2026 LiveLaw (SC) 478

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
J.B. PARDIWALA; J., R. MAHADEVAN; J.
MAY 8, 2026
CIVIL APPEAL NO. 7370 OF 2026 [Arising out of SLP (C) NO. 7924 of 2024]
MANJULA AND OTHERS *versus* **D.A. SRINIVAS**

Code of Civil Procedure, 1908 – Order VII Rule 11 – Rejection of Plaint – Duty of Court at the threshold – Clever Drafting and Fictional Cause of Action – Admission of a plaint is not an automatic or mechanical process - The trial Court has a bounden duty to scrutinize the averments of the plaint in conjunction with the relied-upon documents to determine whether it discloses a real cause of action or if it is barred by law - Litigants cannot circumvent statutory prohibitions by clever drafting or artful pleadings that create a surreal or illusory cause of action - When clever drafting veils an implied bar under law, the Court must lift the veil, expose the bar, and nip the sham litigation in the bud at the earliest stage, without necessarily waiting for the defendant to enter appearance or seek rejection. *[Paras 8, 9, 26 - 29]*

Prohibition of Benami Property Transactions Act, 1988 – Sections 2(9), 3, 4, 5, and 27 – Benami Transaction – Retrospective Operation of 2016 Amendment – Fiduciary Capacity Exemption – Employer-Employee Relationship– The amendments introduced by the Benami Transactions (Prohibition) Amendment Act, 2016, being declaratory, procedural, curative, and machinery-oriented, operate retrospectively and can be invoked in respect of past benami transactions - To determine whether a transaction is benami, the substance must prevail over form, and the Court must look at the real nature of the transaction beneath any camouflage - The expression "fiduciary capacity" under Section 2(9)(A)(ii) must receive a restricted construction and covers explicitly enumerated classes (trustee, executor, partner, director, etc.) or categories notified by the Central Government - An ordinary employer-employee relationship or a commercial arrangement supported by reciprocal financial consideration does not constitute a fiduciary relationship - Where a plaintiff provides the consideration to purchase agricultural lands in the name of an employee/name-lender to circumvent statutory restrictions under the land reforms law, the arrangement squarely falls within the mischief of a prohibited benami transaction. *[Paras 18 – 29]*

Hindu Succession Act, 1956 – Section 25 – Disqualification of Murderer – Applicability to Testamentary Succession – Standard of Proof in Civil Proceedings – Section 25 provides that a person who commits murder or abets murder shall be disqualified from inheriting the property of the person murdered - This disqualification is based on public policy, justice, equity, and good conscience, encapsulating the maxim *nullus*

***commodum capere potest de injuria sua propria* (no man can take advantage of his own wrong) - The bar under Section 25 applies uniformly to both intestate and testamentary succession (disposition through a Will) - Criminal conviction is not a condition precedent for the operation of this statutory bar; the civil consequence of disqualification can be examined independently on the standard of preponderance of probabilities - A person who claims title through a Will but suppresses the material fact that they are facing investigation/prosecution for the murder of the testator is disentitled from asserting any rights in a court of equity.** *[Relied on T. Arivandandam v. T.V. Satyapal and Another, (1977) 4 SCC 467; Mithilesh Kumari and Another v. Prem Behari Khare, (1989) 2 SCC 95; R. Rajagopal Reddy (Dead) by LRs and Others v. Padmini Chandrasekharan (Dead) by LRs, (1995) 2 SCC 630; Union of India and Others v. Major General Madan Lal Yadav, (1996) 4 SCC 127; Nusli Neville Wadia v. Ivory Properties and Others, (2020) 6 SCC 557]*

Prohibition of Benami Property Transactions Act, 1988 – Section 27 and Section 45 – Civil Confiscation vs. Criminal Prosecution – Constitution of India, Article 20(2) – Double Jeopardy – Adjudication and confiscation under Chapter IV of the Benami Act are civil actions directed against the property itself to remedy a statutory violation, whereas personal criminal prosecution is governed by Chapter VII - Confiscation is a civil consequence tested on the principle of preponderance of probabilities and does not amount to prosecution or criminal punishment - Simultaneous or successive initiation of both civil confiscation and criminal prosecution does not attract the bar of double jeopardy under Article 20(2) of the Constitution - Once a competent judicial determination declaring a transaction to be benami attains finality in a civil suit, the property is liable to absolute confiscation by the Central Government, and it is unnecessary to relegate the matter to the statutory Adjudicating Authority under the Act.

For Petitioner(s) :Mr. Mukul Rohatgi, Sr. Adv. Mr. C. S. Vaidyanathan, Sr. Adv. Mr. Mahesh Thakur, AOR Mrs. Anuparna Bordoloi, Adv. Mr. Narveer Yadav, Adv. Mr. Siddhartha Sati, Adv. Ms. Ruchi Kumari, Adv.

For Respondent(s) :Mr. Vikas Singh, Sr. Adv. Mr. Gagan Gupta, Sr. Adv. Mr. T M Shivakumar, Adv. Mr. Deepak Goel, AOR Ms. Deepika Kalia, Adv. Ms. Vasudha Singh, Adv. Mr. Sudeep Chandra, Adv. Ms. Laxmi Pundir, Adv. Ms. Simmi Bagga, Adv. Ms. Sanjana, Adv.

J U D G M E N T

R. MAHADEVAN, J.

1. Leave granted. For ease of reference, this judgment is divided into the following heads:

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I. RELIEF SOUGHT

2. The instant Civil Appeal is directed against the Judgment and Final Order dated 22.02.2024 passed by the High Court of Karnataka at Bengaluru[1] in Regular First Appeal No. 2216 of 2023 (DEC/INJ), whereby the High Court allowed the appeal filed by the Plaintiff / Respondent herein and set aside the

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

order dated 30.10.2023 passed by the Principal Senior Civil Judge, Bengaluru Rural District, Bengaluru[2] in I.A. No. V and O.S. No. 246 of 2020.

2.1. By the aforesaid order, the trial Court had allowed the application filed by Defendant Nos. 1 to 3 / Appellants under Order VII Rule 11 (a) and (d) of the Code of Civil Procedure, 1908[3], and rejected the plaint on the grounds that it did not disclose any cause of action and that the suit was barred under Sections 4 and 6 of the Prohibition of Benami Property Transactions Act, 1988[4]. However, by the impugned judgment, the High Court reversed the said findings and restored the suit for adjudication on merits.

3. By order dated 08.04.2024, this Court, while issuing notice to the Respondent, directed that the restored proceedings shall remain stayed until further orders.

II. FACTUAL MATRIX

4. The Appellants herein were arrayed as Defendant Nos. 1 to 3 in O.S. No. 246 of 2020, instituted by the Respondent / Plaintiff, seeking a declaration that he is the owner of the suit schedule properties on the strength of a Will dated 20.04.2018, allegedly executed by the husband of Defendant No. 1 and father of Defendant Nos. 2 and 3, namely, K. Raghunath, who died on 04.05.2019. The Respondent also sought a declaration for rectification of certain alleged mistakes said to have crept into the schedule appended to the said Will, together with consequential relief of injunction.

4.1. According to the Appellants, the properties in question were the selfacquired properties of late K. Raghunath, who had earlier executed a registered Will dated 28.01.2016 bequeathing the same in favour of his wife, Appellant No. 1. On the basis of the said Will, the Appellants caused the revenue records to be mutated in their favour and have since been in peaceful possession and enjoyment of the properties. It is their further case that the Respondent, being aggrieved by the close relationship maintained by the deceased K. Raghunath with the Respondent's father, D.K. Adikesavalu, entered into a conspiracy with others and caused the murder of K. Raghunath. At the instance of Appellant Nos.1 and 3, two FIRs, namely Crime No.0089/2020 dated 05.03.2020 and Crime No.0148/2020 dated 15.09.2020, came to be registered against the Respondent and other accused persons.

4.2. During the pendency of the suit, the Appellants / Defendant Nos. 1 to 3 filed an Application under Order VII Rule 11 (a) and (d) CPC seeking rejection of the plaint on the grounds that it disclosed no cause of action and that the suit was barred by Sections 4 and 6 of the Benami Act. According to the Appellants, the averments contained in the plaint themselves rendered it liable to be rejected at the threshold.

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[2] Hereinafter referred to as "the trial Court"
[3] In short, "CPC"
[4] In short, "Benami Act"

4.3. The trial Court, after hearing the parties and upon a detailed consideration of the plaint averments as well as the legal principles governing benami transactions, allowed the application under Order VII Rule 11(a) and (d) CPC and by order dated 30.10.2023, rejected the plaint.

4.4. Aggrieved thereby, the Respondent / Plaintiff preferred Regular First Appeal No.2216 of 2023 before the High Court. By the impugned judgment dated 22.02.2024, the High Court allowed the appeal holding that the pleadings in the plaint did not attract the provisions of the Benami Act and that the plaint, therefore, could not have been rejected at the threshold. Consequently, the High Court set aside the order of the trial Court and restored the suit to file for adjudication on merits. Hence, the present Civil Appeal by the Appellants / Defendants before this Court.

III. CONTENTIONS OF THE PARTIES

5. The learned Senior Counsel appearing for the Appellants submitted that the impugned judgment of the High Court is wholly unsustainable in law, inasmuch as a plain, meaningful, and substantive reading of the plaint, read in conjunction with the recitals contained in the alleged Will dated 20.04.2018, unmistakably discloses that the Respondent / Plaintiff claims to be the real owner of the suit schedule properties, while the same stood in the name of late K. Raghunath only as an ostensible owner. According to the Plaintiff's own pleadings, the properties were purchased out of his funds in the name of the deceased K. Raghunath, who was merely a name-lender, and the subsequent Will was allegedly intended to restore or reconvey title in favour of the Plaintiff. It was contended that this crucial aspect has not been appreciated by the High Court, which erroneously proceeded on the footing that there was no reference to any benami arrangement in the plaint.

5.1. It was further contended that the High Court fell into grave error in reversing a well-reasoned order of the trial Court, which had, upon a comprehensive reading of the plaint, rightly concluded that the suit was barred by law. The trial Court correctly found that the substance of the relief sought was the enforcement of a benami transaction. The Plaintiff's own case was that he financed the purchase of agricultural lands, but caused them to be acquired in the name of the deceased, allegedly owing to statutory restrictions upon his own eligibility to purchase such lands. The present suit, therefore, seeks a declaration of title founded upon an alleged Will dated 20.04.2018 said to have been executed by the deceased, who has since been murdered, and in respect whereof, criminal proceedings are pending, in which the plaintiff himself is stated to be the principal accused.

5.2. The learned Senior Counsel emphasised that while dealing with an application under Order VII Rule 11 CPC, the Court is not confined to a formal or superficial reading of the plaint, but is duty-bound to undertake a meaningful and substantive examination of the averments and the real nature of the relief claimed. Even if the plaint does not expressly use the expression "benami", a holistic reading thereof clearly reveals that the Plaintiff asserts that the

consideration flowed from him, the purchase was made at his instance, and the properties were held by the deceased merely as a name-lender. The High Court, by confining itself to the absence of express terminology, failed to discern the true character of the transaction pleaded by the Plaintiff.

5.3. It was further submitted that while considering an application under Order VII Rule 11 CPC, the Court is entitled to look not only into the plaint averments but also the documents annexed thereto. The sale deeds relied upon by the Plaintiff themselves show that the consideration was paid by late K. Raghunath, thereby reinforcing the statutory presumption against the Plaintiff's claim. On a cumulative reading of the plaint and the accompanying documents, it becomes evident that the suit is barred under the provisions of the Benami Act. The mere attempt to camouflage the claim as one arising under a Will cannot salvage the Plaintiff's case, particularly when the genuineness of the Will itself is under serious cloud and is the subject matter of criminal investigation.

5.4. The learned Senior Counsel submitted that the principal question arising for consideration is whether, on a reading of the plaint as a whole, the properties claimed by the Respondent / Plaintiff are admittedly benami properties within the meaning of Section 2(9) of the Benami Act, thereby attracting the statutory bar on civil court jurisdiction under Section 45 and rendering the plaint liable to rejection under Order VII Rule 11(d) CPC.

5.5. It was next contended that the relationship between the Plaintiff and the deceased, namely that of employer and employee, cannot by any stretch of legal reasoning be construed as a fiduciary relationship so as to attract the exception carved out under Section 2(9)(A)(ii) of the Benami Act. The Plaintiff has not even pleaded the existence of any fiduciary relationship in the plaint. In the absence of foundational pleadings, the Plaintiff cannot be permitted to invoke such statutory exception for the first time in argument. To treat an ordinary employer-employee relationship as "fiduciary" would defeat the very object and purpose of the Benami Act.

5.6. Developing this submission further, the learned Senior Counsel pointed out that the Benami Transactions (Prohibition) Amendment Act, 2016 introduced exceptions for certain fiduciary relationships, including trustees, executors, partners, directors, and other persons standing in fiduciary capacity. However, the present case does not satisfy the essential requirement of existence of such fiduciary relationship. The pleadings themselves reveal no entrustment, confidence, duty of loyalty, or legally recognised fiduciary obligation between the Plaintiff and the deceased K. Raghunath. Reliance was placed by way of illustration upon the concept of fiduciary obligations recognised under Section 166 of the Companies Act, 2013 in the context of directors and companies, to contend that no such analogous duty arises between employer and employee in the present facts.

5.7. It was also argued that in any event, the question of invoking Section 2(9)(A)(ii) does not arise since no such plea was ever raised in the plaint, nor did the High Court restore the suit on the basis of that exception. Consequently,

the Plaintiff cannot now seek to sustain the plaint by raising an altogether new foundation dehors the pleadings.

5.8. The learned Senior Counsel further submitted that the 2016 Amendment, which introduced the fiduciary exception in its present form, came into effect on 01.11.2016, whereas the sale deeds in respect of the suit properties were executed during the years 2006 and 2011. Relying upon the decision of this Court in ***Union of India and another v. Ganpati Dealcom Private Limited***[5]**,** it was contended that the 2016 Amendment is not retrospective in operation. Therefore, the subsequently introduced exception cannot govern transactions that had taken place much prior thereto.

5.9. It was then submitted that during the pendency of the present proceedings, the Respondent / Plaintiff caused mutation of revenue records in his favour and executed various sale deeds on the strength of the disputed Will. According to the learned Senior Counsel, the Will itself is under investigation by the CBI on allegations of forgery, including the use of fabricated stamp papers purportedly printed after the death of the testator. The Plaintiff is stated to have been arrested in connection therewith and to remain in custody since 22.12.2025. Despite these serious allegations, the Plaintiff is stated to have secured mutation entries and alienated portions of the properties, thereby aggravating the illegality.

5.10. In sum and substance, it was contended that the admitted position remains that the suit properties stood in the name of late K. Raghunath, husband of Appellant No. 1 and father of Appellant Nos. 2 and 3, who are presently in possession thereof. The Plaintiff's own case is that he supplied the funds and caused the properties to be purchased in the name of the deceased. If these pleadings are tested in light of Section 2(9) of the Benami Act, the transaction squarely falls within the statutory definition of benami property. Since none of the statutory exceptions apply, the suit is clearly barred by law and the plaint is liable to be rejected under Order VII Rule 11(a) and (d) CPC.

5.11. In support of these submissions, reliance was placed on the decision in ***T.Arivandandam v. T.V.Satyapal and another***[6]**,** wherein this Court held that if clever drafting creates an illusion of a cause of action, the Court must, upon a meaningful reading of the plaint, nip such litigation in the bud.

5.12. Reference was also made on ***Valliammal (D) by LRs v. Subramaniam and others***[7]**,** wherein this Court exhaustively considered the concept of a benami transaction and held that no absolute formula can be laid down for determining whether a transaction is benami, the question being one of intention to be gathered from the surrounding circumstances. The Court identified certain wellrecognised indicia, namely: (i) the source from which the purchase money came; (ii) the nature and possession of the property after purchase; (iii) the motive, if any, for giving the transaction a benami colour; (iv) the relationship

[5] (2023) 3 SCC 315
[6] (1977) 4 SCC 467
[7] (2004) 7 SCC 233

between the parties; (v) the custody of title deeds; and (f) the conduct of the parties in dealing with the property after purchase. It was submitted that where the plaintiff himself pleads purchase in another's name with his own funds, the plaint prima facie attracts the mischief of benami law.

5.13. Reliance was next placed on ***K. Akbar Ali v. K. Umar Khan and others*[8]*,*** wherein this Court reiterated that while considering an application under Order VII Rule 11 CPC, the plaint must be read as a whole in a meaningful and not merely formal manner. The Court held that clever drafting or selective pleadings cannot obscure the real nature of the claim, and if upon a holistic reading the suit appears barred by any law, the plaint is liable to be rejected at the threshold. The substance of the pleadings, and not the form in which relief is couched, is determinative.

5.14. Further reliance was placed on ***Sree Surya Developers & Promoters v. N. Sailesh Prasad and others*[9]*,*** wherein, this Court held that a cause barred in law cannot be revived or rendered maintainable by astute or artful pleading. The Court emphasised that litigants cannot circumvent statutory prohibitions or limitations by merely drafting the plaint in a manner that conceals the true legal impediment. Where the foundational averments themselves disclose a legal bar, the court must exercise powers under Order VII Rule 11 CPC.

5.15. Reference was also made to ***Ramisetty Venkatanna and another v. Nasyam Jamal Saheb and others*[10]*,*** wherein this Court once again stressed that while deciding an application for rejection of plaint, the court must look beyond clear phraseology and superficial drafting. If a meaningful reading of the plaint reveals that the claim is illusory, vexatious, or barred by law, the court should not permit the suit to proceed to trial merely because the pleadings are skilfully structured. The judgment reiterates that Order VII Rule 11 CPC is intended to prevent abuse of process and needless trials where no legally sustainable cause survives.

5.16. In conclusion, it was submitted that the High Court failed to apply the settled principles governing rejection of plaints and overlooked the express statutory bar under the Benami Act. The impugned judgment, therefore, deserves to be set aside and the order of the trial Court rejecting the plaint restored.

6. *Per contra*, the learned Senior Counsel appearing for the Respondent/Plaintiff contended that the High Court was correct in law in setting aside the order of the trial Court rejecting the plaint under Order VII Rule 11 CPC. It was submitted that the Respondent/Plaintiff is the real owner in possession of the suit schedule properties, which were purchased in the name of the testator, K. Raghunath, owing to statutory restrictions under Sections 79A and 79B of the Karnataka Land Reforms Act that prohibited the Plaintiff from acquiring agricultural land in his own name. The entire sale consideration was

[8] (2021) 14 SCC 51
[9] (2022) 5 SCC 736
[10] (2024) 18 SCC 426

provided by the Plaintiff, and in recognition thereof, the testator executed a registered Will dated 20.04.2018, bequeathing all rights, title, and interest in the suit properties in favour of the Plaintiff. Upon the death of the testator on 04.05.2019, the Plaintiff derived title by way of testamentary succession, which forms the basis of the present suit.

6.1. It was contended that the suit is not founded on any alleged benami transaction but is squarely based on a valid Will, which constitutes an independent and complete cause of action under the Indian Succession Act. The plaint seeks declaration of title, permanent injunction, and correction of clerical errors in the Will schedule, and therefore, the averments therein, taken at face value, unmistakably disclose a triable and enforceable cause of action. The trial Court's finding that the Will is "concocted" is wholly impermissible at the stage of Order VII Rule 11, as the genuineness or otherwise of the Will is a matter of evidence to be adjudicated during trial. A disputed cause of action cannot be equated with absence of cause of action.

6.2. It was further submitted that the scope of Order VII Rule 11 CPC is well settled and narrowly circumscribed. The Court is required to confine itself strictly to the averments made in the plaint and must assume them to be true in their entirety. The defence taken in the written statement or the allegations made by the Defendants are wholly irrelevant at this stage. This position stands authoritatively settled in the decisions in ***Liverpool & London S.P. & I Association Ltd. v. M.V.Sea Success I and another***[11]***, Popat and Kotecha Property v. State Bank of India Staff Association***[12]***, P.V. Guru Raj Reddy v. P. Neeradha Reddy and others***[13]***, and Vinod Infra Developers Ltd. v. Mahaveer Lunia and others***[14]. The test is whether, on a demurrer, the plaint discloses a cause of action or a right to sue. If, on a meaningful reading of the plaint, the answer is in the affirmative, the plaint cannot be rejected under Order VII Rule 11 CPC.

6.3. The learned Senior Counsel contended that the trial Court gravely erred in invoking Order VII Rule 11(d) CPC by inferring that the suit is barred under the Benami Act. A plain reading of the plaint does not disclose any admission of a prohibited benami transaction. On the contrary, the plaint sets out a transparent financial arrangement, supported by agreements and banking transactions, coupled with a fiduciary relationship between the plaintiff and the testator, culminating in a testamentary disposition. There is no statement in the plaint which, on its face, attracts the statutory bar under the Benami Act.

6.4. It was submitted that even assuming that the consideration for the purchase of the properties was provided by the Plaintiff, the case squarely falls within the statutory exception carved out under Section 2(9)(A)(ii) of the Benami Act, which excludes transactions where the property is held by a person in a fiduciary

[11] (2004) 9 SCC 512
[12] (2005) 7 SCC 510
[13] (2015) 8 SCC 331
[14] 2025 INSC 772

capacity for the benefit of another. The relationship between the Plaintiff and the deceased K. Raghunath was one of trust and confidence, akin to a principal, agent or employer, trusted employee relationship, and is therefore clearly fiduciary in nature. The scope and import of fiduciary capacity have been elaborately explained by this Court in ***Marcel Martins v. M. Printer and others***[15], wherein it was held that such relationships are founded on trust, good faith, and confidence, extending beyond formal legal relationships.

