so-called traditional functions, the modern state operates as multitude of public enterprises and discharges a host of other public functions. If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. This is precisely what was pointed out by Mathew, J., in Sukhdev v. Bhagatram (supra) where the learned Judge said that "institutions engaged in matters of high public interest of performing public functions are by virtue of the nature of the functions performed government agencies. Activities which are too fundamental to the society are by definition too important not to be considered government functions."

The court however proceeded to point out with reference to the last functional test:
"...the decisions show that even this test of public or governmental character of the function is not easy of application and does not invariably lead to the correct inference because the range of governmental activity is broad and varied and merely because an activity may be such as may legitimately be carried on by Government, it does not mean that a corporation, which is otherwise a private entity, would be an instrumentality or agency of Government by reason of carrying on such activity. In fact, it is difficult to distinguish between governmental functions and non-governmental functions. Perhaps the distinction between governmental and non-governmental functions is not valid any more in a social welfare State where the laissez faire is an outmoded concept and Herbert Spencer's social statics has no place. The contrast is rather between governmental activities which are private and private activities which are governmental. [Mathew, J. Sukhdev v. Bhagatram (supra) at p. 652]. But the public nature of the function, if impregnated with governmental character or

"tied or entwined with Government" or fortified by some other additional factor, may render the corporation an instrumentality or agency of Government. Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of the inference."

These observations of the court in the International Airport Authority's case (supra) have our full approval.

9.The tests for determining as to when a corporation can be said to be a instrumentality or agency of Government may now be called out from the judgment in the International Airport Authority's case. These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression "other authorities", it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the International Airport Authority's case as follows :
(1) One thing is clear that if the entire share capital of the corporation is held by Government it would go a long way towards indicating that the corporation is an instrumentality or agency of Government.
(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.
(3) It may also be a relevant factor...
whether the corporation enjoys monopoly status which is the State conferred or State protected.
(4) Existence of deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality.
(5) If the functions of the corporation of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.
(6) Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference of the corporation being an instrumentality or agency of Government. If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of government, it would, as pointed out in the International Airport Authority's case, be an 'authority' and, therefore, 'State' within the meaning of the expression in Article 12."

30. Therefore, with the above conclusion that the appellant/4th defendant is a "State" within the meaning of Article 12 of the Constitution, the mandatory requirement of notice under Section 80 has come into operation. A plain reading of Section 80 along with the settled position of law clearly enunciates that it is a duty of the trial court to deal with that aspect of satisfaction of the notice under Section 80. Such preconditions to be satisfied before initiation of a suit are recognized as mandatory in civil disputes where a statute prescribes the same. A reference may be made to Section 18 of the MSME Act, which provides for conciliation, or to Section 12-A of the Commercial Courts Act, 2015, which mandates pre-institution mediation – failure of which would render the suit unsustainable and liable to be rejected. The trial Court, in the present case, failed to do so, thereby rendering the decree a nullity. For a moment, we pause to state that the plaintiff, in our view, cannot by any stretch be considered to be ignorant or illiterate, as it is a registered partnership firm and the pleadings or the documents marked also cannot be come to their aid to condone the lapse as there is nothing on record to show that any notice was issued to the appellant/4th defendant, which has gone into the root of the jurisdiction of the trial court to entertain the suit against the appellant/4th defendant.

Applicability of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993

31. The trial Court is bound to decide all the issues framed. While doing so, it goes without saying that all the applicable legal provisions must be duly analysed. It is to be noted that Issue No.8 as framed by the trial court was: "whether the plaintiff is a small-scale unit, if yes, then its effect?". This issue was taken up for consideration along with Issue No.5, which reads: "whether the plaintiff is entitled to receive interest, if yes, then at what rate?". However, while deciding these issues, the trial Court failed to render any categorical finding on whether the plaintiff was, in fact, a small-scale industry, and if so, whether the provisions of the now-repealed Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993[32] (which came into force only after the suit was filed) would at all be applicable – more particularly against the appellant/4th defendant. Therefore, it has become imperative for this Court to examine the applicability of the Act, 1993.

32. The Act, 1993 came into force with effect from 23.09.1992 and remained in effect until it was repealed by the Micro, Small and Medium Enterprises Development Act, 2006. The Act, 1993 is a special legislation. In order to determine whether the Act, 1993 applies to the present case, it is necessary to examine certain provisions of the Act, in light of the factual matrix on record. Section 2 of the Act defines various terms used therein, the relevant definitions of which, are extracted below, for the purpose of the present adjudication:

[32] For short, "the Act, 1993"

*2(b) "**appointed day**" means the day following immediately after the expiry of the period of thirty days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier;*

*2 (c) "**buyer**" means whoever buys any goods or receives any services from a supplier for consideration;*

*2 (f) "**supplier**" means an ancillary industrial undertaking or a small scale industrial undertaking holding a permanent registration certificate issued by the Directorate of Industries of a State or [Union territory and includes- [Substituted by Act 23 of 1998, Section 2, for " Union territory" (w.e.f. 10.8.1998).]*

32.1. Sections 3 to 6 of the Act, 1993 deal with the key aspects of supply, liability for delayed payment, interest (including compound interest), and recovery mechanisms. These provisions form the substantive core of the Act and read as under:

*Section 3. **Liability of buyer to make payment.**- Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day: Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed one hundred and twenty days from the day of acceptance or the day of deemed acceptance.*

*Section 4. **Date from which and rate at which interest is payable.**- Where any buyer fails to make payment of the amount to the supplier, as required Under Section 3, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay interest to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at one and half time of prime Lending Rate charged by the State Bank of India.*
Explanation.- For the purposes of this section," Prime Lending Rate" means the Prime Lending Rate of the State Bank of India which is available to the best borrowers of the bank.

*Section 5. **Liability of buyer to pay compound interest.**- Notwithstanding anything contained in any agreement between a supplier and a buyer or in any law for the time being in force, the buyer shall be liable to pay compound*

interest (with monthly interests) at the rate mentioned in Section 4 on the amount due to the supplier.