6.5. It was further contended that the question whether a transaction is benami or falls within the fiduciary exception is a mixed question of fact and law, which necessarily requires evidence. This position has been conclusively settled in ***Pawan Kumar v. Babulal and others***[16] and reaffirmed in ***Shaifali Gupta v. Vidya Devi Gupta and others***[17]***,*** wherein this Court held that such issues cannot be adjudicated at the stage of Order VII Rule 11 CPC and must be determined after a full-fledged trial. Therefore, the rejection of the plaint on the ground of a supposed statutory bar is premature and legally untenable.

6.6. The learned Senior Counsel submitted that trial Court has also failed to appreciate that the suit is fundamentally based on a Will and not on the underlying transaction of purchase. A Will does not operate as a transfer *inter vivos* but as an instrument of testamentary succession, taking effect only upon the death of the testator. As held by the Karnataka High Court in ***N. Ramaiah v. Nagaraj S. and another***[18]***,*** a Will does not constitute a transfer of property within the meaning of the Transfer of Property Act, 1882, and, therefore, the prohibitions contained in Sections 4 and 6 of the Benami Act, which deal with recovery or re-transfer of benami property, have no application to testamentary dispositions.

6.7. It was further submitted that the trial Court exceeded its jurisdiction by relying upon the written statement, the application filed by the defendants, and even pending criminal proceedings to draw adverse inferences against the Plaintiff. Such an approach is directly contrary to the settled law laid down in ***P.V.Guru Raj Reddy (supra) and Hardesh Ores (P) Ltd v. Hede and Company***[19] which categorically held that at the stage of Order VII Rule 11, the Court cannot travel beyond the plaint or undertake an evaluation of disputed facts or evidence.

6.8. The learned Senior Counsel submitted that the reliance placed by the trial Court on pending criminal proceedings to doubt the validity of the Will or to reject the plaint is equally misconceived. Civil and criminal proceedings operate in distinct spheres, and the pendency of a criminal investigation cannot extinguish civil rights or render a civil suit non-maintainable. The High Court has rightly

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[15] (2012) 5 SCC 342
[16] (2019) 4 SCC 367
[17] 2025 INSC 739
[18] 2001 SCC OnLine Kar 191
[19] (2007) 5 SCC 614

held that criminal proceedings cannot be used as a ground to non-suit the plaintiff at the threshold.

6.9. Lastly, it was submitted that the reliance placed by the Appellants / Defendants on ***Union of India v. Ganpati Dealcom Private Limited*** *(supra)* is misplaced, as the said judgment has been recalled in ***Union of India and another v. Ganpati Dealcom Private Limited***[20]. In any event, the statutory exception relating to fiduciary relationships existed even under the unamended provisions of the Benami Act and continues to apply to the facts of the present case.

6.10. In view of the above, it was submitted that the plaint read as a whole, clearly discloses a cause of action and does not, on its face, attract any statutory bar. The issues raised are manifestly triable and require adjudication on evidence. The trial Court has exceeded the limited jurisdiction vested in it under Order VII Rule 11 CPC and erroneously rejected the plaint. On the other hand, the High Court rightly considered the same and set aside the order of the trial Court and restored the suit on file by the impugned judgment, which does not call for any interference at the hands of this Court.

IV. DISCUSSION AND ANALYSIS

7. We have heard the learned Senior Counsel appearing for the parties and perused the materials placed before us, including the decisions relied on in support thereof.

(A) LEGAL PRINCIPLES GOVERNING REJECTION OF PLAINT

8. Before venturing into the issue involved in the case at hand, it will be apposite to recapitulate the principles governing an application under Order VII Rule 11 CPC.

8.1. Rule 11 of Order VII deals with rejection of plaint, which reads as under:

"11. Rejection of plaint.— *The plaint shall be rejected in the following cases:—*

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time

[20] (2024) SCC OnLine SC 2981 : (2025) 474 ITR 354

fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

8.2. Rules 12 and 13 of Order VII, deal respectively with the procedure and effect of rejection of plaint. They read as under:

"12. Procedure on rejecting plaint.—*Where a plaint is rejected the Judge shall record an order to that effect with the reasons for such order.*

13. Where rejection of plaint does not preclude presentation of fresh plaint.— *The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action."*

8.3. Rule 14 speaks about documents relied upon in the plaint, which reads as under:

"14. Production of document on which plaintiff sues or relies.—*(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.*

(2) Where any such document is not in the possession or power of the plaintiff,he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to document produced for the cross-examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory."

8.4. The scope and applicability of Order VII Rule 11 CPC have been discussed in detail by this Court in ***The Correspondence, RBANMS Educational Institution v. B. Gunashekar and Others***[21]**,** as under:

*"**14.** Let us first examine the scope and purpose of Order VII Rule 11 CPC. This Court in Dahiben v. Arvindbhai Kalyanji Bhanusali (Gajra) dead through legal representatives (MANU/SC/0508/2020 : 2020:INSC:450 : (2020) 7 SCC 366), explained in detail the applicable law for deciding the application for rejection of the plaint. The relevant paragraphs of the said decision are reproduced below:*

…

23.2. The remedy Under Order VII Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order VII Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation Under Rule 11(d), the Court would not permit the Plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4. In Azhar Hussain v. Rajiv Gandhi MANU/SC/0284/1986 : [1986] 2 SCR 782, this Court held that the whole purpose of conferment of powers under this provision is to ensure that a

[21] 2025 LiveLaw (SC) 429

litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words:

"12. ...The whole purpose of conferment of such power is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the Court, and exercise the mind of the Respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action."

23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order VII Rule 11 are required to be strictly adhered to.

23.6. Under Order VII Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint read in conjunction with the documents relied upon, or whether the suit is barred by any law.

23.7. Order VII Rule 14(1) provides for production of documents, on which the Plaintiff places reliance in his suit, which reads as under:

….

23.8. Having regard to Order VII Rule 14 Code of Civil Procedure, the documents filed alongwith the plaint, are required to be taken into consideration for deciding the application Under Order VII Rule 11(a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.

23.9. In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. At this stage, the pleas taken by the Defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration.

23.11. The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed.

This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I which reads as: (SCC p.562, para 139)

"139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed."

23.12. In Hardesh Ores (P.) Ltd. v. Hede & Co. (MANU/SC/7671/2007: 2007:INSC:576 : (2007) 5 SCC 614) the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R.V. Janakiraman (MANU/SC/0154/1999: 1999:INSC:97 : (1999) 3 SCC 267).

23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power Under Order VII Rule 11 Code of Civil Procedure.

23.14. The power Under Order VII Rule 11 Code of Civil Procedure may be exercised by the Court at any stage of the suit, either before registering the plaint, or after issuing summons

to the Defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra (MANU/SC/1185/2002 : 2002:INSC:554 : (2003) 1 SCC 557). The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain (supra).

23.15. The provision of Order VII Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in Clause (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint.

24. "Cause of action" means every fact which would be necessary for the Plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the Plaintiff to prove in order to entitle him to the reliefs claimed in the suit.

24.1. In Swamy Atmanand v. Sri Ramakrishna Tapovanam (MANU/SC/0287/2005 : 2005:INSC:205 : (2005) 10 SCC 51) this Court held:

"24. A cause of action, thus, means every fact, which if traversed, it would be necessary for the Plaintiff to prove an order to support his right to a judgment of the court. In other words, it is a bundle of facts, which taken with the law applicable to them gives the Plaintiff a right to relief against the Defendant. It must include some act done by the Defendant since in the absence of such an act, no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded."

(emphasis supplied)

24.2. In T. Arivandandam v. T.V. Satyapal MANU/SC/0034/1977: 1977:INSC:204 : (1977) 4 SCC 467 this Court held that while considering an application Under Order VII Rule 11 Code of Civil Procedure what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory, in the following words: (SCC p. 470, para 5)

"5. ...The learned Munsif must remember that if on a meaningful - not formal - reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power Under Order VII, Rule 11 Code of Civil Procedure taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing ..."

24.3. Subsequently, in I.T.C. Ltd. v. Debt Recovery Appellate Tribunal (MANU/SC/0968/1998 : (1998) 2 SCC 170) this Court held that law cannot permit clever drafting which creates illusions of a cause of action. What is required is that a clear right must be made out in the plaint.

24.4. If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, this Court in Madanuri Sri Ramachandra Murthy v. Syed Jalal (MANU/SC/0485/2017 : 2017:INSC:366 : (2017) 13 SCC 174) held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court.

.....

28. A three-Judge Bench of this Court in State of Punjab v. Gurdev Singh (MANU/SC/0612/1991 : 1991:INSC:200 : (1991) 4 SCC 1: 1991 SCC (L&S) 1082) held that the Court must examine the plaint and determine when the right to sue first accrued to the Plaintiff, and whether on the assumed facts, the plaint is within time. The words "right to sue" means the right to seek relief by means of legal proceedings. The right to sue accrues only when the cause of action arises. The suit must be instituted when the right asserted in the suit is infringed, or when there is a clear and unequivocal threat to infringe such right by the Defendant against whom the suit is instituted. Order VII Rule 11 (d) provides that where a

suit appears from the averments in the plaint to be barred by any law, the plaint shall be rejected.

14.1. *Thus, it is clear that the above provision viz., Order VII Rule 11 CPC serves as a crucial filter in civil litigation, enabling courts to terminate proceedings at the threshold where the Plaintiff's case, even if accepted in its entirety, fails to disclose any cause of action or is barred by law, either express or by implication. The scope of Order VII Rule 11 Code of Civil Procedure and the authority of the courts is well settled in law. There is a bounden duty on the Court to discern and identify fictitious suit, which on the face of it would be barred, but for the clever pleadings disclosing a cause of action, that is surreal. Generally, Sub-clauses (a) and (d) are stand alone grounds, that can be raised by the Defendant in a suit. However, it cannot be ruled out that under certain circumstances, Clauses (a) and (d) can be mutually inclusive. For instances, when clever drafting veils the implied bar to disclose the cause of action; it then becomes the duty of the Court to lift the veil and expose the bar to reject the suit at the threshold. The power to reject a plaint under this provision is not merely procedural but substantive, aimed at preventing abuse of the judicial process and ensuring that court time is not wasted on fictitious claims failing to disclose any cause of action to sustain the suit or barred by law. Therefore, the appeal before us requires careful consideration of the scope of rejection of the plaint Under Order VII Rule 11 Code of Civil Procedure, particularly, in the context of the suit filed based on an agreement to sell against third parties in possession.*

15. *Order VII Rule 11(a) Code of Civil Procedure mandates rejection of the plaint where it does not disclose a cause of action. In Om Prakash Srivastava v. Union of India and Anr. (MANU/SC/3240/2006 : 2006:INSC:463 : (2006) 6 SCC 207), this Court pointed out that cause of action means every fact which, if traversed, would be necessary for the Plaintiff to prove in order to support their right to judgment. It consists of bundle of facts which narrate the circumstances and the reasons for filing such suit. It is the foundation on which the entire suit would rest. Therefore, it goes without saying that merely including a paragraph on cause of action is not sufficient but rather, on a meaningful reading of the plaint and the documents, it must disclose a cause of action. The plaint should contain such cause of action that discloses all the necessary facts required in law to sustain the suit and not mere statements of fact which fail to disclose a legal right of the Plaintiff to sue and breach or violation by the Defendant(s). It is pertinent to note here that even if a right is found, unless there is a violation or breach of that right by the Defendant, the cause of action should be deemed to be unreal. This is where the substantive laws like Specific Relief Act, 1963, Contract Act, 1872, and Transfer of Property Act, 1882, come into operation. A pure question of law that can be decided at the early stage of litigation, ought to be decided at the earliest stage……"*

8.5. A careful reading of the above provisions and decision makes it clear that rejection of a plaint under the grounds mentioned under Order VII Rule 11 is essentially determinable on the basis of the averments contained in the plaint. The plaint must disclose a cause of action; the relief claimed must be properly valued; requisite court fee must be paid; a duplicate copy must be filed; and as many copies of plaint as there are defendants must be filed after the order of the Court directing issuance of summons. Before rejecting the plaint for improper valuation or deficit court fee, the Court must grant an opportunity to the plaintiff to properly value the relief and pay the requisite court fee, failing which the plaint shall stand rejected. The time granted by the Court to value the relief and pay the court fee cannot be extended unless the plaintiff satisfies the Court that for extraordinary reasons, he was unable to do so.

8.6. In this context, it would be useful to refer to Section 148 CPC, which enables the Court to extend the time for complying with any period fixed or granted by

the Court for doing any act prescribed or allowed by the Code. The Court may extend such period by a maximum of thirty days, notwithstanding the fact that the period originally fixed or granted has already expired. Section 149 enables the Court, in its discretion, to allow the person responsible for payment of court fee to make such payment, and upon such payment, it shall be deemed as if the same had been paid in the first instance. Then, there is also Section 151 CPC which deals with the inherent powers of the Court. It must not be forgotten at this juncture that the Code of Civil Procedure is generally a procedural law, though some of its provisions are substantive in nature. When it comes to timelines fixed under the Code or granted by the Court, except where the plaintiff is required to institute the suit within the period of limitation or initiate execution of the decree within the prescribed period of limitation, in other words, where the Limitation Act comes into operation, the provisions are procedural and therefore cannot defeat the substantive right of a litigant to present or defend his case.

8.7. The jurisdiction to extend or enlarge time, once conferred, cannot be restricted merely by imposing a timeline, and the inherent power of the Court under Section 151 comes into operation to meet the requirements of justice. Such inherent power is to be exercised in appropriate cases where the party concerned is unable to comply with the direction of the Court within the time fixed or granted, for reasons beyond his control, and approaches the Court for further enlargement of time. Obviously, the totality of the circumstances and the prejudice likely to be caused to the other side are also to be considered. In matters relating to payment of court fee or filing of requisite copies, it is essentially a matter between the Court and the plaintiff, and ordinarily no prejudice would be caused to the opposite party.

8.8. In this regard, reference can be had to the decision in ***D.V. Paul v. Manisha Lalwani***[22]**,** wherein after analysing the various earlier judgments of this Court, it was held as follows:

*"**26.** Insofar as the first aspect is concerned Section 148 CPC, in our opinion, clearly reserves in favour of the court the power to enlarge the time required for doing an act prescribed or allowed by the Code of Civil Procedure. Section 148 of the Code may at this stage be extracted:*

"148. Enlargement of time.—Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Code, the court may, in its discretion, from time to time, enlarge such period not exceeding thirty days in total, even though the period originally fixed or granted may have expired.".

A plain reading of the above would show that when any period or time is granted by the court for doing any act, the court has the discretion from time to time to enlarge such period even if the time originally fixed or granted by the court has expired. It is evident from the language employed in the provision that the power given to the court is discretionary and intended to be exercised only to meet the ends of justice.

……

[22] (2010) 8 SCC 546

32……. The power to fix the time for doing of an act must in our opinion carry with it the power to extend such period, depending upon whether the party in default makes out a case to the satisfaction of the court who has fixed the time. There is nothing in Section 148 CPC or in any other provision of the Code to suggest that such a power of extension of time cannot be exercised in a case like the one at hand. The argument that the power to extend time cannot be exercised where the act in question is stipulated in a conditional decree has not impressed us. We see no reason to draw a distinction depending on whether the prayer for extension is in regard to a conditional order or a conditional decree. The heart of the matter is that where the court has the power to fix time and that power is not regulated by any statutory limits, it has in appropriate cases the power to extend the time fixed by it. It is common ground that neither CPC nor the provisions of the M.P. Accommodation Control Act place any limitation on the power of the court in case like the one in hand."

8.9. However, when it comes to Clause (a) or (d), the Court has no option. The clauses under Rule 11 of Order VII, except Clause (d), do not use the word "suit". If, upon perusal of the averments in the plaint, the suit is barred by law, then the plaint can be rejected. The bar can be express or by necessary implication. Therefore, while considering a claim that the suit is barred by law, a thorough and meaningful reading of the plaint must be undertaken. A suit can be held to be barred by law if the right asserted is legally unavailable or, even if available, there exists a bar to seek the relief in view of any other substantive law which conditions enforcement of such right upon satisfaction of certain requirements or compliance with prescribed procedures. It is needless to state that while carefully analysing the plaint averments, the relief sought and all relevant laws must be considered. Clauses (a) and (d) are stand-alone provisions. Yet, depending upon the facts of each case, they may also overlap. Similarly, if by clever drafting a fictional cause of action is created to veil a bar under law, it is imperative for the Court to reject the plaint.

(B) ROLE OF THE COURT IN CONDUCTING SUITS AS CONTEMPLATED UNDER THE CPC

9. Let us now examine a few other provisions of the CPC to ascertain the role of the Court in dealing with suits. They are as follows:

SECTION 26. Institution of Suits—

(1) Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.

(2) In every plaint, facts shall be proved by affidavit.

SECTION 27. Summons to Defendants—

Where a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and may be served in manner prescribed on such day not beyond thirty days from the date of the institution of the suit.

SECTION 35A. Compensatory costs in respect of false or vexatious claims or defences—

(1) If in any suit or other proceedings including an execution proceedings but excluding an appeal or a revision any party objects to the claim or defence on the ground that the claim or defence or any part of it is, as against the objector, false or vexatious to the knowledge of the

party by whom it has been put forward, and if thereafter, as against the objector, such claim or defence is disallowed, abandoned or withdrawn in whole or in part, the Court if it so thinks fit, may, after recording its reasons for holding such claim or defence to be false or vexatious, make an order for the payment to the objector by the party by whom such claim or defence has been put forward, of cost by way of compensation.

…

ORDER IV – INSTITUTION OF SUITS

***Rule 1**: Suit to be commenced by plaint—*

(1) Every suit shall be instituted by presenting a plaint in duplicate to the Court or such officer as it appoints in this behalf.

(2) Every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable.

(3) The plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in sub-rules (1) and (2).

***Rule 2**: Register of suits— The Court shall cause the particulars of every suit to be entered in a book to be kept for the purpose and called the register of civil suits. Such entries shall be numbered in every year according to the order in which the plaints are admitted.*

ORDER V – ISSUE AND SERVICE OF SUMMONS

***Rule 1** : **Summons.—** (1) When a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, within thirty days from the date of service of summons on that defendant:*

….

***Rule 3** : Court may order defendant or plaintiff to appear in person.—*

(1) Where the Court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in Court on the day therein specified.

(2) Where the Court sees reason to require the personal appearance of the plaintiff on the same day, it shall make an order for such appearance.

***Rule 5** : Summons to be either to settle issues or for final disposal—*

The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit; and the summons shall contain a direction accordingly:

Provided that, in every suit heard by a Court of Small Causes, the summons shall be for the final disposal of the suit.

By the Karnataka Amendment, with effect from 30.03.1967, Rule 5 of Order V was substituted with the following rule:

***5.** The Court shall determine, at the time of issuing the summons, whether it shall be –*

(1) for the settlement of issues only, or

(2) for the defendant to appear and state whether he contests to or does not contest the claim and directing him if he contests to receive directions as to the date on which he has to file his written statement, the date of trial and other matters, and if he does not contest for final disposal of the suit at once; or

(3) for the final disposal of the suit; and the summons shall contain a direction accordingly:

Provided that in every suit heard by the Court of Small Causes, the summons shall be for final disposal of the suit.

ORDER VI – PLEADINGS

Rule 2 *:* ***Pleading to state material facts and not evidence–***

(1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

(2) Every pleading shall, when necessary, be divided into paragraphs,numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph.

(3) Dates, sums and numbers shall be expressed in a pleading in figures as wellas in words.

Rule 4 *:* ***Particulars to be given where necessary***

In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.

Rule 6 *:* ***Condition precedent***

Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading.

Rule 9 *:* ***Effect of document to be stated***

Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material.

ORDER VII – PLAINT

Rule 9 *: Procedure on admitting plaint.—*

Where the Court orders that the summons be served on the defendants in the manner provided in rule 9 of Order V, it will direct the plaintiff to present as many copies of the plaint on plain paper as there are defendants within seven days from the date of such order along with requisite fee for service of summons on the defendants.

ORDER IX – APPEARANCE OF PARTIES AND CONSEQUENCE OF NON-APPEARANCE

Rule 1 *: Parties to appear on day fixed in summons for defendant to appear and answer—*

On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the Court-house in person or by their respective pleaders, and the suit shall then be heard unless the hearing is adjourned to a future day fixed by the Court.

ORDER XIV – SETTLEMENT OF ISSUES AND DETERMINATION OF SUIT ON ISSUES OF LAW OR ON ISSUES AGREED UPON

Rule 2 *: Court to pronounce judgment on all issues.—*

(1) Notwithstanding that a case may be disposed of on a preliminary issue, theCourt shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court isof opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to—

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force; and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

9.1. A careful reading of the above provisions would exemplify the following:

Section 26 CPC stipulates that a suit shall be instituted by presenting a plaint. As per Section 27, where a suit has been duly instituted, summons may be issued to the defendants. Section 35A empowers the Court to impose costs for filing frivolous suits. A reading of Order IV would indicate that a suit shall not stand instituted unless the requirements of Orders VI and VII are satisfied. Rule 11 of Order VII, as we have already discussed, which deals with rejection of plaint, states that the plaint shall be rejected if it fails to disclose a cause of action or if the suit is barred by any law. A conjoint reading of Order IV Rule 2 and Order VII Rule 9 would disclose that admission of the plaint is necessary before entering the particulars of the suit in the Register and issuance of summons.

9.2. *As a fortiori*, Rule 1 of Order V states that summons may be issued after the suit has been duly instituted. Rule 3 of Order V empowers the Court to summon the plaintiff. Rule 5 of Order V, including the Karnataka High Court amendment, empowers the Court to state the purpose for which summons may be issued, which can also be for the final disposal of the suit. Rule 2 of Order VI states that material facts have to be pleaded. Rule 4 of Order VI requires that necessary particulars are to be given. Rule 6 of Order VI requires that compliance with condition precedent has to be stated. Rule 9 of Order VI requires that the averments in the plaint must state the effect of the document relied upon in the pleading. Rule 9 of Order VII states that upon admitting the plaint, the Court, after ordering that summons shall be served on the defendants, shall direct the plaintiff to present as many copies of the plaint as there are defendants within seven days from the date of such order, along with the requisite fee. Rule 14 of Order VII states that the plaintiff has to produce the document on which his claim is based.