Section 6. ***Recovery of amount due****.-*
(1) The amount due from a buyer, together with the amount of interest calculated in accordance with the provisions of Sections 4 and 5, shall be recoverable by the supplier from the buyer by way of a suit or other proceeding under any law for the time being in force.
(2) Notwithstanding anything contained in Sub-section (1), any party to a dispute may make a reference to the Industry Facilitation Council for acting as an arbitrator or conciliator in respect of the matters referred to in that Sub-section and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such dispute as if the arbitration or conciliation were pursuant to an arbitration agreement referred to in Sub-section (1) of Section 7 of that Act."

32.2. A reading of the above provisions would indicate that under Section 3, there is a statutory liability on the buyer to make payment for the supplies received by him. The statutory liability comes into operation when any supplier supplies any goods to any buyer; the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing, or, where there is no agreement in this behalf, before the appointed day. The term 'Appointed day' as defined in Section 2(b) means the day following immediately after the expiry of thirty days from the day of acceptance or the day of deemed acceptance of any goods or services by a buyer from a supplier. Thus, statutory liability to make payment falls on the buyer from the 31st day after the supply, if no specific agreement exists between the parties. It is relevant to note here that the liability to make payment accrues "where any supplier supplies any goods or renders any services to any buyer," and the incident of liability is either the supply of goods, rendering any service, or both. The Act, 1993, without any

shadow of doubt, is clearly prospective in nature and governs the incidents of supply and rendering service which happens after its enforcement, i.e., 23.09.1992. Further, it is the buyer who is liable to make the payment after the supply of goods or rendering any service. Thus, by virtue of Section 3, both the incidents – i.e., the supply of goods or services on the one hand, and the payment or default on the other – must occur after the Act has come into force. Only in cases where the supply or service is rendered after the enforcement of the Act, the liability of payment shall accrue and the Act can be pressed into service by a supplier. The provisions also clearly indicate that the liability is only on the buyer, and any amounts including interest under Section 4 or compounded interest under Section 5 can be demanded only from the buyer, if the incidents referred to in Section 3 occur after the Act has come into force and not for any supply or service rendered prior to 23.09.1992.

33. In ***Shanti Conductors (P) Ltd v. Assam State Electricity Board and others***[33], a three-Judge Bench of this Court had an occasion to consider the scope of the repealed Act, 1993, its applicability with regard to the date of contract, date of supply, liability to make payments and the conflicting judgments of the Division Bench of this Court, and ultimately, held as under:

> *"27. From the submissions of the learned Counsel for the parties and pleadings on record we need to answer the following questions in these appeals:*
> *(1) Whether Act, 1993 is not applicable when the contract for supply was entered between the parties prior to enforcement of the Act i.e. 23.09.1992?*

[33] MANU/SC/0068/2019: (2019) 19 SCC 529

(2) Whether in the event it is found that Act is applicable also with regard to contract entered prior to Act, 1993 in pursuance of which contract, supplies were made after the enforcement of Act, 1993, the Act, 1993 can be said to have retrospective operation?
(3) Whether money suit by M/s. Shanti Conductors was barred by limitation?
(4) Whether judgment of this Court in Purbanchal Cables dated 31.08.2016 by which appeal of M/s. Shanti Conductors was also dismissed is binding between the parties i.e. M/s. Shanti Conductors and Assam Electricity Board and the Appellant cannot be allowed to question the said judgment in these appeals?
(5) Whether the suit filed by the Appellants for recovery of only interest when admittedly entire principal amount was paid prior to filing of the suit can be said to be maintainable?
(6) Whether appeal filed by M/s. Trusses and Towers Pvt. Ltd. challenging the review judgment dated 19.03.2003 cannot be entertained since no liberty was granted by this Court in SLP(C) No. 12217 of 2001 when the SLP filed against the main judgment of the High court dated 05.04.2001 was dismissed as withdrawn?
(7) Whether the High court while considering the Review petition No. 75 of 2001 M/s. Trusses & Towers Pvt. Ltd. even after expressing that Act, 1993 is not applicable could have allowed 9% interest to the Plaintiff?"
.....

37. The liability to make payment under Section 3 and the liability to pay interest under Section 4 is not dependent on date of agreement between the parties to make supply. When the question of supply and payment are incidents contemplated under the Act which have to take place after the enforcement of the Act the day of agreement between the parties has no relevance insofar as statutory liability under the Act is concerned.

38. There are several two-Judge Benches judgments of this Court where provisions of Act, 1993 especially Sections 3 and 4 have been interpreted. We now refer to judgments of this Court which have considered the above provisions. The first judgment which has been noticed is Assam Small Scale Industries Development Corporation Ltd. and Ors. v. J.D. Pharmaceuticals and another (2005) 13 SCC 19. This Court in the said judgment laid down that Act, 1993 will not apply to transactions which took place prior to enforcement of the Act. Following was laid down in paragraphs 37 and 38:

> *"37. We have held hereinbefore that Clause 8 of the terms and conditions relate to the payments of balance 10%. It is not in dispute that the Plaintiff had demanded both the principal amount as also the interest from the Corporation. Section 3 of the 1993 Act imposes a statutory liability upon the buyer to make payment for the supplies of any goods either on or before the agreed date or where there is no agreement*

before the appointed day. Only when payments are not made in terms of Section 3, Section 4 would apply. The 1993 Act came into effect with effect from 23.9.1992 and will not apply to transactions which took place prior to that date. We find that out of the 71 suit transactions, sl. Nos. 1 to 26 (referred to in penultimate para of the Trial Court Judgment), that is supply orders between 5.6.1991 to 28.7.1992, were prior to the date of 1993 Act coming into force. Only the transactions at sl. No. 27 to 71 (that is supply orders between 22.10.1992 to 19.6.1993). will attract the provisions of the 1993 Act.

38. The 1993 Act, thus, will have no application in relation to the transactions entered into between June, 1991 and 23.9.1992. The Trial Court as also the High Court, therefore, committed a manifest error in directing payment of interest at the rate of 23% upto June, 1991 and 23.5% thereafter."

39. The word 'transaction' used in the above judgment has to include the supply, in the event word 'transaction' is understood as supply there cannot be any quarrel with the proposition that Act will not apply with regard to supply made prior to the Act.

40. The next judgment of this Court is Shakti Tubes Ltd. v. State of Bihar and Others, (2009) 7 SCC 673. In the said case, Shakti Tubes had filed a suit for payment of interest. In the above case, supply orders were placed by the State of Bihar on 16.07.1992, reliance on Act, 1993 was placed by the appellant. It was also noticed in the said case that earlier supply order dated 16.07.1992 was materially altered and substituted by a fresh supply order issued on 18.03.1993. Referring to the judgment of this Court in Assam Small Scale Industries case, two-Judge Bench held that ratio of the aforesaid decision is clearly applicable. In paragraphs 17, 18 and 19 following was laid down:

"17. In the light of the said facts in Assam Small Scale Industries case, it was recorded in paragraph 37 of the judgment that while the Act came into effect from 23rd September, 1992, the supply orders were placed only in respect of Serial Nos. 1 to 26 immediately and before coming into effect of the Act and rest of the supply orders namely, supply orders at Serial Nos. 27 to 71 were placed between 22.10.1992 to 19.06.1993 which were subsequent to the date when the Act came into force. In that context, it was clearly recorded in the judgment that the Act will have no application to the transactions that took place prior to the commencement of the Act. In the next sentence the Court made it clear as to what is referred to and understood by the expression "transaction" when it clearly stated that out of 71 transactions, Serial Nos. 1 to 26, i.e. supply orders between 05.06.1991 to 28.07.1992 being prior to 23rd September, 1992 when the Act came into force, higher interest as envisaged Under Sections 4 and 5

of the Act cannot be paid and demanded in respect of the said supply orders/transactions. It was also made clear that the transactions at Serial Nos. 27 to 71 only i.e. supply orders between 22.10.1992 to 19.06.1993, would attract the provisions of the Act. therefore, those supply orders which were issued by the Corporation between 22.10.1992 to 19.06.1993 were held to be the transactions which would be entitled to get the benefit of the provisions of the Act.

18. In our considered opinion, the ratio of the aforesaid decision in Assam Small Scale Industries case is clearly applicable and would squarely govern the facts of the present case as well. The said decision was rendered by this Court after appreciating the entire facts as also all the relevant laws on the issue and, therefore, we do not find any reason to take a different view than what was taken by this Court in the aforesaid judgment. Thus, we respectfully agree with the aforesaid decision of this Court which is found to be rightly arrived at after appreciating all the facts and circumstances of the case.

19. Now coming to the facts of the present case we find that there is no dispute with regard to the fact that the supply order was placed with the Respondents on 16.07.1992 for supply of the pipes which date is admittedly prior to the date on which this Act came into effect."

41. The Bench further referring to earlier judgment of this Court in Assam Small Scale Industries observed that the use of the expression 'transaction' was only for supply order. In paragraph 21, following was laid down:

"21. We have considered the aforesaid rival submissions. This Court in Assam Small Scale Industries case has finally set at rest the issue raised by stating that as to what is to be considered relevant is the date of supply order placed by the Respondents and when this Court used the expression "transaction" it only meant a supply order. The Court made it explicitly clear in paragraph 37 of the judgment which we had already extracted above. In our considered opinion there is no ambiguity in the aforesaid judgment passed by this Court. The intent and the purpose of the Act, as made in paragraph 37 of the judgment, are quite clear and apparent. When this Court said "transaction" it meant initiation of the transaction i.e. placing of the supply orders and not the completion of the transactions which would be completed only when the payment is made therefore, the submission made by the learned senior Counsel appearing for the Appellant-Plaintiff fails."

42. The Court further held that there was neither any alteration of the contract nor novation of the contract in paragraph 31, which is to the following effect:

"31. Even otherwise, we are of the considered view that there was neither any alteration of the contract nor any novation of the contract in the present case. The correspondence between the parties clearly disclosed that after the Respondents issued the supply order, the Appellant-Plaintiff did not supply the pipes in terms of the supply order and it urged mainly for the increase in the price of the goods. Subsequently, they relied upon the price escalation Clause and asked for increase in the price of pipes."

43. Next judgment we notice is Modern Industries v. Steel Authority of India Limited, (2010) 5 SCC 44. Noticing the purpose and object of the Act, 1993, following was observed in paragraph 23:

"23. The wholesome purpose and object behind 1993 Act as amended in 1998 is to ensure that buyer promptly pays the amount due towards the goods supplied or the services rendered by the supplier. It also provides for payment of interest statutorily on the outstanding money in case of default. Section 3, accordingly, fastens liability upon the buyer to make payment for goods supplied or services rendered to the buyer on or before the date agreed upon in writing or before the appointed day and when there is no date agreed upon in writing, the appointed day shall not exceed 120 days from the day of acceptance."

44. The Court had also considered one of the submissions that the suit for recovery of mere interest under Act, 1993 is not maintainable. The Bench answered the issue by holding that the suit even for interest is also maintainable. Following was laid down in paragraphs 45 - 46:

"45. It is true that word 'together' ordinarily means conjointly or simultaneously but this ordinary meaning put upon the said word may not be apt in the context of Section 6. Can it be said that the action contemplated in Section 6 by way of suit or any other legal proceeding Under Sub-section (1) or by making reference to IFC Under Sub-section (2) is maintainable only if it is for recovery of principal sum along with interest as per Sections 4 and 5 and not for interest alone? The answer has to be in negative.

46. We approve the view of Gauhati High Court in Assam State Electricity Board (2002) 2 GLR 550 that word 'together' in Section 6(1) would mean 'alongwith' or 'as well as'. Seen thus, the action Under Section 6(2) could be maintained for recovery of principal amount and interest or only for interest where liability is admitted or has been disputed in respect of goods supplied or services rendered. In our opinion, under Section 6(2) action by way of reference to IFC cannot be restricted to a claim for recovery of interest due Under Sections 4 and 5 only in cases of an existing determined, settled or admitted liability. IFC

has competence to determine the amount due for goods supplied or services rendered in cases where the liability is disputed by the buyer. Construction put upon Section 6(2) by learned senior Counsel for the buyer does not deserve to be accepted as it will not be in conformity with the intention, object and purpose of 1993 Act. Preamble to 1993 Act, upon which strong reliance has been placed by learned senior Counsel, does not persuade us to hold otherwise. It is so because Preamble may not exactly correspond with the enactment; the enactment may go beyond Preamble."

45. In the above case also the contract was entered on 15.01.1993 but the contract was subsequently altered. Last alteration being on 29.04.1995 hence the Bench repelled the submission that Act, 1993 was not applicable.