9.3. Once the plaint is presented for institution, and before it is admitted, it is the duty of the trial Court to verify the contents of the plaint and ensure that all legal requirements are satisfied before admitting the plaint. A trial Court cannot mechanically admit the plaint and register the suit. Admission of the plaint cannot be a mechanical process by which the note of the Registry is merely endorsed by the Court. If, at the stage of admission of the plaint, the trial Court, upon a meaningful reading of the plaint, comes to the conclusion that the plaint is liable to be rejected, it shall reject the plaint. It is not necessary for the trial Court to wait for the defendant to enter appearance and seek rejection of the plaint. Once the Court finds that the suit is frivolous, without jurisdiction, instituted without compliance with prerequisites, fails to disclose a real cause of action, suppresses material facts, or is barred by law but couched in clever drafting to create an illusion of a cause of action, it must reject the plaint with costs. [**See *T.Arivandandam v. T.V. Satyapal*** (supra)]. In this context, it would

be useful to refer to the following judgments of this Court and the observations made therein:

(i) *Samar Singh v. Kedar Nath @ K.N. Singh and Others*[23]

*"**7.** …Normally, when a suit is instituted, the Court is to satisfy itself that the suit is maintainable and it disclosed cause of action and only thereafter the Court may issue summons to the defendants but merely because the summons are issued, the defendants right to raise preliminary objection for rejection of the plaint on the ground that it disclosed no cause of action is not affected. If a plaint or an election petition does not disclose any cause of action, it does not stand to reason as to why the defendant or the respondent should incur costs and waste public time in producing evidence when the proceedings can be disposed of on the preliminary objection. …"*

(ii) *Odisha State Financial Corporation v. Vigyan Chemical Industries and others*[24]

*"**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."*

9.4. Every plaint must be presented along with the documents relied upon in the plaint as per Rule 14 of Order VII. A document is ordinarily relied upon in the plaint, and the narration in the bundle of facts contribute to the cause of action. Therefore, it is imperative upon the plaintiff to produce such document. It is trite law that the plaint can be rejected for failure to produce documents relied upon or referred to in the plaint. There can be no quarrel with the well settled position that while considering an application for rejection of plaint, only the averments in the plaint and the documents filed along with the plaint can be looked into. Though we agree with the learned Senior Counsel for the Respondent / Plaintiff on this proposition, the plaint cannot be read in an incomprehensive manner. What is implied in Order VII is a meaningful reading of the plaint, because the bar under law may be either express or by necessary implication. **[See *T.Arivandandam v. T.V. Satyapal* (supra), *Sopan Sukhdeo Sable and others v. Assistant Charity Commissioner and others*[25] *and Madanuri Sri Rama Chandra Murthy v. Syed Jalal*[26]]**.

9.5. Similarly, all material facts have to be stated in the plaint. Material facts are those facts which create a complete cause of action; those facts which directly bear upon the maintainability or sustainability of the suit; and those facts upon adjudication of which may bring an end to the *lis*. Any suppression of a material

[23] 1987 SCC OnLine SC 638
[24] 2025 INSC 928
[25] (2004) 3 SCC 137
[26] *(2017) 13 SCC 174*

fact, which has the effect of creating an illusory cause of action and eclipsing the legal bar, ought to be dealt with firmly, and the plaint would be liable to be summarily rejected. It is also settled law that a person who has suppressed a material fact is not entitled to any relief. Suppression of a material fact within the knowledge of the party amounts to fraud upon the Court. The relevancy or otherwise of a fact is to be decided by the Court, and parties cannot contend that they omitted a material fact on the assumption that it was not relevant. It is not only the duty of the Court to summarily reject the claim of a party suppressing a material fact, but also to ensure that any benefit obtained by such party is undone and *status quo ante* restored in its fairness and equity. The consistent view of this Court, irrespective of whether it is a petition under Article 136 of the Constitution, a writ petition under Article 226 of the Constitution, or in any proceedings before a civil, criminal, judicial or quasijudicial forum is that the parties must disclose all material facts in their pleadings, and that a party, who suppresses any material fact is not entitled to any relief.

9.6. It would be useful to refer to the following judgments of this Court and the observations made therein, on the above aspects:

(i) *Sopan Sukhdeo Sable v. Assistant Charity Commissioner* (supra)

"20. *There is distinction between "material facts" and "particulars". The words "material facts" show that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement or plaint becomes bad. The distinction which has been made between "material facts" and "particulars" was brought by Scott, L.J. in Bruce v. Odhams Press Ltd. [(1936) 1 KB 697: (1936) 1 All ER 287 (CA)] in the following passage : (All ER p. 294)*

"The cardinal provision in Rule 4 is that the statement of claim must state the material facts. The word 'material' means necessary for the purpose of formulating a complete cause of action; and if any one 'material' statement is omitted, the statement of claim is bad; it is 'demurrable' in the old phraseology, and in the new is liable to be 'struck out' under R.S.C. Order 25 Rule 4 (see Philipps v. Philipps [(1878) 4 QBD 127]); or 'a further and better statement of claim' may be ordered under Rule 7.

The function of 'particulars' under Rule 6 is quite different. They are not to be used in order to fill material gaps in a demurrable statement of claim — gaps which ought to have been filled by appropriate statements of the various material facts which together constitute the plaintiff's cause of action. The use of particulars is intended to meet a further and quite separate requirement of pleading, imposed in fairness and justice to the defendant. Their function is to fill in the picture of the plaintiff's cause of action with information sufficiently detailed to put the defendant on his guard as to the case he had to meet and to enable him to prepare for trial."

The dictum of Scott, L.J. in Bruce case [(1936) 1 KB 697 : (1936) 1 All ER 287 (CA)] has been quoted with approval by this Court in Samant N. Balkrishna v. George Fernandez [(1969) 3 SCC 238] and the distinction between "material facts" and "particulars" was brought out in the following terms: (SCC p. 250, para 29)

"The word 'material' shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet."

Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word "shall" is used, clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13."

(ii) *K.D. Sharma v. Steel Authority of India Limited and others*[27]

"34. *The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.*

35. *The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of R. v. Kensington Income Tax Commrs. [(1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)] in the following words: (KB p. 514)*

"… it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts—it says facts, not law. He must not misstate the law if he can help it—the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement."

(emphasis supplied)

36. *A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, "We will not listen to your application because of what you have done." The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.*

….

38. *The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts".*

[27] (2008) 12 SCC 481

39. *If the primary object as highlighted in Kensington Income Tax Commrs. [(1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)] is kept in mind, an applicant who does not come with candid facts and "clean breast" cannot hold a writ of the court with "soiled hands". Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court.*

....

45. *In Agricultural & Processed Food Products v. Oswal Agro Furane [(1996) 4 SCC 297] the petitioner filed a petition in the High Court of Punjab and Haryana which was pending. Suppressing that fact, it filed another petition in the High Court of Delhi and obtained an order in its favour. Observing that the petitioner was guilty of suppression of "very important fact", this Court set aside the order of the High Court.*

...

49.*"Strongly disapproving" the explanation put forth by the petitioner and describing the tactics adopted by the Federation as "abuse of process of court", this Court observed: (All India State Bank Officers Federation case [1990 Supp SCC 336 : 1991 SCC (L&S) 429 : (1991) 16 ATC 454] , SCC pp. 340-41, paras 9 & 11)*

"9. … There is no doubt left in our minds that the petitioner has not only suppressed material facts in the petition but has also tried to abuse judicial process. …

11. Apart from misstatements in the affidavits filed before this Court, the petitioner Federation has clearly resorted to tactics which can only be described as abuse of the process of court. The simultaneous filing of writ petitions in various High Courts on the same issue though purportedly on behalf of different associations of the officers of the Bank, is a practice which has to be discouraged. Sri Sachar and Sri Ramamurthi wished to pinpoint the necessity and importance of petitions being filed by different associations in order to discharge satisfactorily their responsibilities towards their respective members. We are not quite able to appreciate such necessity where there is no diversity but only a commonness of interest. All that they had to do was to join forces and demonstrate their unity by filing a petition in a single court. It seems the object here in filing different petitions in different courts was a totally different and not very laudable one."

(emphasis supplied)

51. *Yet in another case in Vijay Syal v. State of Punjab [(2003) 9 SCC 401 : 2003 SCC (L&S) 1112] this Court stated: (SCC p. 420, para 24)*

"24. In order to sustain and maintain the sanctity and solemnity of the proceedings in law courts it is necessary that parties should not make false or knowingly, inaccurate statements or misrepresentation and/or should not conceal material facts with a design to gain some advantage or benefit at the hands of the court, when a court is considered as a place where truth and justice are the solemn pursuits. If any party attempts to pollute such a place by adopting recourse to make misrepresentation and is concealing material facts it does so at its risk and cost. Such party must be ready to take the consequences that follow on account of its own making. At times lenient or liberal or generous treatment by courts in dealing with such matters is either mistaken or lightly taken instead of learning a proper lesson. Hence there is a compelling need to take a serious view in such matters to ensure expected purity and grace in the administration of justice."

(iii) *Dalip Singh v. State of Uttar Pradesh and others*[28]

*"**1.** For many centuries Indian society cherished two basic values of life i.e. "satya" (truth) and "ahimsa" (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.*

....

***3.** In Hari Narain v. Badri Das [AIR 1963 SC 1558] this Court adverted to the aforesaid rule and revoked the leave granted to the appellant by making the following observations: (AIR p. 1558)*

"It is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Article 136 of the Constitution, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. Thus, if at the hearing of the appeal the Supreme Court is satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is entitled to contend that the appellant may have obtained special leave from the Supreme Court on the strength of what he characterises as misrepresentations of facts contained in the petition for special leave, the Supreme Court may come to the conclusion that in such a case special leave granted to the appellant ought to be revoked."

.....

***5.** In G. Narayanaswamy Reddy v. Govt. of Karnataka [(1991) 3 SCC 261 : AIR 1991 SC 1726] the Court denied relief to the appellant who had concealed the fact that the award was not made by the Land Acquisition Officer within the time specified in Section 11-A of the Land Acquisition Act because of the stay order passed by the High Court. While dismissing the special leave petition, the Court observed: (SCC p. 263, para 2)*

"2. … Curiously enough, there is no reference in the special leave petitions to any of the stay orders and we came to know about these orders only when the respondents appeared in response to the notice and filed their counteraffidavit. In our view, the said interim orders have a direct bearing on the question raised and the non-disclosure of the same certainly amounts to suppression of material facts. On this ground alone, the special leave petitions are liable to be rejected. It is well settled in law that the relief under Article 136 of the Constitution is discretionary and a petitioner who approaches this Court for such relief must come with frank and full disclosure of facts. If he fails to do so and suppresses material facts, his application is liable to be dismissed. We accordingly dismiss the special leave petitions."

***6.** In S.P. Chengalvaraya Naidu v. Jagannath [(1994) 1 SCC 1 : JT (1993) 6 SC 331] the Court held that where a preliminary decree was obtained by withholding an important document from the court, the party concerned deserves to be thrown out at any stage of the litigation.*

***7.** In Prestige Lights Ltd. v. SBI [(2007) 8 SCC 449] it was held that in exercising power under Article 226 of the Constitution of India the High Court is not just a court of law, but is also a court of equity and a person who invokes the High Court's jurisdiction under Article*

[28] (2010) 2 SCC 114

226 of the Constitution is duty-bound to place all the facts before the Court without any reservation. If there is suppression of material facts or twisted facts have been placed before the High Court then it will be fully justified in refusing to entertain a petition filed under Article 226 of the Constitution. This Court referred to the judgment of Scrutton, L.J. in R. v. Kensington Income Tax Commissioners [(1917) 1 KB 486 (CA)], and observed: (Prestige Lights Ltd. Case [(2007) 8 SCC 449], SCC p. 462, para 35)

"In exercising jurisdiction under Article 226 of the Constitution, the High Court will always keep in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, then the Court may dismiss the action without adjudicating the matter on merits. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible."

8. *In A.V. Papayya Sastry v. Govt. of A.P. [(2007) 4 SCC 221 : AIR 2007 SC 1546] the Court held that Article 136 does not confer a right of appeal on any party. It confers discretion on this Court to grant leave to appeal in appropriate cases. In other words, the Constitution has not made the Supreme Court a regular court of appeal or a court of error. This Court only intervenes where justice, equity and good conscience require such intervention.*

....

10. *In K.D. Sharma v. SAIL [(2008) 12 SCC 481] the Court held that the jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the writ court must come with clean hands and put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim. The same rule was reiterated in G. Jayashree v. Bhagwandas S. Patel [(2009) 3 SCC 141]."*

(iv) *Ram Kumar v. State of Uttar Pradesh and others*[29]

*"**28.** This Court, in S.P. Chengalvaraya Naidu (Dead) By LRs. v. Jagannath (Dead) by LRs and others [(1994) 1 SCC 1 : JT (1993) 6 SC 331] has held that non-disclosure of the relevant and material documents with a view to obtain an undue advantage would amount to fraud. It has been held that the judgment or decree obtained by fraud is to be treated as a nullity. We find that respondent No.9 has not only suppressed a material fact but has also tried to mislead the High Court. On this ground also, the present appeal deserves to be allowed."*

9.7. Rule 13 of Order VII lays down that rejection of the plaint does not preclude the plaintiff from preventing a fresh plaint in respect of the same cause of action. Rule 13 can ordinarily be invoked only when the plaint has been rejected for non-disclosure of cause of action or curable defects. There is a distinction between "having" a cause of action and "disclosing" a cause of action. As noticed above, a plaint can be rejected if it fails to disclose a cause of action upon a meaningful reading. All that Rule 13 permits is, where the right to sue survives after rejection of the plaint on the ground of non-disclosure of cause of action, a fresh plaint may be presented. However, when the suit itself is barred by law, Rule 13 cannot come to the rescue of the plaintiff. Similarly, what is enabled is only presentation of a fresh plaint; it does not mandate automatic

[29] (2023) 16 SCC 691

admission of the plaint or registration of the suit. The plaintiff must still establish compliance with all legal requirements, including the law of limitation.

(C) INTERPLAY BETWEEN ORDER VII RULE 11 AND ORDER XIV RULE 2 CPC

10. An application under Order VII Rule 11 can be filed at any stage of the suit. The Court is bound to look into the averments in the plaint, the documents filed therewith, and the law under which the bar is claimed. Once an application under Order VII Rule 11 CPC is filed, the trial Court is first bound to decide the same before proceeding with the suit. In this regard, reference may be made to the judgment of this Court in ***R.K. Roja v. U.S. Rayudu and another***[30]**,** wherein it was held as follows:

*"**4.** We are afraid that the stand taken by the High Court in the impugned order cannot be appreciated. An application under Order 7 Rule 11 CPC can be filed at any stage, as held by this Court in Sopan Sukhdeo Sable v. Charity Commr [(2004) 3 SCC 137] : (SCC p. 146, para 10)*

"10… The trial court can exercise the power at any stage of the suit – before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial."

The only restriction is that the consideration of the application for rejection should not be on the basis of the allegations made by the defendant in his written statement or on the basis of the allegations in the application for rejection of the plaint. The court has to consider only the plaint as a whole, and in case, the entire plaint comes under the situations covered by Order 7 Rules 11(a) to (f) CPC, the same has to be rejected.

5. Once an application is filed under Order 7 Rule 11 CPC, the court has to dispose of the same before proceeding with the trial. There is no point or sense in proceeding with the trial of the case, in case the plaint (election petition in the present case) is only to be rejected at the threshold. Therefore, the defendant is entitled to file the application for rejection before filing his written statement.

In case the application is rejected, the defendant is entitled to file his written statement thereafter (see Saleem Bhai v. State of Maharashtra [(2003) 1 SCC 557]). But once an application for rejection is filed, the court has to dispose of the same before proceeding with the trial court. To quote the relevant portion from para 20 of Sopan Sukhdeo Sable case [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137] : (SCC pp. 148-49)

"20. … Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word "shall" is used, clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant."

6. In Saleem Bhai case, this Court has also held that: (SCC p. 560, para 9) "9. …. a direction to file the written statement without deciding the application under Order 7 Rule 11 cannot but be a procedural irregularity touching the exercise of jurisdiction by the trial Court,"

[30] (2016) 14 SCC 275

However, we may hasten to add that the liberty to file an application for rejection under Order 7 Rule 11 CPC cannot be made as a ruse for retrieving the lost opportunity to file the written statement.

7. Apparently, in the present case, it is seen that Annexure P-4, affidavit dated15-3-2015 with a prayer … "to dismiss the present election petition under Order 7 Rule 11 CPC…", was filed within thirty days of the receipt of the summons in the election petition. However, the court was not inclined to consider the same in the absence of a formal application, and thus, Annexure P5, Application No. EA No. 222 of 2016 was filed on 22-2-2016 leading to the impugned order, posting the application for consideration at the time of final hearing.

8. The procedure adopted by the court is not warranted under law. Without disposing of an application under Order 7 Rule 11 CPC, the court cannot proceed with the trial. In that view of the matter, the impugned order is only to be set aside. Ordered accordingly."

10.1. Therefore, an application for rejection of the plaint can be filed at any stage of the suit and once the same is filed, it has to be taken up first before proceeding with the suit, presupposing the legal position that the grounds raised therein are to be treated as preliminary objections. However, as held in *R.K. Roja's* case (supra), an application to reject the plaint cannot be used as a ruse to retrieve the lost opportunity to file the written statement, implying thereby that the right to seek rejection of the plaint must be exercised at the earliest stage, when the right to file the written statement subsists. The filing of an application to reject the plaint does not stop the clock for filing the written statement. If the defendant is set *ex parte*, he cannot, as of right, participate further in the proceedings, unless he exercises his option to file a written statement along with an application to set aside the *ex parte* order under Order IX Rule 7 CPC. It may be noted, that even when set *ex parte*, the defendant does not forfeit his right to contest the plaintiff's case through cross-examination. The plaintiff must still prove his case in order to obtain a decree, even in the absence of the defendant.

10.2. On the other hand, a preliminary objection as to the jurisdiction of the trial Court or the maintainability of the suit on the ground that it is barred by law can be raised in the written statement. The trial Court may then take up the issues relating to jurisdiction or statutory bar as preliminary issues under Order XIV Rule 2, leaving the remaining issues framed under Order XIV Rule 1 to be decided at a later stage, if necessary. The object behind the provision is to ensure that judicial time is not wasted and that the suit is disposed of at the earliest possible stage, so as to prevent abuse of process of law and dismiss frivolous suits. Rule 2 of Order XIV, which enables the Court to decide a question of law on undisputed facts, is an exception to Rule 1, which contemplates pronouncement of judgment on all issues. Therefore, where a pure question of law can be decided without entering into disputed facts requiring evidence, the Court may decide the same at the earliest stage.

10.3. In ***Nusli Neville Wadia v. Ivory Properties and others***[31]**,** this Court explained the scope of Order XIV Rule 2 CPC, as follows:

*"**51.** ... As per Order 14 Rule 1, issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other. The issues are framed on the material*

[31] (2020) 6 SCC 557

proposition, denied by another party. There are issues of facts and issues of law. In case specific facts are admitted, and if the question of law arises which is dependent upon the outcome of admitted facts, it is open to the court to pronounce the judgment based on admitted facts and the preliminary question of law under the provisions of Order 14 Rule 2. In Order 14 Rule 2(1), the court may decide the case on a preliminary issue. It has to pronounce the judgment on all issues. Order 14 Rule 2(2) makes a departure and the court may decide the question of law as to jurisdiction of the court or a bar created to the suit by any law for the time being in force, such as under the Limitation Act. "

10.4. Referring to the aforesaid judgment, this Court in ***Sukhbiri Devi and Others v. Union of India and Others***[32]**,** reiterated that although limitation is generally a mixed question of law and fact, it may, in an appropriate case, be decided as a preliminary issue where the foundational facts determining the starting point of limitation are specifically pleaded and are either admitted or indisputable. In such circumstances, the court may postpone settlement of other issues and dispose of the suit in accordance with the decision on limitation. The following paragraphs are relevant:

"16. *Now, we will consider the first question: 'whether the issue of limitation can be determined as a preliminary issue under Order XIV, Rule 2, CPC'. It is no longer res integra. In the decision in Mongin Realty and Build Well Private Limited v. Manik Sethi [2022 SCC OnLine SC 156], even while holding that the course of action followed by the learned Trial Judge of directing the parties to address arguments on the issue of limitation as irregular since it being a case where adduction of evidence was required, a two-Judge Bench of this Court referred to a three-Judge Bench decision of this Court in Nusli Neville Wadia v. Ivory Properties observing that the issue therein was whether the issue of limitation could be determined as a preliminary issue under Order XIV, Rule 2, CPC. After taking note of the fact that going by the decision in Nusli Neville Wadia's case, in a case where question of limitation could be decided based on admitted facts it could be decided as a preliminary issue under Order XIV, Rule 2(2)(b), CPC., the two-Judge Bench held that in the case before their Lordships the question of limitation could not have been decided as a preliminary issue under Order XIV, Rule 2 of CPC as determination of the issue of limitation in that case was not a pure question of law. In the said contextual situation it is worthy and appropriate to refer to paragraphs 51, in so far as it is relevant, and 52 of the decision in Nusli Neville Wadia's case and they read thus:—*

…

19. *We referred to the said provisions and decisions only to stress upon the point that the appellants cannot legally have any dispute or grievance in taking their statements in the plaint capable of determining the starting point of limitation for the purpose of application of Order XIV, Rule 2(2)(b) of the CPC. Though, limitation is a mixed question of law and facts it will shed the said character and would get confined to one of question of law when the foundational fact (s), determining the starting point of limitation is vividly and specifically made in the plaint averments. In such a circumstance, if the Court concerned is of the opinion that limitation could be framed as a preliminary point and it warrants postponement of settlement of other issues till determination of that issue, it may frame the same as a preliminary issue and may deal with the suit only in accordance with the decision on that issue. It cannot be said that such an approach is impermissible in law and in fact, it is perfectly permissible under Order XIV, Rule 2(2)(b), CPC and legal in such circumstances. In short, in view of the decisions and the provisions, referred above, it is clear that the issue limitation can be framed*

[32] 2022 SCC Online SC 1322

and determined as a preliminary issue under Order XIV, Rule 2(2)(b), CPC in a case where it can be decided on admitted facts. …..