46. Now we come to the judgment of this Court in Purbanchal Cables and Conductors Private Limited (supra), which is a judgment on which reliance has been placed by the High Court while allowing the appeal of the Board. Learned Counsel for the Board has also placed heavy reliance on the said judgment.

47. In the above case, Board placed order dated 31.03.1992 for delivery of goods on 16.09.1992. Further, supplies were made between 25.9.1992 and 30.03.1993. Entire supply was completed on 12.10.1993 entire payment was received by October, 1993. The supplier instituted money suit for payment of interest on delayed payment under Act, 1993. The issues to be answered have been noted in paragraph 10 of the judgment which is to the following effect:

"10. The issues that are required to be answered by us in these appeals are whether a suit for interest along is maintainable under the provisions of the Act, and whether the Act would be applicable to contracts that have been concluded prior to the commencement of the Act. In other words, we are required to examine whether the Act would apply to those contracts which were entered into prior to the commencement of the Act but supplies were effected after the Act came into force."

48. On the question of maintainability of the suit for interest, the Bench held that the supplier may file suit only for a higher rate of interest on delayed payment made by the buyer from the commencement of the Act. The Bench held that Act, 1993, being a substantive law it shall operate prospectively. In paragraph 51, following has been laid down:

"51. There is no doubt about the fact that the Act is a substantive law as vested rights of entitlement to a higher rate of interest in case of delayed payment accrues in favour of the supplier and a corresponding liability is imposed on the buyer. This Court, time and again, has observed that any substantive law shall operate prospectively unless retrospective operation is clearly made out in the language of the statute. Only a

procedural or declaratory law operates retrospectively as there is no vested right in procedure."

49. The Court further held that Act, 1993 shall be applicable only for sale agreements after the date of the commencement of the Act and not any time prior. Following was laid down in paragraph 52:

"52. In the absence of any express legislative intendment of the retrospective application of the Act, and by virtue of the fact that the Act creates a new liability of a high rate of interest against the buyer, the Act cannot be construed to have retrospective effect. Since the Act envisages that the supplier has an accrued right to claim a higher rate of interest in terms of the Act, the same can only be said to accrue for sale agreements after the date of commencement of the Act i.e. 23-9-1992 and not any time prior."

50. The Bench also expressly rejected the submission of the learned Counsel appearing for the supplier that the earlier judgments of this Court in Assam Small Scale Industries and Shakti Tubes need consideration. On question of limitation of the suit, no final opinion was expressed. The appeals were ultimately dismissed by the Bench.

Issue No. 1

51. The judgment of this Court in Purbanchal Cables and Conductors Pvt. Ltd., relying on Assam Small Scale Industries and Shakti Tubes had laid down that Act, 1993 cannot be made applicable with regard to sale agreements which were entered into prior to the enforcement of the Act and Act can be invoked only for the sale agreements which were entered after the enforcement of the Act. Although attempt was made in Purbanchal Cables to get judgment in Assam Small Scale Industries and Shakti Tubes reconsidered, but Coordinate Bench in Purbanchal Cables has refused to permit any such reconsideration. The matter now having been referred to this three-Judge Bench, we have to consider and answer as to whether the above interpretation of Act, 1993 as given is in consonance with the statutory scheme.

52. We have noticed above that the incidence of applicability of the liability under the Act is supply of goods or rendering of service. In event the supply of goods and rendering of services is subsequent to Act, can liability to pay interest on delayed payment be denied on the ground that agreement in pursuance of which supplies were made were entered prior to enforcement of the Act? Entering into an agreement being not expressly or impliedly referred to in the statutory scheme as an incident for fastening of the liability, making the date of agreement as date for imposition of liability does not conform to the statutory scheme. This can be illustrated by taking an example. There are two small scale

industries who received orders for supply of materials. 'A' received such orders prior to the enforcement of the Act and 'B' received the order after the enforcement of the Act. Both supplied the goods subsequent to enforcement of the Act and became entitled to receive payment after the supply, on or before the day agreed upon between the supplier and buyer or before the appointed day. Payments were not made both to A and B as required by Section 3. Can the buyer who has received supplies from supplier A escape from his statutory liability to make payment of interest Under Section 3 read with Section 4? The answer has to be ***No.*** *Two suppliers who supply goods after the enforcement of the Act, become entitled to receive payment after the enforcement of the Act one supplier cannot be denied the benefit of the statutory protection on the pretext that agreement in his case was entered prior to enforcement of the Act. When the date of agreement is not referred as material or incidence for fastening the liability, by no judicial interpretation the said date can be treated as a date for fastening of the liability. The Act, 1993 being beneficial legislation enacted to protect small scale industries and statutorily ensure by mandatory provision for payment of interest on the outstanding money, accepting the interpretation as put by learned Counsel for the Board that the day of agreement has to be subsequent to the enforcement of the Act, the entire beneficial protection of the Act shall be defeated. The existence of statutory liability depends on the statutory factors as enumerated in Section 3 and Section 4 of the Act, 1993. Factor for liability to make payment Under Section 3 being the supplier supplies any goods or renders services to the buyer, the liability of buyer cannot be denied on the ground that agreement entered between the parties for supply was prior to Act, 1993. To hold that liability of buyer for payment shall arise only when agreement for supply was entered subsequent to enforcement of the Act, it shall be adding words to Section 3 which is not permissible under principles of statutory construction. We, thus, are of the view that judgments in Purbanchal Cables and Conductors (supra), Assam Small Scale Industries and Shakti Tubes which held that Act, 1993 shall be applicable only when the agreement to sale/contract was entered prior/subsequent to the enforcement of the Act, does not lay down the correct law. We accept the submission of learned Counsel for the Appellants that even if agreement of sale is entered prior to enforcement of the Act, liability to make payment Under Section 3 and liability to make payment of interest Under Section 4 shall arise if supplies are made subsequent to the enforcement of the Act.*

Issue No. 2

53. In all the judgments of this Court referred above, it has been held that Act, 1993 is not retrospective. It is not even contended before us by any of the parties that the Act, 1993 is retrospective in operation. Judgments of this Court as noticed above rightly hold that Act, 1993 is not retrospective.