27. *The relief sought for, in suit No. 410/2000 would reveal that the first prayer, which is the main prayer, is declaratory in nature. Even according to the plaintiffs, as revealed from the plaint the second prayer (extracted hereinbefore) is only consequential relief. A perusal of the same would undoubtedly show that it is consequential and not an independent one and therefore the courts below are right in holding that the said prayer is grantable only if the first prayer is granted. In this case based on the determination on the preliminary issue of limitation and in accordance with the decision on that preliminary issue the suit was dismissed. As held by the three-judge Bench in the decision in Nusli Neville Wadia's case (supra) the provisions under Order XIV Rule 2(1) and Rule 2(2)(b) permit to deal with and dispose of a suit in accordance with the decision on the preliminary issue. In the case on hand in view of the nature of the finding on the preliminary issue and the consequential consideration of the suit in terms of Order XIV Rule 2(2)(b) and taking note of the fact that the suit do not survive after such consideration we find no reason to consider the contention of the appellants with reference to Order VII Rule 11 based on the decisions relied on by them and referred hereinbefore. So also, the contentions of the appellants based on Articles 17 and 65 also would pale into insignificance and warrant no consideration at all, in the circumstances."*

10.5. A conjoint reading of Order VII Rule 11 and Order XIV Rule 2 CPC would show that both provisions enable the Court to examine the maintainability of a suit at the earliest possible stage, though they operate in distinct procedural spheres. Order VII Rule 11 is confined to the averments contained in the plaint and the documents relied upon by the plaintiff. Order XIV Rule 2, on the other hand, comes into operation after pleadings are complete and issues arise for adjudication. If the statutory bar is apparent upon a meaningful reading of the plaint, the plaint may be rejected under Order VII Rule 11. If, however, the objection requires consideration of admitted or foundational facts emerging from the pleadings, the Court may frame and decide a preliminary issue under Order XIV Rule 2, where permissible in law. The distinction is one of procedure and evidentiary scope. Under Order VII Rule 11, the Court does not embark upon disputed questions of fact, nor can it rely upon the defence in the written statement to reject the plaint. Under Order XIV Rule 2, however, the Court may examine whether a pure question of law arises on admitted facts so as to obviate a full-fledged trial. Thus, while the former tests the sustainability of the plaint on its face, the latter concerns the mode of adjudication after issues are framed.

10.6. In this context, reference may also be made to the judgment in ***Abdul Rahman v. Prasony Bai & another***[33]**,** wherein this Court held as follows:

*"**21.** For the purpose of disposal of the suit on the admitted facts, particularly when the suit can be disposed of on preliminary issues, no particular procedure was required to be followed by the High Court. In terms of Order 14 Rule 1 of the Code of Civil Procedure, a civil court can dispose of a suit on preliminary issues. It is neither in doubt nor in dispute that the issues of res judicata and/or constructive res judicata as also the maintainability of the suit can be adjudicated upon as preliminary issues. Such issues, in fact, when facts are admitted, ordinarily should be decided as preliminary issues."*

[33] (2003) 1 SCC 488

10.7. In ***Srihari Hanumandas Totala v. Hemant Vithal Kamat and others***[34]**,** this Court considered a plea of *res judicata* raised through an application under Order VII Rule 11(d) CPC. In that case, the property in question had been mortgaged in favour of Karnataka State Finance Corporation, which auctioned the property upon default in repayment of the loan. The legal heirs of the borrower instituted O.S. No. 138 of 2008 challenging the sale deed dated 08.08.2006 executed by the Corporation and seeking partition of the suit property. A separate suit in O.S No. 103 of 2007 had already been filed by the auction purchaser, which was decreed on 26.02.2009 and affirmed by the High Court thereafter on 11.08.2017. The purchaser from the Corporation filed an application under Order VII Rule 11 seeking rejection of the plaint. The said application was dismissed by the trial Court. The order was affirmed in revision by the High Court on the ground that the plea of res judicata could not be decided merely by looking at the averments in the plaint. This Court held that a plea of *res judicata* ordinarily requires examination of the pleadings, issues, and decision in the previous suit, and would therefore, generally travel beyond the scope of Order VII Rule 11 CPC. Nevertheless, liberty was granted to raise the question of maintainability before the trial Court, which was directed to consider whether a preliminary issue under Order XIV Rule 2 CPC should be framed and decided expeditiously. The operative portion is extracted below for better appreciation:

*"**28.** For the above reasons, we hold that the plaint was not liable to be rejected under Order 7 Rule 11(d) and affirm the findings of the trial court and the High Court. We clarify however, that we have expressed no opinion on whether the subsequent suit is barred by the principles of res judicata. We grant liberty to the appellant, who claims as an assignee of the bona fide purchaser of the suit property in an auction conducted by KSFC, to raise an issue of the maintainability of the suit before the Additional Civil Judge, Belgaum in OS No. 138 of 2008. The Additional Civil Judge, Belgaum shall consider whether a preliminary issue should be framed under Order 14, and if so, decide it within a period of 3 months of raising the preliminary issue. In any event, the suit shall be finally adjudicated upon within the outer limit of 31-3-2022."*

Thus, while Order VII Rule 11 and Order XIV Rule 2 are distinct procedural mechanisms, both are designed to prevent unnecessary trials in cases where the suit is barred in law. The former operates where the defect is evident on the face of the plaint; the latter applies where a pure question of law arises upon admitted or undisputed foundational facts after pleadings are complete. Proper invocation of either provision advances procedural economy, curbs abuse of process, and would promote timely administration of justice as it is the duty of the Courts to weed out frivolous suits. It would be useful to refer to the judgment of this Court in ***A.Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam & Others***[35], this Court observed as under:

*"**39.** Our courts are usually short of time because of huge pendency of cases and at times the courts arrive at an erroneous conclusion because of false pleas, claims, defences and*

[34] (2021) 9 SCC 99
[35] (2012) 6 SCC 430

irrelevant facts. A litigant could deviate from the facts which are liable for all the conclusions. In the journey of discovering the truth, at times, this Court, at a later stage, but once discovered, it is the duty of the court to take appropriate remedial and preventive steps so that no one should derive benefits or advantages by abusing the process of law. The court must effectively discourage fraudulent and dishonest litigants."

(D) WHETHER SUIT IS BARRED BY LAW

11. Having discussed and settled the scope of Order VII Rule 11 and Order XIV Rule 2 CPC, we now move to the question of the bar under law raised by the Appellants / Defendants.

11.1. The Appellants in their application averred that the transaction between the Plaintiff and K. Raghunath is a benami transaction barred under the provisions of the Benami Act; that the Will dated 20.04.2018 is a forged document; and further that there is a bar under Section 25 of the Hindu Succession Act, 1956 since K. Raghunath was allegedly murdered by the Plaintiff, who has been arrayed as an accused in the criminal case.

11.2. On the other hand, the Respondent / Plaintiff contended that the suit is founded solely on the Will; that while considering an application for rejection of plaint, only the averments in the plaint are to be examined; that there existed a fiduciary relationship between him and K. Raghunath who was employed in the company of the Plaintiff's father, and therefore the transaction cannot be termed benami; that no transfer of property takes place under a Will; and that each of the grounds raised cannot be summarily decided, but can be adjudicated only at trial.

(D1) THE PROHIBITION OF BENAMI PROPERTY TRANSACTIONS ACT, 1988

12. Before proceeding to analyse the facts of the case and juxtapose them with the legal position, we deem it necessary to ascertain the history, object, provisions and applicability of the Benami Act.

Origin

13. Prior to the enactment of the 1988 legislation, there was no specific statute dealing comprehensively with benami transactions. However, such transactions which were prevalent in the country, had received legal recognition through judicial decisions, notwithstanding the existence of certain enactments touching upon the subject. In ***Musammat Bilas Kunwar v. Desraj Ranjit Singh and others***[36], the Privy Council observed as under:

"Down to the taluqdar's death the natural inference is that the purchase was a benami transaction; a dealing common to Hindus and Muhammadans alike, and much in use in India; it is quite unobjectionable and has a curious resemblance to the doctrine of our English law that the trust of the legal estate results to the man who pays the purchase money, and this again follows the analogy of our common law, that where a feoffment is made without consideration the use results to the feoffer."

[36] AIR 1915 PC 96

13.1. Reference may also be made to the judgment in ***Punjab Province v. Daulat Singh***[37]**,** wherein the Federal Court, while considering the propriety of such transactions, observed as under:

"A notion has sometimes prevailed in this country that all benami transactions must be regarded as reprehensible and improper if not illegal; but, as late as in 1915, Sir George Farwell, delivering the judgment of the Judicial Committee in 37 ALL. 557 spoke of them as 'quite unobjectionable' and as having their analogues in the English law; and Mr. Amreer Ali, delivering the judgment of the Committee in 46 Cal. 566, observed that "there is nothing inherently wrong in it, and it accords, within its legitimate scope, with the ideas and habits of the people". As indicated by the qualifying words "within its legitimate scope", their Lordships' observations were clearly not meant to countenance transactions entered into for fraudulent or illegal purposes."

The Court, however, clarified that such observations were never intended to countenance transactions entered into for fraudulent or illegal purposes.

13.2. Though such transactions were regulated to some extent by Sections 81, 82 and 84 of the Indian Trusts Act,1882, Section 53 of the Transfer of Property Act, 1882, Section 66 of the Code of Civil Procedure, 1908, and Section 281A of the Income Tax Act, 1961, none of those provisions expressly employed the term "benami", nor were they sufficiently deterrent to prevent such transactions.

13.3. The 57th Report of the Law Commission of India dated August 1973 also did not treat benami transactions as inherently illegal. Instead, it recognised that such transactions were generally legal, except in specified situations, and considered several alternatives for reform. Ultimately, the Commission preferred the second alternative, namely, refusal of the law to recognise the benami character of transactions rather than criminalising them. It recommended that where property is transferred benami, the benamidar should be treated as the real owner, thereby abolishing judicial recognition of benami claims. The Commission further observed that this would be the simplest and most effective course and that the doctrine of benami would, under such reform, cease to form part of Indian law. The relevant paragraphs of the Report of the Law Commission are usefully extracted below:

*"5.2. **Summary of present position - in general** - A few basis points concerning benami transactions may be stated, as follows:*

(a) Benami transfer or transaction means the transfer by or to a person who acts only as the ostensible owner in place of the real owner whose name is not disclosed;

(b) The question whether such transfer or transaction was real or benami depends upon the intention of the beneficiary;

(c) The real owner in such cases may be called the beneficiary, and the ostensible owner the benamidar.

…

*5.3. **Effect of benami transfer**.- The effect of a benami transfer is as follows:-*

(a) A person does not acquire any interest in property by merely leading his name;

[37] AIR (29) 1942 FC 38

(b) The benamidar has no beneficial interest though he may represent the legal owner as to third persons.

(c) A benami transaction is legal, except in certain specified situations.

…..

6.3. ***Possible alternative for regulating benami transaction.****- Several possible alternatives could be thought of, with reference to prohibiting or regulating benami transactions for avoiding prejudice to private individuals or minimising litigation:-*

(i) Entering into a Benami transactions could be made an offence;

(ii) A provision may be enacted to the effect that in a civil suit a right shallnot be enforced against the benamidar or against a third person, by or on behalf of the person claiming to be the real owner of the property on the ground of benami; a similar provision could be made to bar defences on the ground of benami.

(This provision would be based on the principle on which the existing provisions in the Civil Procedure Code and the new provision in the Income-tax Act are based, but could be wider in scope and more radical).

(iii) The present presumption of a resulting trust in favour of the person who provided the consideration may be displaced (as in England) by the presumption of advancement, in cases where the person to whom property is transferred is a near relative of the person who provided the consideration. (This would bring in the doctrine of advancement, so as to rebut the presumption of resulting trust under section 82 of the Trusts Act).

Whichever alternative is adopted, it may be desirable to make an exception for an acquisition made by the manager of a joint Hindu family in the name of one of the co-parceners, and similar cases.

….

6.24. ***First alternative not likely to be effective****- The first alternative referred to above, namely, the imposition of a criminal prohibition against benami transactions, is the most drastic alternative, but it is not likely to be more effective than the others. A prohibition backed by criminal sanctions would not, moreover, be desirable, unless the mens rea is also included in the provision to be enacted.*

If this alternative is to be adopted, a provision could be enacted on the following lines:-

"Where property is transferred to one person for a consideration paid or provided by another person, and it appears that such person did not intend to pay or provide such consideration for the benefit of the transferee, the person paying or providing the consideration shall be guilty of an offence punishable with imprisonment upto three years, or with fine, or both.

Provided that this section shall not apply where the transferee is a co-parcener in a Hindu undivided family in which such other person is also a co-parcener, and it is proved that such other person intended to pay or provide such consideration for the benefit of the co-parceners in the family.

Exception-Nothing in this section shall be deemed to affect section 66 of the Code of Civil Procedure, 1908 or any provision similar thereto."

Yet another device for giving effect to the first alternative, with a requirement of mens rea, would be to have a law on the following lines:

"Where property is transferred to one person for a consideration paid or provided by another person, and it appears that such person did not intend to pay or provide such consideration for the benefit of the transferee, the person paying or providing the consideration shall, if he has caused the transfer to be entered into with the intention of facilitating the evasion of any

law, or defeating the claims of his creditors, or the creditors of any other person be guilty of an offence punishable with imprisonment upto three years, or with fine, or with both."

Yet another device to give effect to the first alternative would be to add a section in the Indian Penal Code as follows:-

"421A. Whoever, dishonestly or fraudulently causes to be transferred to any person, any property, for which transfer he has paid or provided the consideration, intending thereby to prevent, or knowing to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, or intending thereby to facilitate, or knowing it to be likely that he will thereby facilitate, the evasion of any law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both."

6.25. ***Second alternative****- The second alternative is less drastic than the first. In form, it could follow the existing statutory provision limiting the judicial recognition of benami transactions, such as, section 66, Code of Civil*

Procedure, 1908. But its scope would be much wider. The provision could be to the effect that no suit shall lie to enforce a right in respect of any property held benami, either against the person in whose name the property is held or against any other person, by or on behalf of a person who claims to be the real owner of the property on the ground that the person in whose name the property is held is a benamidar of the claimant. (If necessary, a defence can also be barred).

…

6.27. ***Second alternative refusal to recognise Benami preferred-*** *In our opinion, the simplest alternative would be the second alternative. The law should refuse to recognise the Benami character of transactions, without making them an offence. The law should, in effect, provide that where property is transferred benami, the benamidar will become the real owner. The result of such a provision will be that the fact that the benamidar did not provide the consideration, or that the consideration was provided by a third person, will not be a ground for recognising a person other than the benamidar as owner. To put the matter in broad terms, the doctrine of benami will, under the proposed amendment, cease to be a part of the Indian law.*

It may be observed that in enacting the proposed provision, the legislature will carry, to its logical conclusion, the trend illustrated by provisions, such as, section 66 of the Code of Civil Procedure. The section in the Code is applicable to involuntary alienations, while the proposed provision will extend the same principle to voluntary transfers as well.

We think that this will be the simplest and most effective course, and is, therefore, preferable to others.

The amendment will bring out a change in the legal position in some of the situations where, at present, the benami character is recognised.

6.27A. We are also of the view that it is not necessary to enact a prohibition attracting criminal penalties – which is the course suggested in the first alternative. Such a prohibition will have to be accompanied by a requirement of mens rea, thus narrowing down its scope and limiting its practical utility."

13.4. After the 44th Constitutional Amendment in 1978, the Government, for the first time, considered that the time was ripe to curb such transactions by prohibiting the right to recover property held benami. Accordingly, an Ordinance to that effect was promulgated by the President of India on 19th May 1988 bringing into force the Benami Transactions (Prohibition of the Right to Recover Property) Ordinance, 1988. The Ordinance prohibited any person from

instituting a suit or raising any defence claiming to be the real owner of the property held benami. Two exceptions were carved out to this prohibition: first, where the property stood in the name of a coparcener in a Hindu Undivided Family and was held for the benefit of the coparceners in the family; and secondly, where the property stood in the name of a trustee or any other person standing in a fiduciary capacity, and was held for the benefit of another person for whom he was a trustee or in whose favour he stood in such capacity. The Ordinance however, suffered from several shortcomings and did not appear to be a comprehensive scheme capable of effectively preventing such transactions. Consequently, a further report was sought from the Law Commission of India, which culminated in its 130th Report. The Report contained five chapters dealing with the introduction, legislative approach, coverage of the proposed statute, benami transactions and the motivations behind them, and the suggested future course of action. Ultimately, the Report recommended enactment of a suitable legislation, which paved the way for the Benami Transactions (Prohibition) Act, 1988.

Legislative intent

14. Before delving into the provisions of the Benami Act, it would be apposite to extract the relevant portions of the parliamentary debates preceding the passing of the Bill, together with the Statement of Objects and Reasons for the enactment, for the purpose of understanding the legislative intent underlying the statute. They are as follows:

Statement and reply of the Minister of Law and Justice and the Minister of Water Resources on 1 September, 1988

"That the Bill to prohibit benami transactions and the right to recover property held benami and for matters connected therewith or incidental thereto, be taken into consideration.

As the House is aware, the President promulgated the Benami Transactions (Prohibition of the Right to Recover Property) Ordinance, 1988, on 19th May 1988. The Bill seeks to implement the recommendations of the Law Commission contained in its 57th report. Although the Government has taken some time to implement the recommendations of the Law Commission, the Government felt that this was the most opportune time for bringing out such a legislation. The Ordinance evoked mixed response from the press, public and the Bar. While some sections congratulated the Government on making a beginning in the law of benami transactions, there was some criticism that the Ordinance had not gone very far to achieve the object, that is to say, prevention of proliferation of black money. There was also criticism that the Ordinance was not and touched many of the important aspects of benami transactions. It was also criticised that the Ordinance did not specifically provide for those cases where properties were transferred in the name of inanimate persons or in the name of tenants or deceased persons. In view of all these criticisms, it was felt that the Bill to replace the Ordinance should be drafted as comprehensively as possible, and if necessary, after obtaining the recommendations of the Law Commission. Accordingly, our Ministry had referred it to the Law Commission and the Law Commission was good enough to send its recommendations so that we might bring the Bill after considering its recommendations, before the expiry of the period of six weeks from the commencement of the session when the Ordinance will expire. The report of the Law Commission has already been placed on the Table of the House.

Before dwelling upon the provisions of the Bill, I would like to take the indulgence of the House for bringing this Bill at such short notice. As I mentioned earlier, in view of the peculiar circumstances in which we had to refer the Bill to the Law Commission for advice, there had been some delay in bringing forward the legislation. The Ordinance has to be replaced by a Bill within six weeks, that is to say by 5th September. As the House is aware, the Ordinance prohibited the right of the true owners to file a suit in respect of any property held benami and no defence based on any right is respect of any property to held would also be allowed in any suit, claim or action. It provided exceptions only to properties held by coparceners and by trustees on behalf of the beneficiaries. The Law Commission while justifying the provisions of the Ordinance had recommended that in order to be effective the entering into of benami transactions should be made an offence. It also felt that most of the benami transactions were entered into for the purpose of defeating tax laws, ceiling laws, etc. Both the parties to the transaction are equally guilty and as such the Ordinance should not allow one of the parties to obtain an undue advantage, that is to say, to retain the property. It has, therefore, suggested that in addition to making the entering into of benami transactions an offence, it should also provide for acquisition of the property from the benamidar. This would also provide a check against the benamidar retransferring the property back to the true owner after the commencement of the Ordinance for no consideration thus resulting in circumventing the provisions of the law. The Law Commission has, however, made two more recommendations, to check the entering into of benami transactions by authorising voluntary agencies to file complaints before tribunals designated for the purpose and to appoint an authority like the Charity Commissioner for supervising private trusts. It is proposed to accept all the recommendation of the Law Commission. The Bill, apart from including the provisions of the Ordinance, includes the recommendations of the Law Commission for prohibiting the benami transactions and for providing for acquisition of properties held benami. The only exception to the entering into of benami transactions is the purchase of a property by the father or the husband for the benefit of an unmarried daughter or wife, And a presumption has also been included that in respect of such transactions, it should be presumed that the transactions had been entered into for the benefit of the unmarried daughter or wife. As mentioned by the Law Commission and in the Statement of Objects and Reasons attached to the Bill, the doctrine of acquisition as prevailing in the English law has been incorporated in the Indian law. The specific provisions for authorising private agencies and creating an authority like the Charity Commissioner for private trusts have not been included in the Bill as we feel that by the prohibition of benami transactions and for the acquisition of properties held benami, the concerned authorities will come to know of the existence of the benami transactions and voluntary agencies would automatically be sending their complaints even without their being specifically authorised. The objects would be amply achieved by these provisions.

As the House is aware, this Bill is relatable to a matter in the Concurrent List and both the Central and the State Governments are competent to pass legislation. In fact, Parliament will come in only for the purpose of legislation and it is the State Governments who have to administer the provisions of such law. As such we are not in a position to immediately specify the authority for acquisition of properties in the legislation itself. This will be taken care of by the rules which will be made after consultation with the State Governments.

A point may be raised that this provision may amount to excessive delegation. But the House can see that the procedure for acquisition alone is included in the rules. It will not suffer from the vice of excessive delegation. Further as no step has been taken to assess the quantum entered of benami transactions entered into in the country, we are not in a position to estimate the properties that would be taken up for acquisition. As and when occasion arises, it is proposed to designate either an officer of the Central Government or a State Government to be the competent authority for the purpose of acquisition in accordance with the procedure that would be specified in the rules. As the entire proceedings for acquisition will be taken up by the existing officers, it is not proposed to create any additional staff for the purpose and

no expenditure will be incurred on account of the provisions of the Bill being passed and brought into operation. This has been brought out clearly in the Financial Memorandum attached to the Bill. As no expenditure is involved, the re commendation of the President for the consideration of this Bill in this behalf has not been obtained.

As the Members of the House will agree, this Bill attempts to provide for a comprehensive law on Benami and it has touched all aspects. We also feel that this will be very effective in achieving the objective of preventing benami transactions. Much of the criticisms levelled against the ordinance will be met by the provisions of the Bill and the intention of the Government cannot be doubted. Further, we have brought forward this Bill after a detailed examination by an expert authority like the Law Commission and I am sure that the Bill will go a long way in achieving the objective and will have the unanimous approval of all sections of the House.

….

Mr. Vice-Chairman, I need not tell the House as to who indulge in these benami transactions, why they indulge in benami transactions and how they indulge in benami transactions. I need not the Honorable House that it is the man who earns and enriches himself to such an extent with all the black deeds and black deals which are reprehensible in the society and it is he who tries to invest such money at the cost of the nation and the entire society loses, the entire country loses. He defeats the various laws that control property dealings in this country. He defeats the tax laws, he defeats the land ceiling laws and how he does it is by surreptitiously transferring his ill-gotten money to purchase properties in somebody's name, living or dead, animate or inanimate and as observed by you, in the name of gods also……

Sir, we have heard that properties are transferred in the name of cats, dogs, cows and, as he said, maybe carts and God knows in how many names they are transferred. It is these people who are putting the economy of the country in jeopardy. People who want to evade the tax laws are the people here and very large money is involved in this. Perhaps I will not be able to say it but I think the Finance Minister will be able to say about the findings of the various committees about the amount of black money in circulation in this country. But it is these people who do it.

Sir, a question was raised whether some time will be given to people to adjust their benami transactions. How can we give any time to adjust benami, illegal, transfers?

…

The implementation of the provisions of the Bill will have to be done very carefully because the purpose of the Bill is that not a single benami transaction is left out. The question is, who will bring this to the notice of the Government? I have already clarified in my speech when I introduced the Bill that those organisations themselves are competent to inform the Government and the Government will definitely take action. Not only both the parties would not be spared, but both will be held guilty and the property will be procured by the Government.

…

It is gone for the man who transfers it and it is also gone for the transferee according to this Bill. He also loses. The Government can procure the property. Sir, I need not dwell upon clause 8 which gives the authority to the Government to make the rules under the provisions and under certain circumstances enumerated in the clause.

I can only say, Sir, that I must thank the honorable Members who have supported the Bill and I can assure the House that this will not be the last act by the Government. We will do everything that is under our command which we can do for the welfare of the poor people of this country and to reduce the gap between the rich and the poor. Thank you."

Statement of Objects and Reasons for the Benami Act

(1) To implement the recommendations of the Fifty-seventh Report of the Law Commission on Benami Transactions, the President promulgated the Benami Transactions (Prohibition of the Right to Recover Property) Ordinance, 1988, on the 19th May, 1988.

(2) The Ordinance provided that no suit, claim or action to enforce any right in respect of any property held benami shall lie and no defence based on any right in respect of any property held benami shall be allowed in any suit, claim or action. It, however, made two exceptions regarding property held by a coparcener in a Hindu undivided family for the benefit of the Coparceners and property held by a trustee or other person standing in a fiduciary capacity for the benefit of another person. It also repealed section 82 of the Indian Trusts Act, 1882, section 66 of the Code of Civil Procedure and section 281A of the Income-tax Act, 1961.

(3) The provisions of the Ordinance received a mixed response from the press and the public. There had been criticism also that the Ordinance was a halfhearted measure and had not tackled the problem effectively and completely. It was, therefore, felt that the Bill to replace the Ordinance may be brought out as a comprehensive law on benami transactions touching all aspects and accordingly, the Law Commission was requested to examine the subject in all its ramifications. The Law Commission has submitted its 130th Report titled "Benami Transactions-a Continuum" and has made certain recommendations.

(4) The Law Commission has, inter alia, recommended the inclusion of the following provisions in the Bill to replace the Ordinance, namely:

(i) benami transactions should cover all kinds of property,

(ii) entering into a benami transaction after the commencement of the new law should be declared as an offence. However, an exception should be made for transactions entered into by the husband or father for the transfer of properties in the name of the wife or unmarried daughter for their benefit. By this, the doctrine of advancement as obtaining in the English law will be incorporated into the Indian Statute Book;

(iii) voluntary organisations should be authorised to file complaints about the entering into of benami transactions and the District Judges should be designated as Tribunals. Even Gram Nayaylayas recommended by the Law Commission may also be utilised for this purpose;

(iv) as both the benamidars and the true owner are equal participants to a criminal transaction, by prohibiting the true owner's right to recover property held benami as provided in the Ordinance will be provided for an undue enrichment to the benamidar. As such, the Commission has suggested that the properties should be acquired from him by resorting to a procedure analogous to Chapter XXA of the Income-tax Act, 1961. It has been suggested that the same action has to be taken when a benamidar retransfers the property back to the true owner for an apparent or no consideration to circumvent the provisions of the Ordinance,

(v) in addition to section 82 of the Indian Trusts Act, 1882, as provided in the Ordinance, sections 81 and 94 of that Act should also be omitted;

(vi) appointment of an authority, like the Charity Commissioner, for supervising private trusts should be provided for.

(5) The recommendations of the Law Commission have been examined. It is felt that all the recommendations of the Law Commission, except the recommendation regarding authorising voluntary organisations to file complaints before Tribunals and the appointment of an authority, like the Charity Commissioner, for supervising private trusts, may be specifically provided in the Bill, and the other two recommendations would, it is felt, come into effect automatically as a result of the prohibition of benami transactions and the provision for

acquisition of all properties held benami. The Bill accordingly provides for the following, among other things. namely-

(a) entering into benami transactions after the commencement of the new law will be an offence, with an exception for the transfer of properties by the husband or father for the benefit of the wife or unmarried daughters;

(b) all the properties held benami will be subject to acquisition by such authority, in such mariner and after following such procedure, as may be prescribed by rules under the proposed legislation. As a result of the provisions of the Ordinance and the prohibition of entering into benami transactions, the benamidar would be acquiring the rights to the property by the mere lending of his name and without investing any money for the purchase of such property. Accordingly, it is provided that no amount shall be payable for the acquisition of any property held benami,

(c) Sections 81 and 94 of the Indian Trusts Act, 1882, shall also be repealed.

(6) The Bill seeks to achieve the above object."

14.1. The debates surrounding the enactment of the Benami Act reveals the legislative anxiety to curb the widespread misuse of benami arrangements as a vehicle for concealing illicit wealth, defeating tax laws, evading land ceiling laws, and frustrating regulatory measures. While moving the Bill, the Minister for Law and Justice stated that the earlier Ordinance of 19.05.1988 had received mixed reactions and had been criticised as inadequate and incomplete. It was therefore considered necessary to enact a comprehensive legislation covering all aspects of benami transactions.

14.2. The Minister further explained that the Government had considered the recommendations of the Law Commission, which had opined that mere denial of the true owner's right to recover benami property would unjustly enrich the benamidar. Accordingly, the proposed legislation not only prohibited benami transactions, but also contemplated acquisition of properties held benami, so that neither the ostensible holder nor the real owner could derive any benefit therefrom. It was also emphasized in Parliament that benami transactions were often funded through black money and properties were purchased in the names of living persons, deceased persons, fictitious entities, and even inanimate objects, thereby undermining the national economy and legal order.

14.3. The Statement of Objects and Reasons accompanying the Bill also records that the Ordinance had been viewed as a half-hearted measure and that a more effective and complete law was necessary. It further clarifies that no compensation was to be payable upon acquisition, since the benamidar acquired rights merely by lending his name without investing consideration, and the real owner was equally a participant in the illegality.

14.4. It is therefore manifest from the parliamentary debates and the Statement of Objects and Reasons that the dominant object of the enactment was two-fold: first, to prohibit benami transactions; and second, to deprive all parties of any benefit arising therefrom by enabling acquisition / confiscation of the property involved. The legislative intent was to strike at transactions entered into for concealing ownership, laundering unaccounted wealth, and defeating fiscal or social welfare laws.

14.5. The Bill was thereafter passed, and the Benami Transactions (Prohibition) Act, 1988 came into force on 19.05.1988, except Sections 3, 5 and 8, which came into force on 05.09.1988. As already stated, the object of the Act as discernible from its Preamble, was to prohibit benami transactions and the right to recover the property held in benami.

Provisions of the Benami Act, 1988

15. The Act originally contained nine sections. Section 2(a) defined a "benami transaction" to mean any transaction in which property is transferred to one person for a consideration paid or provided by another person. Section 2(c) defined "property" to mean property of any kind, whether movable or immovable, tangible or intangible, and included any right or interest in such property.

15.1. Section 3(1) provided that no person shall enter into any benami transaction. Sub-section (2) carved out exceptions by excluding purchases made by a person in the name of his wife or unmarried daughter, in which case it would be presumed that the property had been purchased for their benefit. It also excluded securities held by a depository as registered owner and by a participant as an agent of a depository. Sub-section (3) prescribed punishment for entering into a benami transaction, extendable upto three years, while Subsection (4) declared the offence to be non-cognizable and bailable. Section 4 consisted of three sub-sections. Sub-section (1) prohibited institution of any suit, claim or action to enforce any right in respect of property held benami against the person in whose name the property stood. Sub-section (2) prohibited any defence based on a claim of real ownership. Sub-Section (3) carved out exceptions in respect of property standing in the name of a coparcener in a Hindu Undivided Family for the benefit of other coparceners, and property held by a trustee or a person standing in a fiduciary capacity for the benefit of another. Section 5 provided for acquisition of benami property without payment of compensation. Section 6 clarified that the Act would not affect Section 53 of the Transfer of Property Act, 1882 dealing with fraudulent transfers or any law relating to transfers for illegal purposes. Section 7 repealed the relevant provisions of the Trusts Act, the Code of Civil Procedure, and the Income Tax Act. Section 8 empowered the Central Government to make rules, and Section 9 repealed the earlier Ordinance.

15.2. In consonance with its object, Sections 3 and 4 introduced two distinct forms of prohibition. Section 3 prohibited the entering into a benami transaction, whereas Section 4 prohibited enforcement of rights in respect of benami property or raising such claim as a defence. The exceptions contained in Sections 3 and 4 were different and operated in distinct spheres and at different stages. The exception under Section 4 could arise only when a suit or claim was instituted or defended in respect of property already held benami. In contrast, the prohibition under Section 3 related to the original acquisition of the property. Put differently, invocation of Section 4 would not arise unless there had already been a transaction falling within the ambit of Section 3. It is apposite to recall

the definition under Section 2(a) which characterised a benami transaction as one where the consideration was paid or provided by another person. The test for determining whether a transaction was benami depended upon the intention and conduct of the purchaser, namely, whether the property was intended to be held for himself or to be conveyed to the person who funded the consideration, or to another nominated person at a later stage. The Act, in effect, extinguished the right of the real owner to recover the property from the person in whose name it stood.

Scope of the Benami Act

16. Reference may be made to the judgment in ***Mithilesh Kumari and another v. Prem Behari Khare***[38]**,** wherein this Court considered the scope of the provisions of the Benami Act. The following paragraphs are pertinent:

*"**22.** As defined in Section 2(a) of the Act "'benami transaction' means any transaction in which property is transferred to one person for a consideration paid or provided by another person". A transaction must, therefore, be benami irrespective of its date or duration. Section 3, subject to the exceptions, states that no person shall enter into any benami transaction. This section obviously cannot have retrospective operation. However, Section 4 clearly provides that no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie, by or on behalf of a person claiming to be real owner of such property. This naturally relates to past transactions as well. The expression "any property held benami" is not limited to any particular time, date or duration. Once the property is found to have been held benami, no suit, claim or action to enforce any right in respect thereof shall lie. Similarly, subsection (2) of Section 4 nullifies the defences based on any right in respect of any property held benami whether against the person in whose name the property is held or against any other person in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property. It means that once a property is found to have been held benami, the real owner is bereft of any defence against the person in whose name the property is held or any other person. In other words in its sweep Section 4 envisages past benami transactions also within its retroactivity. In this sense the Act is both a penal and a disqualifying statute. In case of a qualifying or disqualifying statute it may be necessarily retroactive. For example when a Law of Representation declares that all who have attained 18 years shall be eligible to vote, those who attained 18 years in the past would be as much eligible as those who attained that age at the moment of the law coming into force. When an Act is declaratory in nature the presumption against retrospectivity is not applicable. Acts of this kind only declare. A statute in effect declaring the benami transactions to be unenforceable belongs to this type. The presumption against taking away vested right will not apply in this case inasmuch as under law it is the benamidar in whose name the property stands, and law only enabled the real owner to recover the property from him which right has now been ceased by the Act. In one sense there was a right to recover or resist in the real owner against the benamidar. Ubi jus ibi remedium. Where there is a right, there is a remedy. Where the remedy is barred, the right is rendered unenforceable. In this sense it is a disabling statute. All the real owners are equally affected by the disability provision irrespective of the time of creation of the right. A right is a legally protected interest. The real owner's right was hitherto protected and the Act has resulted in removal of that protection.*

***23.** When the law nullifies the defences available to the real owner in recovering the benami property from the benamidar the law must apply irrespective of the time of the benami transactions. The expression "shall lie" in Section 4(1) and "shall be allowed" in Section 4(2)*

[38] (1989) 2 SCC 95

are prospective and shall apply to present (future stages) and future suits, claims or actions only. ..”

16.1. The above judgment was partially overruled by this Court in ***R. Rajagopal Reddy (Dead) by LRs and others v. Padmini Chandrasekharan (Dead) by LRs***[39] with respect to retrospective applicability of the provision and it was held as under:

*“**11.** … Thus it was enacted to efface the then existing right of the real owners of properties held by others benami. Such an Act was not given any retrospective effect by the legislature. Even when we come to Section 4, it is easy to visualise that sub-section (1) of Section 4 states that no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other shall lie by or on behalf of a person claiming to be the real owner of such property. As per Section 4(1) no such suit shall thenceforth lie to recover the possession of the property held benami by the defendant. Plaintiff's right to that effect is sought to be taken away and any suit to enforce such a right after coming into operation of Section 4(1) that is 19-5-1988, shall not lie. The legislature in its wisdom has nowhere provided in Section 4(1) that no such suit, claim or action pending on the date when Section 4 came into force shall not be proceeded with and shall stand abated. On the contrary, clear legislative intention is seen from the words “no such claim, suit or action shall lie”, meaning thereby no such suit, claim or action shall be permitted to be filed or entertained or admitted to the portals of any court for seeking such a relief after coming into force of Section 4(1). …*

The word ‘lie’ in connection with the suit, claim or action is not defined by the Act. If we go by the aforesaid dictionary meaning it would mean that such suit, claim or action to get any property declared benami will not be admitted on behalf of such plaintiff or applicant against the defendant concerned in whose name the property is held on and from the date on which this prohibition against entertaining of such suits comes into force. With respect, the view taken that Section 4(1) would apply even to such pending suits which were already filed and entertained prior to the date when the section came into force and which has the effect of destroying the then existing right of plaintiff in connection with the suit property cannot be sustained in the face of the clear language of Section 4(1). It has to be visualised that the legislature in its wisdom has not expressly made Section 4 retrospective. Then to imply by necessary implication that Section 4 would have retrospective effect and would cover pending litigations filed prior to coming into force of then section would amount to taking a view which would run counter to the legislative scheme and intent projected by various provisions of the Act to which we have referred earlier. It is, however, true as held by the Division Bench that on the express language of Section 4(1) any right inhering in the real owner in respect of any property held benami would get effaced once Section 4(1) operated, even if such transaction had been entered into prior to the coming into operation of Section 4(1), and henceafter Section 4(1) applied no suit can lie in respect to such a past benami transaction. To that extent the section may be retroactive. To highlight this aspect we may take an illustration. If a benami transaction has taken place in 1980 and a suit is filed in June 1988 by the plaintiff claiming that he is the real owner of the property and defendant is merely a benamidar and the consideration has flown from him, then such a suit would not lie on account of the provisions of Section 4(1). Bar against filing, entertaining and admission of such suits would have become operative by June 1988 and to that extent Section 4(1) would take in its sweep even past benami transactions which are sought to be litigated upon after coming into force of the prohibitory provision of Section 4(1); but that is the only effect of the retroactivity of Section 4(1) and nothing more than that. From the conclusion that Section 4(1) shall apply even to past benami transactions to the aforesaid extent, the next step taken by the Division Bench that therefore, the then existing rights got destroyed and even though suits by real

[39] (1995) 2 SCC 630

owners were filed prior to coming into operation of Section 4(1) they would not survive, does not logically follow.

12. *So far as Section 4(2) is concerned, all that is provided is that if a suit is filed by a plaintiff who claims to be the owner of the property under the document in his favour and holds the property in his name, once Section 4(2) applies, no defence will be permitted or allowed in any such suit, claim or action by or on behalf of a person claiming to be the real owner of such property held benami. The disallowing of such a defence which earlier was available, itself suggests that a new liability or restriction is imposed by Section 4(2) on a pre-existing right of the defendant. Such a provision also cannot be said to be retrospective or retroactive by necessary implication. It is also pertinent to note that Section 4(2) does not expressly seek to apply retrospectively. So far as such a suit which is covered by the sweep of Section 4(2) is concerned, the prohibition of Section 4(1) cannot apply to it as it is not a claim or action filed by the plaintiff to enforce right in respect of any property held benami. On the contrary, it is a suit, claim or action flowing from the sale deed or title deed in the name of the plaintiff. Even though such a suit might have been filed prior to 19-5-1988, if before the stage of filing of defence by the real owner is reached, Section 4(2) becomes operative from 19-5-1988, then such a defence, as laid down by Section 4(2) will not be allowed to such a defendant. However, that would not mean that Section 4(1) and Section 4(2) only on that score can be treated to be impliedly retrospective so as to cover all the pending litigations in connection with enforcement of such rights of real owners who are parties to benami transactions entered into prior to the coming into operation of the Act and specially Section 4 thereof. It is also pertinent to note that Section 4(2) enjoins that no such defence "shall be allowed" in any claim, suit or action by or on behalf of a person claiming to be the real owner of such property. That is to say no such defence shall be allowed for the first time after coming into operation of Section 4(2). If such a defence is already allowed in a pending suit prior to the coming into operation of Section 4(2), enabling an issue to be raised on such a defence, then the Court is bound to decide the issue arising from such an already allowed defence as at the relevant time when such defence was allowed Section 4(2) was out of the picture. Section 4(2) nowhere uses the words: "No defence based on any right in respect of any property held benami whether against the person in whose name the property is held or against any other person, shall be allowed to be raised or continued to be raised in any suit." With respect, it was wrongly assumed by the Division Bench that such an already allowed defence in a pending suit would also get destroyed after coming into operation of Section 4(2)…*

13. *According to us this difficulty is inbuilt in Section 4(2) and does not provide the rationale to hold that this section applies retrospectively. The legislature itself thought it fit to do so and there is no challenge to the vires on the ground of violation of Article 14 of the Constitution. It is not open to us to rewrite the section also. Even otherwise, in the operation of Section 4(1) and (2), no discrimination can be said to have been made amongst different real owners of property, as tried to be pointed out in the written objections. In fact, those cases in which suits are filed by real owners or defences are allowed prior to coming into operation of Section 4(2), would form a separate class as compared to those cases where a stage for filing such suits or defences has still not reached by the time Section 4(1) and (2) starts operating. Consequently, latter type of cases would form a distinct category of cases. There is no question of discrimination being meted out while dealing with these two classes of cases differently. A real owner who has already been allowed defence on that ground prior to coming into operation of Section 4(2) cannot be said to have been given a better treatment as compared to the real owner who has still to take up such a defence and in the meantime he is hit by the prohibition of Section 4(2). Equally there cannot be any comparison between a real owner who has filed such suit earlier and one who does not file such suit till Section 4(1) comes into operation. All real owners who stake their claims regarding benami transactions after Section 4(1) and (2) came into operation are given uniform treatment by*

these provisions, whether they come as plaintiffs or as defendants. Consequently, the grievances raised in this connection cannot be sustained."

16.2. It is to be noted that the judgments referred to above arose out of transactions prior to 1988 or immediately thereafter, with litigations having commenced before 1988. Those judgments principally dealt with the applicability of the 1988 Act, without substantial discussion on the effect of Section 66 of the Code of Civil Procedure, 1908. In the present case, however, we are concerned with transactions entered into after the Act came into force in 1988 and before the amendments introduced in 2016.

(D2) <u>THE BENAMI TRANSACTIONS (PROHIBITION) AMENDMENT ACT, 2016</u>

17. Coming now to the subsequent developments, although the provision relating to confiscation existed in the 1988 Act, no rules were framed, and the provisions of the Act could not be effectively implemented for want of additional provisions prescribing a comprehensive procedure. There was, therefore, a necessity to fill the lacunae and bring about amendments, which ultimately materialised in 2016.