54. The opinion of Justice Gowda dated 31.08.2016 although holds that Act is not retrospective but he holds the Act retroactive. The word retroactive has been defined in Black's Law Dictionary in the following words:
***Retroactive. adj. (17C)** (Of a statute, ruling, etc.) extending in scope or effect to matters that have occurred in the past. - Also termed retrospective. Cf. Prospective (1). - retroact, vb.*

*55. Two-Judge Bench of this Court in **State Bank's Staff Union (Madras Circle) v. Union of India and Ors.,** MANU/SC/0564/2005 : (2005) 7 SCC 584, had occasion to examine the concept of retroactive and retrospective. In paragraphs 20 and 21 of the judgment following has been laid down:*

> *"20. Judicial Dictionary (13th Edn.) K.J. Aiyar, Butterworth, p. 857, states that the word "retrospective" when used, with reference to an enactment may mean (i) affecting an existing contract; or (ii) reopening up of past, closed and completed transaction; or (iii) affecting accrued rights and remedies; or (iv) affecting procedure. Words and Phrases, Permanent Edn., Vol. 37-A, pp. 224-25, defines a "retrospective or retroactive law" as one which takes away or impairs vested or accrued rights acquired under existing laws. A retroactive law takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transaction or considerations already past.*
>
> *21. In Advanced Law Lexicon by P. Ramanath Aiyar (3rd Edition, 2005) the expressions "retroactive" and "retrospective" have been defined as follows at page 4124 Vol. 4) Retroactive-Acting backward; affecting what is past. (Of a statute, ruling, etc.) extending in scope or effect to matters that have occurred in the past. - Also termed retrospective. (Black, 7th Edn. 1999) 'Retroactivity' is a term often used by lawyers but rarely defined. On analysis it soon becomes apparent, moreover, that it is used to cover at least two distinct concepts. The first, which may be called 'true retroactivity', consists in the application of a new Rule of law to an act or transaction which was completed before the Rule was promulgated. The second concept, which will be referred to as 'quasi-retroactivity', occurs when a new Rule of law is applied to an act or transaction in the process of completion....*
> *The foundation of these concepts is the distinction between completed and pending transactions...."*
> *(T.C. Hartley, The Foundations of European Community Law 129 (1981).*
> ** * **
> *Retrospective-Looking back; contemplating what is past.*
> *Having operation from a past time.*

'Retrospective' is somewhat ambiguous and that good deal of confusion has been caused by the fact that it is used in more senses than one. In general however the Courts regards as retrospective any statute which operates on cases or facts coming into existence before its commencement in the sense that it affects even if for the future only the character or consequences of transactions previously entered into or of other past conduct. Thus, a statute is not retrospective merely because it affects existing rights; nor is it retrospective merely because a part of the requisite for its action is drawn from a time and antecedents to its passing. (Vol. 44 Halsbury's Laws of England, Fourth Edition, page 570 para 921)"

56. Further in Jay Mahakali Rolling Mills v. Union of India and Ors. MANU/SC/3133/2007 : 2007 (12) SCC 198, explaining the retroactive and retrospective following has been laid down:

"8. "Retrospective" means looking backward, contemplating what is past, having reference to a statute or things existing before the statute in question. Retrospective law means a law which looks backward or contemplates the past; one, which is made to affect acts or facts occurring, or rights occurring, before it comes into force. Retroactive statute means a statute, which creates a new obligation on transactions or considerations or destroys or impairs vested rights."

57. Retroactivity in the context of the statute consists application of new Rule of law to an Act or transaction which has been completed before the Rule was promulgated.

58. In the present case the liability of buyer to make payment and day from which payment and interest become payable Under Section 3 and 4 does not relate on any event which took place prior to Act, 1993, it is not even necessary for us to say that Act, 1993 is retroactive in operation. The Act, 1993 is clearly prospective in operation and it is not necessary to term it as retroactive in operation. We, thus, do not subscribe to the opinion dated 31.08.2016 of one of the Hon'ble Judges holding that the Act, 1993 as retroactive."

33.1. The ratio laid down by this Court in ***Shanti Conductors case*** (supra) can be summarised as under:

A. The date of contract is irrelevant and what is relevant is the incident of supply or rendering of services as contemplated under Section 3 after the

Act, 1993 has come into force, and only if the incidents occur after 23.09.1992, the provisions can be applied thereby overruling the ratio laid down by this Court in ***Purbanchal Cables & Conductors, Assam Small Scale Industries*** and ***Shakti Tubes Ltd.,*** that the Act, 1993 shall be applicable only when the agreement to sale/contract was entered into subsequent to the enforcement of the Act.

B. That the Act, 1993 is prospective – it is neither retrospective nor retroactive – and hence, the provisions of the Act cannot be invoked or relied upon for supplies effected prior to its enforcement.

C. The payment of interest under Section 4, or compounded interest under Section 5, is mandatory and applies *dehors* the terms of the agreement between the parties, and upon failure of the buyer to make payment within the time stipulated, statutory interest is automatic.

D. The liability to pay under the Act is only on the buyer and cannot be fastened on any other person for a transaction covered under the Act,

E. The liability to pay interest or compound interest arises only if the supply or service occurs after the enforcement date of the Act, 1993.

34. Juxtaposing the above ratio with the facts of the present case, we are of the considered view that the trial Court committed a serious error in applying the provisions of the repealed Act, 1993, to the present case, where the supply was effected in 1985, and more particularly, a grave error in fastening liability

for interest and compound interest on the appellant, which was not even a buyer in the transaction. Accordingly, the judgment of the trial Court, to the extent of applying the repealed Act, 1993 and imposing liability on the appellant, is patently without authority and is a nullity on that count. The High Court, in exercise of its supervisory jurisdiction, also failed to examine and address these vital aspects.

35. As pointed out earlier, the trial Court failed to return any finding on the applicability of the repealed Act, 1993, despite the fact that an issue on the payment of interest had been framed. Under Order XX Rule 5 CPC, it is incumbent upon the trial Court to pronounce its judgment on all issues framed. In the present case, the trial Court failed to discharge this obligation and, instead, directly proceeded to apply the provisions of an enactment that was not in force, either at the time of the transaction or at the time of institution of the suit. The failure to discuss and give any finding on the issue has rendered the judgment to be a nullity. This constitutes a fundamental legal error, which, in our view, has vitiated the decree and renders it unenforceable against the appellant.