17.1. At this juncture, it would be apposite to refer to the Statement and Reply of the then Minister of Finance and Minister of Corporate Affairs on 2 August, 2016, when the Amendment Bill of 2016 was introduced. The same clearly indicates not only the object of Parliament in bringing about the amendment, but also the clear intent to cure the existing deficiencies by enabling action in respect of benami transactions undertaken prior to the amendment. The relevant paragraphs are extracted below for ready reference:

"Sir, I would like to say just a few words of introduction to explain the Bill. The original Act was passed in the year 1988, and when it was passed in the year 1988, in substance, the Act was that if a person pays for a particular property, and the property is held in some other person's name, it shall be deemed to be a benami property. There is a prohibition. The property can get confiscated by the State Government, and further, there would be a penal provision for that.

Now, this Bill comprises nine Sections. Under this Bill, rules have to be framed as to the manner to the confiscation, for confiscation, compensation was payable or not payable, how it had to be operated, the competent authority that would undertake these functions, the appeal provisions under the Act, so that the power could be exercised in a reasonable manner. Now, when the matter went to the Law Ministry, the Law Ministry was of the opinion that all these are essential to a legislation, and these should have been a part of the principal legislation itself. If the entire functioning of the law is to be done through subordinate legislation, that would be a case of excessive delegation. So, the Law Ministry advised that the Bill would require some form of an amendment, and therefore, the rules under this were not framed. There are judgments of the Supreme Court, at least, in two cases, where what constitutes a benami property, this Act was interpreted. But actually, no acquisition took place under this Act for the reasons that the rules in order to operationalise the Act themselves were not framed. And those amendments were to be fitted into the main Act. Now the Act has only nine Sections and the amendments were over 74 or so; so new clauses were to be added. One of the reasons why it was felt necessary that you can't have a new Act altogether —there was one proposal to have a new Act—is that if you have a new Act then the penal provisions on the new Act would not be able to apply retrospectively because of Article 20 of

the Constitution. And, because they could not apply retrospectively, all those who have violated the 1988 law would go scot free. As a result of which, these amendments were proposed. The matter went to the Standing Committee, which considered it, and finally, the Lok Sabha dissolved and the Bill lapsed with the Lok Sabha. The present Government again reintroduced this Bill. It has been considered by the Standing Committee and some recommendations have been made.

I have accepted most of those recommendations. There are two key recommendations which we have accepted, and these two key recommendations are: One, with regard to exceptions in the principles of benami principle. Now, there could be a property owned by a family member in the name of any other family member. That's an exception which was there in the 1988 Bill or in the case of such organizations like trust etc., where you hold property in one name but it is held as a fiduciary capacity by the principal owner. Now, these were the two exceptions. There was a third valid exception which Members of the Standing Committee pointed out that a large number of properties are technically registered in the name of some other person but under some arrangement like, an agreement to sell; power of attorney; in Delhi, for instance, this practice is prevalent.

These properties are effectively transferred to some other persons and possession also is given and the possession is protected under Section 53(A) of the Transfer of Property Act. Therefore, it should not apply to these transactions because there would be lakhs and lakhs of transactions of this kind. The Government has accepted that suggestion. There is one more suggestion, that the Standing Committee had made, which is related to known sources of income. That is the phrase used in the original Act itself; in the Amendments that we have proposed, whatever you buy must be from your known sources of income.

Now, the Standing Committee felt that the words 'of income' itself are superfluous because there could be cases where somebody has purchased a property not from his income but by taking a loan from a bank or by some other family member contributing to it. And, therefore, the words itself should be, 'known sources' and not 'known sources of income'.

We have accepted those suggestions and with these amendments, the Bill has already been approved by the Lok Sabha. I commend its acceptance to this hon. House."

2016 Amendment: Structural transformation of the Act

18. The 2016 Amendment introduced sweeping and comprehensive changes by insertion of new provisions and re-arrangement of the existing scheme of the statute. Even the name of the enactment itself was changed to the Prohibition of Benami Property Transactions Act, 1988. A structured mechanism for attachment, adjudication and confiscation of benami property was also introduced.

18.1. The amended Act consists of seventy-two sections divided into eight Chapters. Some of the relevant provisions are extracted hereunder:

"2. Definitions.— *In this Act, unless the context otherwise requires,—*

(8) *"benami property" means any property which is the subject matter of a benami transaction and also includes the proceeds from such property:*

(9) "benami transaction" *means,—*

(A) *a transaction or an arrangement—*

(a) *where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and*

(b) *the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration,*

except when the property is held by—

(i) *a karta, ……*

(ii) ***a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity****, and includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996, (22 of 1996) and any other person as may be notified by the Central Government for this purpose;*

(iii) *any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration of such property has been provided or paid out of the known sources of the individual;*

(iv) *any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual appear as joint-owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual; or*

(B) *a transaction or an arrangement in respect of a property carried out or made in a fictitious name; or*

(C) *a transaction or an arrangement in respect of a property where the owner ofthe property is not aware of, or, denies knowledge of, such ownership;*

(D) *a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious."*

(10) "benamidar" *means a person or a fictitious person, as the case may be, in whose name the benami property is transferred or held and includes a person who lends his name;"*

(12) "beneficial owner" *means a person, whether his identity is known or not, for whose benefit the benami property is held by a benamidar;"*

(26) "property" *means assets of any kind, whether movable or immovable, tangible or intangible, corporeal or incorporeal and includes any right or interest or legal documents or instruments evidencing title to or interest in the property and where the property is capable of conversion into some other form, then the property in the converted form and also includes the proceeds from the property;*

(29) "transfer" *includes sale, purchase or any other form of transfer of right, title, possession or lien;*

3. Prohibition of benami transactions.*--(1) No person shall enter into any benami transaction.*

(2) Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(3) Whoever enters into any benami transaction on and after the date of commencement of the Benami Transactions (Prohibition) Amendment Act, 2016 shall, notwithstanding anything contained in sub-section (2), be punishable in accordance with the provisions contained in Chapter VII.

4. Prohibition of the right to recover property held benami.—(*1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.*

(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.

5. ***Property held benami liable to confiscation****. —Any property, which is subject matter of benami transaction, shall be liable to be confiscated by the Central Government.*

6. ***Prohibition on re-transfer of property by benamidar.— (****1) No person, being a benamidar shall re-transfer the benami property held by him to the beneficial owner or any other person acting on his behalf.*

(2) Where any property is re-transferred in contravention of the provisions ofsub-section (1), the transaction of such property shall be deemed to be null and void.

(3) The provisions of sub-sections (1) and (2) shall not apply to a transfer madein accordance with the provisions of section 190 of the Finance Act, 2016 (28 of 2016).

45. Bar of jurisdiction of civil courts.—*No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which any of the authorities, an Adjudicating Authority or the Appellate Tribunal is empowered by or under this Act to determine, and no injunction shall be granted by any court or other forum in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."*

18.2. The amended Act significantly expanded the scope of the prohibition. It no longer confined itself merely to the property directly involved in a benami transaction, but also extended to assets or properties derived from the income or proceeds of such property. Section 3 categorises consequences based on the date of transaction. Benami transactions entered into during the period from 05.09.1988 to 31.10.2016 fell under Section 3(2), whereas transactions entered into after commencement of the 2016 amendment are governed by Section 3(3) read with Chapter VII.

18.3. Section 4 substantially continued in force, though the earlier exceptions under Section 4(3) were relocated into the definitional structure under Section 2(9). Thus, the bar against asserting claims or defences based on benami ownership continued even after the amendment. Section 5 reaffirmed that any property forming the subject matter of a benami transaction is liable to confiscation by the Central Government. Section 6 introduced a fresh prohibition against re-transfer of property by the benamidar.

18.4. Most significantly, Chapter IV introduced a complete machinery for attachment, adjudication and confiscation, while Chapter VII created a separate code dealing with offences and penalties. The amended statute also established an administrative hierarchy. Section 2(1) defines the Adjudicating Authority referred to in Section 7. Section 2(2) defines Administrator with reference to officers under the Income-tax Act, 1961. Section 2(4) defines Approving Authority as an Additional Commissioner or Joint Commissioner under the Income-tax Act. Section 2(6) refers to authorities under Section 18. Section 2(19) defines Initiating Officer as an Assistant Commissioner or Deputy Commissioner under the Income-tax Act. It must be noted that where a statute adopts definitions by reference from another enactment, subsequent amendments to the parent enactment may, depending on the nature of incorporation or reference, have to be read into the adopting provision in accordance with settled principles relating to legislation by reference.

18.5. Chapter II of the Act consists of Sections 3 to 6 and deals respectively with prohibition of benami transactions, bar to recovery of benami property,

confiscation, and prohibition on re-transfer. Section 3, apart from declaring the prohibition, also renders the prohibited transaction punishable under subsections (2) and (3).

Statutory framework under the Act

19. Let us now traverse the provisions of the Act in some detail before examining the effective date of the amendment. Chapter III deals with the authorities under the Act. Section 7 provides for the Adjudicating Authority. Sections 8 to 17 stood omitted by Act 13 of 2021. Section 18 designates the Initiating Officer, Approving Authority, Administrator and Adjudicating Authority as the authorities for the purposes of the Act. Section 19 provides that such authorities shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit. Sub-section (3) of Section 19 declares that proceedings under sub-sections (1) and (2) shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code. Sub-section (4) authorizes any authority under the Act to requisition the assistance of any police officer or officer of the Central or State Government for the purposes specified in sub-section (1).

19.1. Section 20 enumerates the authorities under various enactments who are bound to assist the authorities in enforcement of the Act. Section 21 empowers the authorities specified in Section 18 to call for information from any person responsible for maintaining books of account or records relating to transactions concerning any property, or from any other person whose information may be useful or relevant for the purposes of the Act. Such person is under a statutory obligation to furnish the information sought.

19.2. Section 22 authorises the authority to impound documents where it has reason to believe that such documents are required for inquiry under the Act. The documents may be retained for a period not exceeding three months from the date of the order of attachment made by the Adjudicating Authority under Section 26(3). The proviso permits further retention for reasons to be recorded in writing. The succeeding sub-sections require approval of the Approving Authority for extension of retention, prescribe that retention shall not exceed thirty days from conclusion of all proceedings, entitle the person concerned to obtain copies, and mandate return of the retained material upon expiry of the prescribed period unless release to another person is permitted by the competent authority.

19.3. Though Section 23 empowers the Initiating Officer, with prior approval of the Approving Authority, to conduct or cause investigation or inquiry in respect of any person, place, property, assets, documents, books of account, or other relevant matters, the Explanation clarifies that nothing in Section 23 applies, or shall be deemed ever to have applied, once notice under Section 24(1) has been issued. The Explanation clearly demarcates the proceedings under Chapter III from those under Chapter IV and delineates their respective scope. Chapter III, particularly Sections 19(3) and 19(4), makes it evident that proceedings under the Act are judicial in character and that the authorities under

the Act are not police officers. The position is further fortified by Section 61, which declares offences under the Act to be non-cognizable.

19.4. Chapter IV deals with attachment, adjudication and confiscation. Section 24(1) empowers the Initiating Officer to issue notice calling upon the person concerned to show cause why the property should not be treated as benami property. Such notice must be founded on material in possession of the officer and on his satisfaction, i.e., reason to believe, that a person is a benamidar in respect of the property. Under sub-section (2), notice must also be issued to the beneficial owner if his identity is known. Sub-section (2A) permits reply within three months from the end of the month in which notice was issued. Sub-section (3) enables provisional attachment of the property for a period of four months from the last day of the month in which notice under sub-section (1) was issued. Under Section 24(4)(a), after making inquiries, calling for reports, and considering the material, the Initiating Officer may, within the said period, continue the provisional attachment with prior approval of the Approving Authority until an order is passed under Section 26(3) or revoke the provisional attachment. Under clause (b), where no prior provisional attachment had been made, the officer may provisionally attach the property with approval, pending decision of the Adjudicating Authority, or decide not to attach it. Sub-section (5) requires the Initiating officer to draw up a statement of the case and refer the matter to the Adjudicating Authority within one month from the end of the month in which an order under Section 24(4) is passed. Section 25 prescribes the mode of service of notice and provides that notice under Section 24(1) may be served by post or in the same manner as summons issued under the Code of Civil Procedure, 1908.

19.5. Section 26 concerns adjudication of benami property. Notice is to be issued to the beneficial owner, interested parties, and any person claiming rights in the property. The Adjudicating Authority, after considering replies, relevant materials, and after granting personal hearing to the parties as well as the Initiating Officer, shall pass an order either holding the property to be benami or otherwise, thereby confirming or revoking the attachment under Section 26(3). Sub-section (5) empowers the Adjudicating Authority to provisionally attach another property if, during proceedings, it has reason to believe that such property is also benami, and such action is deemed part of the original reference. The order under Section 26(3) is required to be passed within one year from the end of the month in which the reference under Section 24(5) was made.

19.6. Once an order under Section 26(3) declares the property to be benami, the Adjudicating Authority may, after affording opportunity of hearing, order confiscation of the property under Section 27. Such confiscation remains subject to the result of appeal under Section 46. Section 27(2) protects a bona fide purchaser who acquired the property before issuance of notice under Section 24(1). Section 27(3) provides that upon confiscation, all rights, title and interest in the property vest absolutely in the Central Government free from all encumbrances, and no compensation is payable.

19.7. Under section 28, management of confiscated properties vests in the Administrator, who acts under directions of the Central Government. Section 29 mandates that the Administrator shall take possession after confiscation. Written notice may be issued directing the person in possession to surrender the property within one week, failing which forcible possession may be taken. For such purpose, assistance of the police may be requisitioned, and it is the duty of the officer concerned to render such assistance.

19.8. Chapter V concerns establishment and composition of the Appellate Tribunal, qualifications of its Chairperson and Members, their service conditions, and incidental matters. Sections 40, 46 and 49 are significant. Section 40, dealing with procedure and powers of the Tribunal, states that it shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 and may regulate its own procedure. Sub-section (2) nevertheless confers upon it the same powers as a civil court while trying a suit. Sub-section (3) provides that orders of the Tribunal shall be executable as decrees of a civil court. Sub-section (5) declares that proceedings before the Tribunal shall be deemed judicial proceedings within the meaning of Sections 193 and 228 IPC, and that the Tribunal shall be deemed a civil court for purposes of Sections 345 and 346 Cr.P.C. These provisions unmistakably establish that adjudication and confiscation proceedings cannot, by any stretch of imagination, be treated as prosecution. Confiscation is intended to ensure that a person who has violated the law is not permitted to enjoy the fruits of such violation. It is remedial and preventive, not penal.

19.9. Section 46 enables filing of an appeal against an order of the Adjudicating Authority. Any person, including the Initiating Officer, may prefer an appeal within forty-five days from receipt of the order passed under Section 26(3). Under sub-section (2), the Tribunal may condone delay on sufficient cause being shown. Sub-section (1A) permits an aggrieved person to appeal against an order under Section 54A as well. Sub-section (4) vests the Tribunal with all powers of the Adjudicating Authority.

19.10. Section 49 provides for appeal to the High Court against an order of the Appellate Tribunal on any question of law arising therefrom within sixty days. Sub-section (8) states that provisions of the Code of Civil Procedure, 1908 relating to appeals to the High Court shall, as far as may be, apply. This indicates that the High Court exercises civil appellate jurisdiction in such matters. These provisions once again demonstrate that proceedings relating to attachment, adjudication and confiscation are civil in nature and cannot be equated with prosecution so as to attract Article 20(2) of the Constitution of India. The entire process from issuance of notice, provisional attachment, adjudication, confiscation, appeal to the Tribunal, and further appeal to the High Court, is a statutory civil action addressing a civil wrong, the proof of which is to be tested on the principle of preponderance of probabilities.

Offences and Prosecution under the Act

20. Let us now examine the provisions of the Act dealing with offences and prosecution. Chapter VI of the Act deals with Special Courts. Such Courts are to be established by the Central Government, in consultation with the Chief Justice of the High Court, by designating one or more Courts of Session as Special Courts for trial of offences punishable under the Act. Section 50(3) provides that the Special Court shall not take cognizance of any offence punishable under the Act except upon a complaint in writing made by the Authority or by any officer of the Central or State Government authorised in writing for that purpose. Under Section 51, unless otherwise provided, the provisions of the Code of Criminal Procedure, 1973 (now the Bharatiya Nagarik Suraksha Sanhita, 2023) apply to proceedings before a Special Court. Section 52 provides for appeal and revision, empowering the High Court to exercise, so far as may be applicable, powers under the relevant appellate and revisional chapters of the Code as if the Special Court were a Court of Session within its territorial jurisdiction.

20.1. The provisions of this Chapter also demonstrate that the Authority under the Act is only empowered to file a complaint before the Special Court and is not competent to submit a police report under Section 173 Cr.P.C. Consequently, such Authority cannot be equated with a police officer. It is also significant that the authorities under the Act have no power to detain a person involved in a benami transaction. In this regard, the following judgments are instructive.

20.2. In ***Ramesh Chandra Mehta v. State of West Bengal***[40]**,** this Court held that a Customs Officer, though vested with powers of search, seizure, arrest, and grant of bail, does not become a police officer within the meaning of Section 25 of the Evidence Act, since he cannot submit a report under Section 173 Cr.P.C. Proceedings before him are for inquiry and adjudication under the statute, and a person examined therein does not become an accused unless and until a formal complaint is filed before the Magistrate. The following paragraphs are pertinent:

*"**24**…. Under Section 105 of the Customs Act, 1962, it is open to the Assistant Collector of Customs himself to issue a search warrant. A proper officer is also entitled under that Act to stop and search conveyances : he is entitled to release a person on bail, and for that purpose has the same powers and is subject to the same provisions as the officer-in-charge of a police station is. But these additional powers with which the Customs Officer is invested under the Act of 1962 do not, in our judgment, make him a police officer within the meaning of Section 25 of the Evidence Act. He is, it is true, invested with the powers of an officer-in-charge of a police station for the purpose of re leasing any person on bail or otherwise. The expression "or otherwise" does not confer upon him the power to lodge a report before a Magistrate under Section 173 of the Code of Criminal Procedure. Power to grant bail, power to collect evidence, and power to search premises or conveyances without recourse to a Magistrate, do not make him an officer-in-charge of a police station, Proceedings taken by him are for the purpose of holding an enquiry into suspected cases of smuggling. His orders are appeal able and are subject also to the revisional jurisdiction of the Central Board of Revenue and*

[40] 1968 SCC OnLine SC 62 : AIR 1970 SC 940

may be carried to the Central Government. Powers are conferred upon him primarily for collection of duty and prevention of smuggling. He is for all purposes an officer of the revenue.

25. *For reasons set out in the judgment in Criminal Appeal No. 27 of 1967 andthe judgment of this Court in Badku Joti Savant's case, we are of the view that a Customs Officer is under the Act of 1962 not a police officer within the meaning of Section 25 of the Evidence Act and the statements made before him by a person who is arrested or against whom an inquiry is made are not covered by Section 25 of the Indian Evidence Act.*

26. *It was strenuously urged that under Section 104 of the Customs Act. 1962,the Customs Officer may arrest a person only if he has reason to believe that any person in India or within the Indian Customs waters has been guilty of an offence punishable under Section 135 and not otherwise and he is bound to inform such person of the grounds of his arrest. Arrest of the person who is guilty of the offence punishable under Section 135 and information to be given to him amount, it was contended, to a formal accusation of an offence and in any case the person who has been arrested and who has been informed of the nature of the infraction committed by him stands in the character of an accused person. We are unable to agree with that contention. Section 104(1) only prescribes the conditions in which the power of arrest may be exercised. The officer must have reason to believe that a person has been guilty of an offence punishable under Section 135, otherwise he cannot arrest such person. But by informing such person of the grounds of his arrest the Customs Officer does not formally accuse him with the commission of an offence. Arrest and detention are only for the purpose of holding effectively an inquiry under Sections 107 and 108 of the Act with a view to adjudging confiscation of dutiable or prohibited goods and imposing penalties. At that stage there is no question of the offender against the Customs Act being charged before a Magistrate. Ordinarily after adjudging penalty and confiscation of goods or without doing so, if the Customs Officer forms an opinion that the offender should be prosecuted he may prefer a complaint in the manner provided under Section 137 with the sanction of the Collector of Customs and until a complaint is so filed the person against whom an inquiry is commenced under the Customs Act does not stand in the character of a person accused of an offence under Section 135."*

20.3. Likewise, in ***Illias v. Collector of Customs, Madras***[41]**,** it was reiterated that even if an officer under a special statute possesses several powers analogous to those of the police, he is not a police officer for purposes of Section 25 of the Evidence Act unless empowered to file a charge-sheet under Section 173 Cr.P.C. The following observation is pertinent:

*"**12.** Adverting to Raja Ram Jaiswal's case [Raja Ram Jaiswal v. State of Bihar, (1964) 2 SCR 752] it is significant that by virtue of Section 77(2) read with Section 78(3) of the Bihar & Orissa Excise Act, 1915, an Inspector or Sub Inspector was deemed to be an officer-in-charge of a police station and was entitled to investigate any offence under the Excise Act. He could exercise all the powers which an officer-in-charge of a police station could exercise under Chapter XIV of the Code. It was, therefore, held by the majority that a confession recorded by an Excise Officer during an investigation into an excise offence could not reasonably be regarded as anything different from a confession to a police officer. Barkat Ram's case was distinguished on a number of grounds. One was that the excise officer did not exercise any judicial power just as the customs officer did under the Sea Customs Act 1878; secondly the customs officer was not deemed to be an officer-in-charge of a police station and, therefore, he could not exercise powers of such an officer under the Code of Criminal Procedure. Further, the customs officer could make an enquiry but he had no power to investigate into an offence under Section 156 of the Code. Even though some of the powers set out in Chapter XV11 of the Sea Customs Act were analogous to those of the*

[41] 1968 SCC OnLine SC 117 : AIR 1970 SC 1065

police officer under the Code, they were not identical with those of a police officer and were not derived from or by reference to the Code. It was pertinently observed that the customs officer was not entitled to submit a report to a magistrate under Section 190 of the Code with a view that cognizance of the offence be taken by a magistrate. It was then said at p. 766 :

"The test for determining whether such a person is a 'police officer' for the purpose of Section 25 of the Evidence Act would, in our judgment, be whether the powers of a police officer which are conferred on him or which are exercisable by him because he is deemed to be an officer in charge of a police station establish a direct or substantial relationship with the prohibition enacted by Section 25, that is, the recording of a confession. In other words, the test would be whether the powers are such as would tend to facilitate the obtaining by him of a confession from a suspect or a delinquent. If they do, then it is unnecessary to consider the dominant purpose for which he is appointed or the question as to what other powers he enjoys."