Maintainability of Suit

36. The appellant is a State-owned Corporation incorporated and registered under the S.F.C. Act, 1951. On 22.11.1984, the appellant had jointly financed,

along with Respondent No.3 - IPICOL, to Respondent No. 2, for the establishment of a bleaching powder unit at Ganjam, Orisha. A *pari passu* agreement was executed among the appellant, Respondent No. 2 and Respondent No. 3. On 29.07.1985, Respondent No. 1 allegedly supplied raw materials worth Rs.66,454.65 to Respondent No. 2. Owing to the non-repayment of dues arising out of the financial assistance provided by the appellant and Respondent No.3, the appellant took over possession of industrial unit of Respondent No. 2, on 18.08.1987 under Section 29 of the S.F.C. Act, 1951, without encumbrances, as specifically permitted under the Act. Upon a thorough analysis of the records, we find that once the appellant took over the affairs of Respondent No. 2 to realise its dues, all debts and liabilities of Respondent No. 2 automatically fell on the appellant to satisfy those claims only out of the balance sale proceeds, if any, after satisfying its dues as contemplated under Section 29. However, it is claimed that the appellant sold the property in the open market for recovery of the loan amount and thereafter, paid the remaining balance to Respondent No.3 - IPICOL pursuant to a contract between them. On 29.02.1988, Respondent No.1, alleging that it had supplied hydrated lime to Respondent No. 2 in 1985, filed a recovery suit in Civil Suit No.103 of 1988 before the Court of Civil Judge (Sr. Division), Dehradun. Initially, the appellant was not a party to the suit. On 11.02.1993, Respondent No.1 made an application to implead the appellant as Defendant No.4 and the trial Court erroneously allowed the same on 06.12.1994. The appellant filed a

written statement denying liability on multiple grounds, including: (i) Under Section 29, no liability of Respondent No. 2 to third parties could be imposed on the appellant, (ii) There was no privity of contract between the appellant and Respondent No. 1 as the appellant was not a party to the underlying transaction, (iii) the suit against the appellant, was barred by limitation, (iv) the suit was not maintainable, and (v) the trial Court lacked territorial jurisdiction to entertain the suit. Without properly considering the same, the trial Court decreed the suit in favour of Respondent No. 1.

37. Upon a perusal of the pleadings and the judgment, this Court finds that the trial Court failed to frame any issues with respect to maintainability, jurisdiction and limitation, nor did it render any finding on the maintainability of the suit against the appellant herein, there being a specific plea to that effect. In a recent judgment in ***R. Nagaraj (dead) through legal heirs and another v. Rajamani and others***[34], this Court held that although it is not necessary to frame a separate issue on each point, a finding on a disputed question, while deciding a connected issue is sufficient. However, in the present case, the trial Court, though framed Issue No. 9 concerning the liability of the appellant / 4th defendant, failed to return any finding on the foundational question of maintainability of the suit, which goes to the root of jurisdiction.

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38. It is further evident that initially, the original suit No.103/88 was partly decreed for Rs.84,170/- along with pending and future interest at 24% per annum from 01.03.1988 to 23.09.1992, and thereafter at 2% compounded monthly from 23.09.1992 until realization. The finding of the trial Court on Issue No.9 is of critical importance and, in fact, gave rise to multiple rounds of litigation. The trial Court however, without analysing the scope and applicability of the S.F.C. Act, 1951, the requirement of mandatory notice under Section 80 CPC, the relevance of the repealed Act, 1993, and the specifically contested issue of maintainability, proceeded to render findings only on the limited issues. The judgment was passed without considering or rendering any finding on the core legal issues in the case, thereby vitiating the trial Court's judgment on fundamental jurisdictional grounds.

Privity of Contract

39. Admittedly, there was no contract between the appellant and Respondent No. 1. The appellant has been impleaded solely on the ground that it took possession of the defaulting industrial concern and exercised its rights under the S.F.C. Act, 1951 to realize its dues. In the absence of any privity of contract, the liability of the appellant is limited strictly to the extent contemplated under Section 29 of the S.F.C. Act, 1951. The appellant therefore, cannot be saddled with the entire liability arising from a transaction to which it was not a party. It is necessary to understand the object behind Section 29.

40. The object of Section 29 of the State Financial Corporation Act, 1951, is to empower State Financial Corporations to enforce their rights, without recourse to a suit, against the securities alone, for the recovery of their dues. In other words, the appellant is a class of secured creditor conferred with special rights under Section 29 to realise its dues by enforcing the security without approaching the Court. The liability of such a creditor is limited only to the extent of the money available in its hands after adjustment of its dues. It is not in dispute that the appellant held such money merely as a "trustee" akin to a legal representative in possession of the estate's proceeds. It is pertinent to note that a financial corporation, or for that matter, the appellant took possession of the defaulting industrial concern only for the limited purpose of realizing its dues and cannot be treated as an owner in the broader legal sense. Once the assets are sold by auction, the financial corporation is entitled to adjust the sale proceeds toward its expenses, the principal, and interest due. Any balance remaining must be distributed among the other creditors. Section 50 CPC deals with the liability of a legal representative upon the death of a judgment debtor, and under Section 50(2), such liability is limited only to the estate of the deceased in the representative's hands and cannot be stretched to the personal properties standing in the name of the legal representatives. It is well settled that if the legal heirs of a deceased judgment debtor do not receive any estate, they cannot even be termed "legal representatives" within the meaning of the law,

since that status arises solely from the receipt of the deceased's estate. Similar provisions limiting the liability of legal heirs or representatives only to the extent of the value of the properties received by them after the death of the deceased, are also found in statutes dealing with direct and indirect taxes. Similarly, the liability of a financial corporation is limited only to the extent of the money received from the management or sale of assets of the defaulting concern and lying in its hand after settlement of its dues and creditors' claims. No claim can be extended to the personal assets or properties of such a corporation. It is needless to state that once the defaulting concern is sold or rehabilitated, the financial corporation's control over it ceases. Hence, the liability of the appellant is restricted to the defaulting concern's funds in its hands, and under no stretch of law, can be extended to its personal or corporate properties. In such a situation, we fail to comprehend how the entire liability has been fastened upon the appellant and how its properties and bank accounts have been attached. This is clearly beyond the jurisdiction of the trial Court or, for that matter, even the Executing Court, which cannot proceed against the personal assets of the appellant in such circumstances.