13. *Emphasis was laid on the police officers having such powers which enablethem to exercise a kind of authority over the persons arrested which facilitate the obtaining from them statements which may be of incriminating nature. The case of Raja Ram Jaiswal came up for discussion in the third of series of these cases, namely, Badku Joti Savant v. State of Mysore. The appellant there had been found in possession of contraband gold. He was prosecuted under Section 167(81) of the Sea Customs Act read with Section 9 of the Land Customs Act. A question arose whether the statement made by the appellant to the Deputy Superintendent of Customs and Excise was admissible in evidence. The contention raised was that the Central Excise Officer under the Central Excises & Salt Act (Act 1 of 1944), hereinafter called the "Central Excise Act", was a police officer within the meaning of those words in Section 25 of the Evidence Act. Therefore even though the Deputy Superintendent of Customs and Central Excise had acted under the power conferred on him by the Sea Customs Act, he was still a police officer and the statement made to him which was in the nature of a confession was inadmissible in evidence. This Court referred to the difference of opinion among the High Courts as to the meaning of the words "police officer" used in Section 25 of the Evidence Act. One view was that those words must be construed in a broad way and all officers would be police officers within the meaning of those words if they had powers of the police officer with respect to investigating of offences with which they were concerned even if they were police officers properly so called or not. The narrow view was that these words in Section 25 meant a police officer properly so called and did not include officers of other departments of Government who might be charged with the duty to investigate, under special Acts, special crimes like the excise or customs offences etc. The Court proceeded on the assumption that the broad view was correct. After examining the various provisions of the Central Excise Act and in particular Section 21 it was observed that a police officer for the purpose of Clause (b)of Section 190 of the Code of Criminal Procedure could only be one properly so called. A Central Excise Officer had to make a complaint under Clause (a) of Section 190 of the Code to a magistrate to enable him to take cognizance of an offence committed under the special statute. The argument that a Central Excise Officer under Section 21(2) of the Central Excise Act had all the powers of an officer-in-charge of a police station under Chapter XIV of the Code and, therefore, he must be considered to be a police officer within the meaning of those words in Section 25 of the Evidence Act was repelled for the reason that though such officer had the power of an officer-incharge of a police station he did not have the power to submit a charge sheet under Section 173 of the Code. Raja Ram Jaiswal's case was distinguished on the ground that Section 21 of the Central Excise Act was in terms different from Section 78(3) of the Bihar & Orissa Excise Act, 1915 which provided that for the purpose of Section 156 of the Code of Criminal Procedure the Excise Officer empowered under Section 77(2) of that Act shall be deemed to be the officer-incharge of a police station. The following observations at page 704 are indeed important:*

"All that Section 21 provides is that for the purpose of his enquiry, a Central Excise Officer shall have the powers of an officer-in-charge of a police station when investigating a cognizable case. But even so it appears that these powers do not include the power to submit a charge-sheet under Section 173 of the Code of Criminal Procedure, for unlike the Bihar & Orissa Excise Act, the Central Excise Officer is not deemed to be an officerin-charge of a police station."

14. *It was reiterated that the appellant could not take advantage of the decisionin Raja Ram Jaiswal's case and that Barkat Ram's case was more apposite. The ratio of the decision in Badku Joti Savant is that even if an officer under the special Act has been invested with most of the powers which an officer-incharge of a police station exercises when investigating a cognizable offence he does not thereby become a police officer within the meaning of Section 25 of the Evidence Act unless he is empowered to file a charge sheet under Section 173 of the Code of Criminal Procedure.*

15. *Learned counsel for the appellant when faced with the above difficulty hasgone to the extent of suggesting that by necessary implication the power to file a charge sheet flows from some of the powers which have already been discussed under the new Act and that a customs officer is entitled to exercise even this power. It is difficult and indeed it would be contrary to all rules of interpretation to spell out any such special power from any of the provisions contained in the new Act. In this view of the matter even though under the new Act a customs officer has been invested with many powers which were not to be found in the provisions of the old Act, he cannot be regarded as a police officer within the meaning of Section 25 of the Evidence Act. In two recent decisions of this Court in which the judgments were delivered only on October 18, 1968 i.e. Ramesh Chandra Mehta v. State of West Bengal and Dady Adarji Fatakia v. K. K. Ganguly, Asstt. Collector of Customs and Anr., the view expressed in Barkat Ram's case with reference to the old Act has been reaffirmed on the question under consideration and it has been held that under the new Act also the position remains the same. This is what has been said in Dady Adarji Fatakia's case :*

"For reasons set out in the judgment in Cr. A. 27/67 (Romesh Chand Mehta v. State of West Bengal) and the judgment of this Court in Badku Joti Savant's case, we are of the view that a Customs Officer is under the Act of 1962 not a police officer within the meaning of Section 25 of the Evidence Act and the statements made before him by a person who is arrested or against whom an inquiry is made are not covered by Section 25 of the Indian Evidence Act."

The provisions of the Act, 1988, though undoubtedly vesting the authorities with powers to search, seize, and prosecute offenders under the Act, do not render them police officers, nor can they exercise all the powers vested in a police officer.

20.4. Chapter VII of the Act, which deals with offences and prosecution, contains seven sections, but only two substantive provisions concern punishment, namely Sections 53 and 54. Orders under Section 54A, as already noticed, are appealable under Section 46, since they arise in the course of proceedings under Chapters III and IV. Section 53 prescribes punishment for benami transactions. Sub-section (1) provides that where any person enters into a benami transaction in order to defeat the provisions of any law, evade payment of statutory dues, or defeat claims of creditors, the beneficial owner, benamidar, and any person who abets, induces, or facilitates such transaction shall be guilty of the offence. Sub-section (2) prescribes punishment of rigorous imprisonment for a term not less than one year and which may extend to sever years, along with fine which may extend to twenty-five per cent of the fair market value of the property. The provision, in our considered view, extends beyond

merely identifying the transaction and proceeds to criminalise the underlying motive behind it. This is consistent with the object of both the original enactment and the subsequent amendment introduced to remedy defects and omissions in the earlier law.

20.5. Section 54 prescribes punishment of imprisonment for a term not less than six months, extendable up to five years, along with fine which may extend to ten per cent of the fair market value of the property, against any person who knowingly furnishes false information or false documents in any proceeding under the Act. Section 55 mandates previous sanction of the competent authority before prosecution can be instituted under Sections 3, 53 or 54. The competent authorities are specified in the Explanation thereto. Section 55A grants immunity from prosecution to persons referred to in Section 53, other than the beneficial owner, in appropriate circumstances. Thus, under the Scheme of the Act, only three provisions namely, Sections 3, 53, and 54, deal with prosecution. Section 3, as already noticed, imposes a general prohibition and also renders the prohibited transaction punishable. The statutory design is such that the effect of a benami transaction is nullified through confiscation of the property by civil action, while criminal punishment follows only where the requisite mental element is established.

20.6. The grounds for prosecution are materially wider and qualitatively distinct from the standard required to determine whether a transaction is benami for purposes of confiscation. To adjudge a transaction as benami, the standard of preponderance of probabilities may suffice. However, to convict a person under Section 53, the prosecution must establish the motive and ingredients of the offence in accordance with criminal law standards.

20.7. Accordingly, we have no hesitation in holding that the actions contemplated under Chapter IV and Chapter VII pursue different objects are governed by different procedures, and entail different consequences. They may therefore proceed simultaneously or successively. If action is taken under both Chapters, such course does not amount to double jeopardy under Article 20(2) of the Constitution.

20.8. Chapter VIII contains miscellaneous provisions. Section 60 states that application of other laws is not barred. This must be understood in harmony with the object of the enactment. Other statutes dealing with the same transaction or related misconduct may continue to operate concurrently. Section 62 deals with offences by companies and renders every person in charge of, and responsible to, the company for conduct of its business liable, including directors, managers, secretaries, or other officers, where contravention is established. Such officers may also incur personal liability where the violation occurred with their consent, connivance, or neglect. Section 65 provides that all pending cases before any court or judicial forum, other than the High Court, shall stand transferred to the Adjudicating Authority or Appellate Tribunal. This provision must be read harmoniously with Section 45, introduced in 2016. The bar under Sections 45 or 65 does not apply to matters already pending before the High Court or the

Supreme Court of India. Section 66 provides that proceedings may be continued against, or initiated against, the legal representatives of a deceased person, except proceedings under Section 3(2) or Chapter VII. This clearly indicate that confiscatory proceedings may survive or be commenced against legal representatives, whereas penal proceedings cannot. This once again underscores the twin yet independent remedies contemplated under the Act. Section 67 gives the Act overriding effect over inconsistent laws, and Section 68 empowers the Central Government to frame rules for carrying out the purposes of the Act. Before any transfer is effected, there must be at least a *prima facie* determination that the dispute concerns a benami transaction. It is at this stage that the principles underlying Order VII Rule 11 and Order XIV Rule 2 CPC may assume relevance.

Independent nature of Confiscation and Prosecution under the Benami Law

21. Further, both before and after the amendment, the Act contemplates two distinct deterrent measures to prohibit benami transactions, namely, confiscation and punishment. Confiscation is a civil action directed against the property itself and not against the individuals participating in the benami transaction. Personal action against such individuals is by way of prosecution contemplated under Chapter VII. The consequence of adjudication and confiscation is that the property vests in the Central Government, as the rights of both the benamidar and the beneficial owner stand extinguished. Such action is in the nature of forfeiture of property, which is a civil consequence flowing from violation of the statute with recovery as its object. Penal action imposing punishment stands on a different footing. The burden of proof and presumptions applicable to the two proceedings are independent, and one does not depend upon the outcome of the other. Unless prosecution is launched under Sections 53 or 54 of the Act, the person proceeded against in adjudicatory proceedings, cannot be termed an accused. Similar provisions are found in several other enactments.

21.1. In ***Assistant Collector of Customs, Bombay and another v. L.R. Melwani and another***[42] a Constitutional Bench of this Court considered whether confiscation proceedings under the Sea Customs Act amount to prosecution. Accordingly, it was held as under:

*"**7.** Reliance on Article 20(2) is placed under the following circumstances. In the enquiry held by the Collector of Customs, he gave the benefit of doubt to accused Nos. 1 and 2. This is what he stated therein:*

"As regards M/s. Larmel Enterprises (of which accused No. 1 is the proprietor and accused No. 2 is the Manager) although it is apparent that they have directly assisted the importers in their illegal activities and are morally guilty. Since there is no conclusive evidence against them to hold them as persons concerned in the act of unauthorised importation, they escape on a benefit of doubt."

[42] 1968 SCC OnLine SC 161 : AIR 1970 SC 962

8. *Despite this finding the Assistant Collector in his complaint referred to earlier seeks to prosecute these accused persons. Hence the question is whether that prosecution is barred under Article 20(2) of the Constitution which says that no person shall be prosecuted and punished for the same offence more than once. This Article has no direct bearing on the question at issue. Evidently those accused persons want to spell out from this Article, the rule of autrefois acquit embodied in Section 403, Criminal Procedure Code. Assuming we can do that still it is not possible to hold that a proceeding before the Collector of Customs is a prosecution for an offence. In order to get the benefit of Section 403, Criminal Procedure Code or Article 20(2), it is necessary for an accused person to establish that he had been tried by a "court of competent jurisdiction" for an offence and he is convicted or acquitted of that offence and the said conviction or acquittal is in force. If that much is established, it can be contended that he is not liable to be tried again for the same offence nor on the same facts for any other offence for which a different charge from the one made against him might have been made under Section 236 or for which he might have been convicted under Section 237. It has been repeatedly held by this Court that adjudication before a Collector of Customs is not a "prosecution" nor the Collector of Customs a "Court". In Maqbool Hussain v. The State of Bombay, MANU/SC/0062/1953 : 1983ECR1598D(SC) this Court held that the wording of Article 20 of the Constitution and the words used therein show that the proceedings therein contemplated are proceedings of the nature of criminal proceedings before a court of law or a judicial tribunal and "prosecution" in this context would mean an initiation or starting of proceedings of a criminal nature before a court of law or a judicial tribunal in accordance with the procedure prescribed in the statute which creates the offence and regulates the procedure. This Court further held that where a person against whom proceedings had been taken by the Sea Customs authorities under Section 167 of the Sea Customs Act and an order for confiscation of goods had been passed, was subsequently prosecuted before a criminal court for an offence under Section 23 of the Foreign Exchange Regulation Act in respect of the same act, the proceeding before the Sea Customs authorities was not a "prosecution" and the order for confiscation was not a "punishment" inflicted by a Court or judicial tribunal within the meaning of Article 20(2) of the Constitution and hence his subsequent prosecution was not barred. The said rule was reiterated in Thomas Dana v. State of Punjab, MANU/SC/0140/1958 : [1959] S.C.R. 274. and in several other cases."*

21.2. In ***Divisional Forest Officer and another v. G.V. Sudhakar Rao and Others***[43], while dealing with confiscation under the Forest Act and prosecution for fresh offences, this Court held that acquittal of the accused in the criminal trial, whether the paucity of evidence or otherwise, does not necessarily nullify the confiscation order based on the authorised officer's independent satisfaction that a forest offence had been committed; and that, proceedings for confiscation were held to be capable of continuing simultaneously and independently of the criminal case. The following paragraphs are pertinent:

"13. *As to the scope and effect of Sub-section (2A) of Section 44 of the Act, different views appear to have prevailed in the High Court. In State of Andhra Pradesh v. P.K. Mohamad and Ors. (1978) 1 A.P.L.J. 391, Jeewan Reddy, J. held that the general power of the Court under Section 452 of the Code or that of the Magistrate under Section 457 to direct disposal of seized property, had to be read along with and in the context of the special procedure prescribed by the Amendment Act 17 of 1976. In that case, the Forest Officer produced the seized forest produce and the vehicle used for the commission of a forest offence under Sub-section (1) of Section 44 before the Authorized Officer along with a report as contemplated by Sub-section (2) thereof for purposes of confiscation, and thereafter he produced the accused before a Magistrate for trial for the commission of such offence. In those*

[43] (1985) 4 SCC 573

circumstances, the learned Judge held that the Amending Act by Sub-section (2A) of Section 44 created the Authorized Officer to be the competent authority to direct confiscation of any timber or forest produce on his being satisfied that a forest offence has been committed in respect thereof, and the seized property having been produced by the Forest Officer before the Authorized Officer along with a report for confiscation under Sub-section (2A) of Section 44 of the Act, the Magistrate could not have any jurisdiction to pass an order under Section 457 of the Code for the disposal of such property. A discordant note was, however, struck by a Division Bench consisting of Sambasiva Rao, C.J. and Raghuvir, J. in Smt. Haji Begum v. State of Andhra Pradesh and Ors. (1978) 2 A.P.L.J. 191. The learned Judges held that the power of the Authorized officer to direct confiscation under Sub-section (2A) of Section 44 of the Act and that of the Magistrate under Section 45 were mutually exclusive and, therefore, there could not be simultaneous proceedings for confiscation before the Authorized Officer under Sub-section (2A) of Section 44 and also the trial of the accused for commission of a forest offence under Section 20 or 29 of the Act. Their conclusion was based on the use of the words 'either' and 'or' in Sub-section (2) of Section 44 of the Act and they held that the Forest Department had an option to adopt either of the two courses. The judgment of the High Court in Sot. Haji Begum's case was clearly wrong and was reversed by this Court in State of Andhra Pradesh v. Smt. Haji Began (supra), where it was observed:

"In our opinion, on the facts and circumstances of the case, the order of the High Court is not fit to be sustained. The High Court has taken an erroneous view of the report of the Forest Ranger to the Magistrate while forwarding the accused to him. The proceeding as to the confiscation of the property seized as also the car has got to go on before the Divisional Forest Officer."

14. *We find that a later Division Bench consisting of Kondaiah, C.J. and Punnayya, J. in Mohd. Yaseen and Ors. v. the Forest Range Officer, Flying Squad, Rayachoti and Ors (1980) 1 A.L.T. 8, approved of the view expressed by Jeewan Reddy, J. in P.K. Mohammad's case (supra), and held that the Act contemplates two procedures, one for confiscation of goods forming the subjectmatter of the offence by the Authorized Officer under Sub-section (2A) of Section 44 of the Act, and the other for trial of the person accused of the offence so committed under Section 20 or 29 of the Act. The learned Judges held that the Act provides for a special machinery for confiscation of illicitly felled timber or forest produce by the Authorized Officer under Sub-section (2A) of Section 44 enacted in the general public interest to suppress the mischief of ruthless exploitation of Government forests by illicit felling and removal of teak and other valuable forest produce. They further held that merely because there was an acquittal of the accused in the trial before the Magistrate due to paucity of evidence or otherwise did not a necessarily entail in nullifying the order of confiscation of the seized timber or forest produce by the Authorized Officer under Sub-section (2A) of Section 44 of the Act based on his satisfaction that a forest offence had been committed in respect thereof. We affirm the view expressed by Jeewan Reddy, J. in P.K. Mohamad's case and by Kondaiah, C.J. and Punnayya, J. in Mohd. Yaseen's case.*

15. *The result therefore is that the appeal succeeds and is allowed. The judgment and order of the High Court passed under Section 482 of the CrPC, 1973 for stay of the proceedings before the Authorized Officer under Subsection (2A) of Section 44 of the Andhra Pradesh Forest Act, 1967 are set aside and the Authorized Officer is directed to proceed with the inquiry for confiscation of the seized timber in accordance with law."*

21.3. Similarly, in ***State of Madhya Pradesh and Others v. Kallo Bai***[44], while construing confiscation provisions under the M.P Van Upaj (Vyapar Viniyaman) Adhiniyam, this Court held as follows:

[44] (2017) 14 SCC 502

*"**22.** In view of the foregoing discussions, it is apparent that Section 15 gives independent power to the concerned authority to confiscate the articles, as mentioned there under, even before the guilt is completely established. This power can be exercised by the concerned officer if he is satisfied that the said objects were utilized during the commission of a forest offence. A protection is provided for the owners of the vehicles/articles, if they are able to prove that they took all reasonable care and precautions as envisaged under Sub-section (5) of Section 15 of the Adhiniyam and the said offence was committed without their knowledge or connivance.*

23. *Criminal prosecution is distinct from confiscation proceedings. The two proceedings are different and parallel, each having a distinct purpose. The object of confiscation proceeding is to enable speedy and effective adjudication with regard to confiscation of the produce and the means used for committing the offence while the object of the prosecution is to punish the offender. The scheme Adhiniyam prescribes an independent procedure for confiscation. The intention of prescribing separate proceedings is to provide a deterrent mechanism and to stop further misuse of the vehicle.*

24. *At the cost of repetition we clarify that confiscatory proceedings are independent of the main criminal proceedings. In view of our detailed discussion in the preceding paragraph we are of opinion that High Court as well as the revisional court erred in coming to a conclusion that the confiscation under the law was not permissible unless the guilt of the Accused is completely established.*

25. *Consequently the appeal is allowed and the judgment of the High Court is set aside."*

21.4. This Court in ***Radhika Aggarwal v. Union of India and Others***[45]**,** while considering whether prosecution is maintainable prior to adjudication and the relationship between adjudication and prosecution, held as under:

*"**61.** However, relying upon the judgment in the case of Makemytrip (supra), it has been submitted on behalf of the petitioners, that the power under subsection (5) to Section 132 cannot be exercised unless the procedure under Section 73 of the GST Act is completed and an assessment order is passed quantifying the tax evaded or erroneously refunded or input tax credit wrongly availed. According to us, this contention should not be accepted as a general or broad proposition. We would accept that normally the assessment proceedings would quantify the amount of tax evaded, etc. and go on to show whether there is any violation in terms of clauses (a) to (d) to sub-section (1) of Section 132 of the GST Acts and that clause (i) to sub-section (1) is attracted. But there could be cases where even without a formal order of assessment, the department/Revenue is certain that it is a case of offence under clauses (a) to (d) to sub-section (1) of Section 132 and the amount of tax evaded, etc. falls within clause (i) of sub-section (1) to Section 132 of the GST Acts with sufficient degree of certainty.. .."*

Therefore, adjudication undertaken for the purpose of confiscation of benami property stands on a distinct and independent footing from criminal proceedings initiated for prosecution of offences under the Act.