41. As already stated, the suit was decreed on 20.08.2001. During the pendency of the appeal, it came to light that the trial Court had neither framed any issue on limitation nor adjudicated upon it. The appellate Court accordingly remanded the matter to the trial Court to frame and adjudicate upon the said

issue. It was only after the appellant raised this plea, Respondent No. 1/ plaintiff filed an application under Section 21 of the Limitation Act, 1963. On 05.11.2005, the trial Court erroneously held that the impleadment of the appellant would relate back to the date of institution of the suit i.e., 29.02.1988, despite the fact that the decree had already been passed. Thereafter, the trial Court passed an order on 22.03.2006 negating the plea of limitation. It is evident that the application under Section 21 was filed only post-decree in an attempt to evade judicial scrutiny of the limitation issue in the appeal proceedings, even though the suit was already barred by limitation against the appellant. We are unable to understand as to how the trial Court can usurp the jurisdiction, when the original order of impleadment without any finding with regard to application of the proviso to Section 21 was affirmed upto the High Court. Unfortunately, the trial Court failed to appreciate and consider this crucial aspect. It is a trite law that once a final decree has been passed, the trial Court becomes *functus officio*, except for limited purposes under Section 114 read with Order XLVII (review), Section 144 (restitution), or Section 152 (amendment for clerical or arithmetical errors) of the CPC, which cannot be applied to the facts of the present case. The trial Court, therefore, has no jurisdiction to reopen a case or alter a part of the order so as to affect the rights and liabilities of the parties once the suit has been disposed of.

41.1. Under Section 21 of the Limitation Act, 1963, the impleadment of a party in a pending suit takes effect only from the date on which such an

application is allowed. However, the proviso enables the court to direct that such impleadment shall relate back to an earlier date, provided that the omission was due to a mistake made in good faith. A mistake in good faith would be applicable if the person claiming shelter under such plea is able to prove that he has exercised all possible diligence and believed an existing fact or law to be true or applicable, which is probable but not correct. Essentially, such a mistake in good faith can only denote an error in judgment, but cannot include a plea that he was not aware of the law, as per the maxim "*Iqnorantia facti doth excusat; Ignorantia juris non excusat"* which means, ignorance of fact is an excuse, but ignorance of law is not excused. For a person to claim that the mistake in good faith in law is applicable to his case, it not only presupposes that he was aware of the law, but has to prove that he after due diligence exercisable by a man of reasonable knowledge believed that he was not entitled to sue or any relief, which later turned out to be incorrect. As stated earlier, the trial Court upon a decree being passed, had become *functus officio*. Section 21 is applicable only in pending proceedings and the provision is to be pressed into service when the application for impleading is decided and not later. The trial Court, while passing an order for impleadment has to consider the proviso to Section 21, the facts pleaded, and the evidence both documentary or oral, and then decide, whether the legal requirement is satisfied to hold that the suit is deemed to have been instituted against the impleaded party with effect from an earlier date. It is also open to the Court to consider the facts and upon

satisfaction, to apply the proviso. However, such an exercise must be done while deciding the application and a further order is to be passed to that effect immediately and not after the suit is decreed. In the present case, the records reveal that the application under section 21 was filed only in 2005 – after the decree had already been passed. Such an application was not maintainable, and the Court had no jurisdiction to entertain it post-decree. Although the appeal filed by the appellant was dismissed by order dated 23.11.2017 in Civil Appeal No. 2073/2010, this Court in that round, did not go into the question of the maintainability or the proper stage for invoking Section 21 of the Limitation Act, 1963.

42. Yet another contention raised by the learned Senior Counsel for the appellant is that the decree cannot be enforced against the appellant, as amounts far in excess of the decretal sum have already been realized from it. Presently, the appellant – a Public Sector Undertaking under the State of Odisha – is facing execution proceedings and has been saddled with a liability of Rs. 8.89 Crores, arising from a decree for Rs. 90,400/- with interest, in a suit instituted in 1988 by Respondent No.1 to recover sums allegedly due from a transaction in which the appellant was never a party. At this juncture, it is pertinent to note that during the pendency of the suit proceedings, the appellant had furnished two bank guarantees – one for Rs.6.36 lakhs in 1998 and another for Rs.3.50 lakhs in 1999 – both drawn on Union Bank of India, Cuttack, and both provided

even prior to the decree dated 20.08.2001. This Court, in its order dated 10.03.2014 in Civil Appeal No. 2073 of 2010, specifically recorded that the appellant had already deposited an amount in excess of the decretal liability through the said bank guarantees, which had been periodically renewed and accordingly, there was no need to direct any further deposit. Thereafter, pursuant to the orders of the Executing Court, the proceeds of the bank guarantees – totaling Rs.58,16,905/- (i.e., Rs.40,16,606/- + Rs.18,00,299/-) – were also improperly released to Respondent No.1 during the course of execution.

43. In the instant case, the supply order in question – namely, the raw materials purchased by Respondent No. 2 from Respondent No. 1/Decree Holder, amounting to Rs.66,454.65, for which the suit was filed in 1988 – was made in the year 1985, well before the coming into force of the Act, 1993, i.e., with effect from 23.09.1992. The suit was decreed only on 20.8.2001. Accordingly, the trial Court ought not to have awarded 2% monthly compound interest from 23.09.1992 onwards on the decretal amount, as the transaction predates the applicability of the said Act. We have already held that the provisions of the repealed Act, 1993 are inapplicable to the facts of the present case against any of the defendants, as the supply in question occurred prior to 23.09.1992. Therefore, not only the maintainability of the suit against the appellant, the imposition and recovery of compound interest is also without any

legal authority. The appellant specifically raised an objection regarding the award of interest in its application under Section 47 CPC. However, the trial Court summarily rejected the said application on the ground that the appeals against the original decree were already dismissed, and the High Court also erroneously dismissed the writ petition, holding that the plea regarding interest had been raised for the first time before it.

43.1. Insofar as the rate of interest awarded by the trial Court is concerned, it is clearly excessive and exorbitant, and as held by us, contrary to law. Hence, the order of the Executing Court attaching the fixed deposits and flexi accounts of the appellant with Axis Bank, Union Bank of India and Odisha State Co-operative Bank, is without jurisdiction and legal authority. Furthermore, the bank guarantees furnished by the appellant were also encashed and paid to the decree holder, resulting in huge loss to the appellant, on the basis of an improper claim agitated before the courts below. It is also relevant to note here that there was no privity of contract between the parties regarding the rate of interest payable. Once it is held that compound interest cannot be levied under the repealed Act, 1993, the natural *sequitur* is that the calculation of interest and the consequential recovery are improper. The record discloses that Respondent No.1/ Decree Holder has received Rs.58,16,905/- on 05.10.2020 and Rs.2,34,40,654/- on 07.01.2022, thereby totaling Rs.2,92,57,559/- through the attachment and encashment of bank guarantees and fixed deposit of the appellant. It is further evident that the bank guarantees were not furnished

voluntarily but only in compliance with the orders of the trial Court. All these factors have not been taken into consideration by the courts below at any point of time.

44. We have already held that the mandatory requirement under Section 80 CPC, was not complied with by Respondent No. 1 before instituting the suit against the appellant, seeking recovery of money for the default alleged to have been committed by Respondent No. 2. On that ground alone, the suit filed against the appellant was not maintainable, and there is a clear bar on the jurisdiction of the trial Court. Though the suit was filed in the year 1988 and execution proceedings were initiated at a later point in time, nearly four decades have been spent litigating the dispute before the Courts. Even though Respondent No. 1/ Decree Holder was successful in every round of litigation up to this Court, the initiation of the suit against the appellant is illegal and a nullity, and hence, cannot be enforced. As observed earlier, the trial Court and the High Court failed to address the core issues that go to the root of its jurisdiction. A State Corporation was made to face one litigation after another for the financial assistance extended by it to a private company, which subsequently defaulted. Although the said company was taken over for the limited purpose of realization of its dues and even after it has lost its control, the losses to the appellant have continued, ultimately leading to the filing of the present appeal before us.

CONCLUSION

45. For the sake of clarity and academic interest, we have elaborately analysed the issues involved in all their facets. However, we are of the considered opinion that the suit itself was not maintainable against the appellant and the provisions of the repealed Act, 1993 were inapplicable to the present case. Consequently, the execution proceedings to realize the principal with exorbitant interest calculated under the repealed Act, 1993 are unsustainable, and the decree cannot be enforced against the appellant. The trial Court, having already passed the decree, could not have entertained an application under Section 21 of the Limitation Act, 1963, and the post-decree application filed by Respondent No.1 was, therefore, not maintainable. Nearly four decades have elapsed in protracted litigation, and we are inclined to bring the matter to a quietus. Article 142 of the Constitution empowers this Court to pass any order necessary for doing complete justice in any cause or matter pending before it. Accordingly, we hold that the appellant (OSFC) is not liable to pay any amount to Respondent No. 1 for the alleged default committed by Respondent No. 2, under the decree. In view of the same, the impugned judgment and orders passed by the Courts below are hereby set aside.

46. It is not in dispute that Respondent No.1 has already received a total sum of Rs.2,92,57,559/-, comprising Rs.58,16,905/- from the encashment of bank guarantees and Rs.2,34,40,654/- from the attachment of fixed deposits furnished by the appellant. Having held that the suit instituted against the appellant was not maintainable and that the resultant decree is unenforceable in law, we are of the considered view that the appellant is entitled to a refund of the entire amount of Rs.2,92,57,559/-, received by Respondent No. 1. However, taking into account the peculiar facts and circumstances of the case, the said amount shall be refunded without any interest. Accordingly, Respondent No. 1 is directed to refund the sum of Rs.2,92,57,559/- to the appellant, without interest, within a period of three months from the date of this judgment. In the event of failure to refund the aforesaid amount within the stipulated period, the appellant shall be at liberty to initiate appropriate proceedings against Respondent No. 1 for recovery of the same along with simple interest at the rate of 6% per annum in accordance with law, after the expiry of the said three-month period.

47. Before parting, we deem it necessary to record our strong disapproval of the manner in which the present litigation has been conducted by the appellant Corporation and its counsel before the lower courts. Public Institutions – particularly those entrusted with the stewardship of public funds – are expected to conduct themselves in legal proceedings with the highest standards of diligence, responsibility, and accountability. The failure to raise appropriate

legal objections at the appropriate stages, coupled with the absence of timely and effective representation, has not only burdened the judicial system but has also exposed the corporation to unwarranted and protracted liability. The present case is a stark example of how a State-owned corporation has been unjustly and unsustainably saddled with financial liability. The Courts below – without a proper appreciation of the factual matrix or applicable legal principles – have passed orders culminating in execution proceedings that contravene foundational tenets of law and disregard essential procedural safeguards. Such outcomes not only lead to manifest injustice but also set a deleterious precedent. It is well settled that procedural compliance is not a mere formality; it is a substantive safeguard designed to protect the interests of State instrumentalities and ultimately, the public exchequer. In the present case, several crores of rupees belonging to a State Financial Corporation are at stake. Courts are duty-bound to ensure that public resources are not unjustly depleted due to judicial oversight or misapplication of law. This responsibility extends equally to Government counsel and officials involved in litigation. It is incumbent upon them to ensure that all material facts are disclosed, all legal defences are properly pleaded, and all relevant documents are placed on record. Government counsel, as officers of the Court, bear a dual responsibility: to protect the interest of the State, and to assist the Court in achieving outcomes that are just, lawful and equitable. It is also imperative for the State to establish and maintain robust internal mechanisms for regular monitoring and effective follow-up of

pending litigation, ensuring it is pursued to its logical conclusion. As has been repeatedly emphasized, while the State and its instrumentalities enjoy all rights available to any litigant, they must exercise these rights in a manner consistent with public interest and the ends of justice. Accordingly, in order to uphold the rule of law and safeguard the primacy of fairness and justice, this Court is compelled to intervene, even at the stage of execution, to scrutinize the decree and rectify the legal infirmities that undermine its very foundation.

48. In the upshot, the Civil Appeal is allowed with the above directions. The parties shall bear their own costs.

49. Pending Application(s), if any, shall stand disposed of.

……J.
[J. B. PARDIWALA]

……J.
[R. MAHADEVAN]

NEW DELHI;
AUGUST 5, 2025