21.5. Much reliance has been placed on the judgment of this Court in ***Union of India v. Ganpati Dealcom Private Limited***[46] to contend that the erstwhile provisions under Sections 3(2) and 5 of the Benami Act, stood struck down, and that the 2016 amendment must therefore operate prospectively. However, the judgment dated 23.08.2022 was subsequently recalled in Review Petition (Civil) No 359 of 2023 in Civil Appeal No. 5783 of 2022 *vide* order dated 18.10.2024,

[45] (2025) 6 SCC545
[46] (2023) 3 SCC 315

on the ground that the constitutional validity of those provisions had never been specifically challenged. The Court held that no declaration of invalidity could have been made in the absence of a proper *lis* and contest on constitutionality. Consequently, the earlier judgment was recalled and the appeal restored for adjudication. The relevant passage of the order dated 18.10.2024 is extracted below for ready reference:

*"**4.** The Court has declared Section 3(2) of the unamended provisions of the Prohibition of Benami Property Transactions Act, 1988 as unconstitutional for being manifestly arbitrary and as violative of Article 20(1) of the Constitution. The provisions of Section 5 of the unamended Act, prior to the Amendment of 2016, have been declared to be unconstitutional on the ground that they are manifestly arbitrary.*

5. *It is not disputed that there was no challenge to the constitutional validity of the unamended provisions. This is also clear from the formulation of the question which arose for consideration before the Bench in paragraph 3 of the judgment, which has been extracted above. In the submissions of parties which have been recorded in the judgment, the issue of constitutional validity was not squarely addressed.*

6. *A challenge to the constitutional validity of a statutory provision cannot be adjudicated upon in the absence of a lis and contest between the parties. We accordingly allow the review petition and recall the judgment dated 23 August 2022. Civil Appeal No 5783 of 2022 shall stand restored to file for fresh adjudication before a Bench to be nominated by the Chief Justice of India on the administrative side."*

21.6. Therefore, we have no hesitation in holding that the prohibition contained in Section 3 as well as the power of confiscation vested in the Central Government, continued to remain operative during the period when the property in question was allegedly purchased by K. Raghunath with funds said to have been provided by the plaintiff, the legal effect whereof shall be considered later in this judgment.

21.7. Reverting now to the statutory scheme, Chapter IV deals with the mechanism for attachment, adjudication, and confiscation, while Chapter VII deals with offences and penalties. In the adjudication process, confiscation is the eventual consequence. The substantive power to confiscate property involved in benami transactions existed even under the unamended law; what the 2016 amendment introduced was a detailed procedural framework which was earlier absent. It must be reiterated that Chapters IV and VII are self-contained codes, inasmuch as they provide independent mechanisms governed by separate procedures and remedies under law.

(E) PROSPECTIVE OR RETROSPECTIVE OPERATION OF THE 2016 AMENDMENT

22. The next question that falls for consideration is, whether the amended provisions operate prospectively or retrospectively. In this regard, it is necessary to recall the object and reasons underlying the amendment, which can be gathered from the statements made when the amendments were proposed in Parliament. The amendments as is evident, were introduced to cure the mischiefs and omissions in the original enactment, which had failed to curb

benami transactions in the manner expected, and effective steps could not be taken for want of adequate procedural provisions.

22.1. It is also noteworthy that certain provisions under the unamended Act were omitted and substituted by new provisions, while several fresh provisions were inserted prescribing the procedure to be followed before confiscation of property and establishing mechanisms of appeal against orders declaring property as benami. At the same time, the foundational provisions prohibiting benami transactions, rendering them offences, extinguishing the right to enforce or defend claims based on benami arrangements, enabling confiscation of benami property, and prohibiting re-transfer, continued substantially in force.

22.2. Ordinarily, every statute is presumed to be prospective unless the statute itself expressly or by necessary implication provides otherwise. Equally, it is well settled that the mere fact that a law is brought into force from a particular date does not necessarily mean that it operates only prospectively. To determine the true temporal operation of a statute, the object of the enactment must be considered. If the purpose of the amendment is to cure a defect, remove an omission, substitute appropriate provisions earlier lacking, effectively implement the original legislative intent, or if the amendment is clarificatory, declaratory or validating in nature, it may legitimately receive retrospective operation.

22.3. It is also apposite to observe that protection against retrospectivity generally extends only to vested or accrued rights. The Act of 1988 had already prohibited benami transactions. Even prior thereto, provisions under the Indian Trusts Act, the Code of Civil Procedure and the Income-tax Act imposed restrictions on such arrangements. Further, after the Forty-Fourth Constitutional Amendment, the right to property ceased to be a fundamental right and remained only a constitutional right. A person, therefore, cannot claim a vested right to enter into transactions designed to defeat or circumvent the law. It is a settled principle that what cannot be done directly cannot be permitted to be done indirectly.

22.4. In this context, it would be useful to refer to the settled principles laid down in ***Bengal Immunity Company Limited v. State of Bihar and others***[47]wherein the rule in ***Heydon case***[48] was approved, namely, that the Court must adopt such construction as suppresses the mischief and advances the remedy. The relevant paragraph reads as follows:

*"**27.** It is a sound rule of construction of a statute firmly established in England as far back as 1584 when Heydon case [Heydon case, MANU/ENRP/0018/1584 : (1584) 3 Co Rep 7a: 76 ER 637] was decided that—*

"...for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered—

1st. What was the common law before the making of the Act.

2nd. What was the mischief and defect for which the common law did not provide.

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[47] (1955) 1 SCC 763
[48] MANU/ENRP/0018/1584 : (1584) 3 Co Rep 7a: 76 ER 637

3rd. What remedy Parliament hath resolved and appointed to cure the disease of the Commonwealth, and

4th. The true reason of the remedy; and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico."

22.5. The Constitution Bench in ***Shyam Sunder and others v. Ram Kumar and another***[49] held that where an enactment declares or explains the previous law, such declaratory legislation ordinarily operates retrospectively, since its purpose is to remove omissions or clarify the earlier statute. The following paragraph is apposite: (SCC p. 49, para 39)

*"**39.**... Ordinarily when an enactment declares the previous law, it requires to be given retroactive effect. The function of a declaratory statute is to supply an omission or to explain a previous statute and when such an Act is passed, it comes into effect when the previous enactment was passed. The legislative power to enact law includes the power to declare what was the previous law and when such a declaratory Act is passed, invariably it has been held to be retrospective. Mere absence of use of the word "declaration" in an Act explaining what was the law before may not appear to be a declaratory Act but if the court finds an Act as declaratory or explanatory, it has to be construed as retrospective…"*

22.6. In ***Zile Singh v. State of Haryana and others***[50] it was reiterated that while statutes are generally prospective, the presumption against retrospectivity does not apply to declaratory or clarificatory enactments. If an amendment is introduced to cure an acknowledged evil, explain the prior law, or supply an obvious omission, retrospective operation may be inferred from legislative intent. The following paragraphs are pertinent: (SCC pp. 8-9, paras 13-15)

*"**13.** It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only--'nova constitutio futuris formam imponere debet non praeteritis'--a new law ought to regulate what is to follow, not the past. (See Principles of Statutory Interpretation by Justice G.P. Singh, 9th Edn., 2004 at p. 438.) It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole (ibid., p. 440).*

***14.** The presumption against retrospective operation is not applicable to declaratory statutes... In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospectively. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended... An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect (ibid., pp. 468-69).*

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[49] (2001) 8 SCC 24
[50] (2004) 8 SCC 1

15. *Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, according to Craies (Statute Law, 7th Edn.), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the statute retrospectivity. Four factors are suggested as relevant: (i) general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated. (p. 388) The rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right. (p. 392)*

16. *Where a statute is passed for the purpose of supplying an obvious omissionin a former statute or to "explain" a former statute, the subsequent statute has relation back to the time when the prior Act was passed. The rule against retrospectivity is inapplicable to such legislations as are explanatory and declaratory in nature. A classic illustration is the case of Attorney General v. Pougett [Attorney General v. Pougett, MANU/ENRP/0454/1816 : (1816) 2 Price 381 : 146 ER 130] (Price at p. 392). By a Customs Act of 1873 (53 Geo. 3, c. 33) a duty was imposed upon hides of 9s 4d, but the Act omitted to state that it was to be 9s 4d per cwt., and to remedy this omission another Customs Act (53 Geo. 3, c. 105) was passed later in the same year. Between the passing of these two Acts some hides were exported, and it was contended that they were not liable to pay the duty of 9s 4d per cwt., but Thomson, C.B., in giving judgment for the Attorney General, said: (ER p. 134)*

'The duty in this instance was, in fact, imposed by the first Act; but the gross mistake of the omission of the weight, for which the sum expressed was to have been payable, occasioned the amendment made by the subsequent Act: but that had reference to the former statute as soon as it passed, and they must be taken together as if they were one and the same Act;' (Price at p. 392)

17. *Maxwell states in his work on Interpretation of Statutes (12th Edn.) that the rule against retrospective operation is a presumption only, and as such it 'may be overcome, not only by express words in the Act but also by circumstances sufficiently strong to displace it' (p. 225). If the dominant intention of the legislature can be clearly and doubtlessly spelt out, the inhibition contained in the rule against perpetuity becomes of doubtful applicability as the "inhibition of the rule" is a matter of degree which would "vary secundum materiam" (p. 226). Sometimes, where the sense of the statute demands it or where there has been an obvious mistake in drafting, a court will be prepared to substitute another word or phrase for that which actually appears in the text of the Act (p. 231).*

18. *In a recent decision of this Court in National Agricultural Coop. Mktg. Federation of India Ltd. v. Union of India [MANU/SC/0243/2003 : (2003) 5 SCC 23] it has been held that there is no fixed formula for the expression of legislative intent to give retrospectivity to an enactment. Every legislation whether prospective or retrospective has to be subjected to the question of legislative competence. The retrospectivity is liable to be decided on a few touchstones such as: (i) the words used must expressly provide or clearly imply retrospective operation; (ii) the retrospectivity must be reasonable and not excessive or harsh, otherwise it runs the risk of being struck down as unconstitutional; (iii) where the legislation is introduced to overcome a judicial decision, the power cannot be used to subvert the decision without removing the statutory basis of the decision. There is no fixed formula for the expression of legislative intent to give retrospectivity to an enactment. A validating clause coupled with a substantive statutory change is only one of the methods to leave actions unsustainable under the unamended statute, undisturbed. Consequently, the absence of a validating clause would*

not by itself affect the retrospective operation of the statutory provision, if such retrospectivity is otherwise apparent."

22.7. In ***Commissioner of Income Tax I, Ahmedabad v. Gold Coin Health Food Private Limited***[51]**,** this Court held that the Court must analyse the true nature of the amendment. The date from which it is brought into force is not conclusive; what is material is whether the amendment is clarificatory or substantive. The following paragraphs are pertinent:

"8. *It would be of some relevance to take note of what this Court said in Virtual case [MANU/SC/0879/2007 : (2007) 9 SCC 665]. Pointing out one of the important tests at para 51 it was observed that even if the statute does contain a statement to the effect that the amendment is clarificatory or declaratory, that is not the end of the matter. The court has to analyse the nature of the amendment to come to a conclusion whether it is in reality a clarificatory or declaratory provision. Therefore, the date from which the amendment is made operative does not conclusively decide the question. The court has to examine the scheme of the statute prior to the amendment and subsequent to the amendment to determine whether amendment is clarificatory or substantive."*

"18. *As noted by this Court in CIT v. Podar Cement (P) Ltd. [MANU/SC/0649/1997 : (1997) 5 SCC 482] the circumstances under which the amendment was brought in existence and the consequences of the amendment will have to be taken care of while deciding the issue as to whether the amendment was clarificatory or substantive in nature and, whether it will have retrospective effect or it was not so."*

22.8. In ***Commissioner of Income Tax (Central) -I, New Delhi v. Vatika Township Private Limited***[52] this Court recognised that declaratory or clarificatory statutes may operate retrospectively, particularly when introduced to explain the meaning of an earlier enactment or remove doubts as to its effect. The following paragraph is pertinent: ***(SCC p. 23, para 32)***

*"**32.** ….The circumstances under which provisions can be termed as "declaratory statutes" are explained by Justice G.P. Singh [Principles of Statutory Interpretation, (13th Edn., Lexis Nexis Butterworths Wadhwa, Nagpur, 2012)] in the following manner:*

*'**Declaratory statutes***

The presumption against retrospective operation is not applicable to declaratory statutes. As stated in Craies [W.F. Craies, Craies on Statute Law (7th Edn., Sweet and Maxwell Ltd., 1971)] and approved by the Supreme Court (in Central Bank of India v. Workmen [Central Bank of India v. Workmen, MANU/SC/0142/1959 : AIR 1960 SC 12, p. 27, para 29]):"For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a Preamble, and also the word "declared" as well as the word "enacted"." But the use of the words "it is declared" is not conclusive that the Act is declaratory for these words may, at times, be used to introduced new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is "to explain" an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous

[51] (2008) 9 SCC 622
[52] (2015) 1 SCC 1

Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language "shall be deemed always to have meant" is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the preamended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law which the Constitution came into force, the amending Act also will be part of the existing law.'

The above summing up is factually based on the judgments of this Court as well as English decisions."

22.9. In ***Indian Performing Rights Society Limited v. Sanjay Dalia and another***[53]**,** this Court reaffirmed the mischief rule of interpretation, namely, that statutory construction must suppress the mischief sought to be remedied and advance the legislative object. The following paragraph is pertinent:

*"**24.** … It is settled proposition of law that the interpretation of the provisions has to be such which prevents mischief. The said principle was explained in Heydon's case [MANU/ENRP/0018/1584 : (1584) 3 Co Rep 7a: 76 ER 637]. According to the mischief rule, four points are required to be taken into consideration. While interpreting a statute, the problem or mischief that the statute was designed to remedy should first be identified and then a construction that suppresses the problem and advances the remedy should be adopted. Heydon's [MANU/ENRP/0018/1584 : (1584) 3 Co Rep 7a: 76 ER 637], mischief rule has been referred to in Interpretation of Statutes by Justice G.P. Singh, 12th Edn., at pp. 124-25 thus:*

"(b) Rule in Heydon's case [MANU/ENRP/0018/1584 : (1584) 3 Co Rep 7a: 76 ER 637]; purposive construction: mischief rule

When the material words are capable of bearing two or more constructions the most firmly established rule for construction of such words 'of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law)' is the rule laid down in Heydon's case [MANU/ENRP/0018/1584 : (1584) 3 Co Rep 7a: 76 ER 637] which has now attained the status of a classic (Kanai Lal Sur v. Paramnidhi Sadhukhan [MANU/SC/0097/1957 : AIR 1957 SC 907]). The rule which is also known as "purposive construction" or "mischief rule" (Anderton v. Ryan [MANU/UKHL/0021/1985 : 1985 AC 560: (1985) 2 WLR 968: (1985) 2 All ER 355 (HL)]), enables consideration of four matters in construing an Act: (i) What was the law before the making of the Act; (ii) What was the mischief or defect for which the law did not provide; (iii) What is the remedy that the Act has provided; and (iv) What is the reason of the remedy. The rule then directs that the courts must adopt that construction which "shall suppress the mischief and advance the remedy". The rule was explained in Bengal Immunity Co. Ltd. v. State of Bihar [MANU/SC/0083/1955 :AIR 1955 SC 661] by S.R. Das, C.J…."

22.10. In ***State Bank of India v. V. Ramakrishnan and another***[54]**,** this court held that where an amendment is intended to clarify and set at rest an overbroad interpretation of an earlier provision, such amendment is clarificatory and therefore retrospective in nature.

22.11. In ***Ghanashyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited and others***[55]**,** this Court reiterated that if

[53] (2015) 10 SCC 161 : (2016) 1 SCC (Civ) 55
[54] (2018) 17 SCC 394: (2019) 2 SCC (Civ) 458
[55] (2021) 9 SCC 657: (2021) 4 SCC (Civ) 638

the legislature supplies an obvious omission or explains a former statute, the subsequent amendment relates back to the date of the original enactment and may operate retrospectively. The following paragraphs are pertinent:

*"**89.** It could thus be seen that what is material is to ascertain the legislative intent. If legislature by an amendment supplies an obvious omission in a former statute or explains a former statute, the subsequent statute has a relation back to the time when the prior Act was passed."*

*"**94.** We have no hesitation to say that the words "other stakeholders" would squarely cover the Central Government, any State Government or any local authorities. The legislature noticing that on account of obvious omission certain tax authorities were not abiding by the mandate of the I&B Code and continuing with the proceedings, has brought out the 2019 Amendment so as to cure the said mischief. We therefore hold that the 2019 Amendment is declaratory and clarificatory in nature and therefore retrospective in operation."*

22.12. Applying the above principles, it is clear that the 2016 amendments were enacted to cure the mischiefs and omissions in the original legislation, which had become largely unworkable in practice. The legislative intent to make the statute effective is manifest. The prohibition against benami transactions already existed. No period of limitation was prescribed either under the original Act or under the amended Act for initiating action against benami property or against persons involved in such transactions. Action for confiscation or prosecution may therefore be taken whenever the transaction comes to the notice of the competent authorities.

22.13. Further, when a *lis* comes before a Court disclosing a benami transaction, the Court is duty-bound to consider the applicability of the Act and enforce the statutory prohibition. The amended provisions merely introduced a complete machinery for attachment, adjudication and appeals. Though attachment and adjudication were elaborately structured for the first time, these provisions are essentially procedural and regulatory, intended to ensure fairness and avoid arbitrary action before confiscation. Unless the amendment is given retroactive operation, the very object of making the legislation workable would be defeated.

22.14. The appellate remedies introduced are beneficial safeguards providing checks against arbitrary exercise of power, and beneficial procedural provisions ordinarily operate retrospectively. So far as penal consequences are concerned, enhanced punishment cannot be retrospectively imposed; however, the machinery provisions enabling adjudication, confiscation and enforcement, being curative and procedural, can apply retrospectively.

22.15. Accordingly, we hold that the 2016 amendments, insofar as they are declaratory, procedural, curative and machinery-oriented, operate retrospectively / retroactively, while penal provisions creating new offences or enhancing punishment can operate only prospectively.

(F) "FIDUCIARY CAPACITY" UNDER THE AMENDED ACT

23. Before proceeding to the facts, another aspect that requires consideration is the scope of the exception contained in Section 4(3) of the unamended Act

viz-a-vis Section 2(9) of the Act post-amendment. Section 4(3) as it stood prior to amendment, exempted certain categories of transactions, namely, those between coparceners in a Hindu Undivided Family or members of a joint family, purchases in the name of wife or unmarried daughter, and transactions involving persons standing in a fiduciary capacity. The said provision was omitted, and the relevant exclusions were incorporated into the substituted Section 2(9) which defines a "benami transaction". We have already held that such omission and substitution would operate retrospectively.

23.1. The expression "fiduciary capacity" was not defined in the original enactment. Under the amended provision, however, the explanation refers to a trustee, executor, partner, director of a company, a depository or participant as an agent under the Depositories Act, 1996, and any other persons as may be notified by the Central Government.

23.2. Ordinarily, where the legislature employs the word "includes", the definition is prima facie extensive and enlarging. Where the word "means" alone is used, the definition is generally exhaustive. Where the expression "means and includes" is employed, the definition is ordinarily exhaustive while also clarifying its scope. However, even where only the word "includes" is used, the context, object of the statute, and the structure of the provision may indicate a restrictive or exhaustive intention.

23.3. In ***South Gujarat Roofing Tiles Manufacturers Association and another v. State of Gujarat and another***[56]**,** a Bench of three Judges held that though "includes" is commonly used as a word of extension, it may, in a given statutory context, be construed in a restrictive sense where such interpretation alone advances the legislative intent. The following paragraphs are pertinent:

*"**3.** The question turns on a true construction of the Explanation to entry 22 which says that for the purpose of this entry potteries industry "includes" the manufacture of the nine "articles of pottery" specified therein. Pottery in a wide sense will take in all objects that are made from clay and hardened by fire, from crude earthen pots to delicate porcelain. Mr. Patel appearing for the respondent, State of Gujarat, contends that the Explanation indicates that potteries industry in entry 22 is intended to cover all possible articles of pottery including Mangalore pattern roofing tiles. Referring to the well-known use of the word 'include' in interpretation clauses to extend the meaning of words and phrases occurring in the body of the statute, Mr. Patel submits that the Explanation, when it says that potteries industry 'includes' the nine named objects, what is meant is that it includes not only these objects but other articles of pottery as well. It is true that 'includes' is generally used as a word of extension, but the meaning of a word or phrase is extended when it is said to include things that would not properly fall within its ordinary connotation. We may refer to the often-quoted observation of Lord Watson in Dilworth v. Commissioner of Stamps (1899) A.C. 105, that when the word 'include' is used in interpretation clauses to enlarge the meaning of words or phrases in the statute*

"these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import but also those things which the interpretation clause declares that they shall include".

[56] (1976) 4 SCC 601 : AIR 1977 SC 90

Thus where 'includes' has an extending force it adds to the word or phrase a meaning which does not naturally belong to it. It is difficult to agree that 'includes' as used in the Explanation to entry 22 has that extending force. The Explanation says that for the purpose of entry 22, potteries industry includes the manufacture of the nine "articles of pottery" specified in the Explanation. If the objects specified are also "articles of pottery", then these objects are already comprised in the expression "potteries industry". It hardly makes any sense to say that potteries industry includes the manufacture of articles of pottery, if the intention was to enlarge the meaning of potteries industry in any way.

4. *We are also unable to agree with Mr. Patel that the articles specified in theExplanation may have been mentioned out of abundant caution to emphasize the comprehensive character of the entry, to indicate that all varieties of pottery are included therein. This argument, though more plausible, does not also seem acceptable. It is possible that one might have doubts whether things like refractory or electrical or textile accessories would pass under the description pottery as that word is used in common parlance, but the Explanation also mentions crockery and toys regarding which there could be hardly any doubt. The inclusion in the list of objects which are well- recognised articles of pottery makes it plain that the Explanation was added to the entry not by way of abundant caution.*

5. *The contention of Mr. Tarkunde for the appellants is that the articlesmentioned in the Explanation were intended to be exhaustive of the objects covered by entry 22. According to Mr. Tarkunde if the legislature wanted to bring within the entry all possible articles of pottery then there was hardly any point in mentioning only a few of them by way of Explanation. To this Mr. Patel's reply is that it is well-known that where the legislature wants to exhaust the significance of the term defined, it uses the word 'means' or the expression 'means and includes', and that if the intention was to make the list exhaustive, the legislature would not have used the word 'includes' only. We do not think there could be any inflexible rule that the word 'include' should be read always as a word of extension without reference to the context. Take for instance entry*

19 in the schedule which also has an Explanation containing the word 'includes'. Entry 19 is as follows :

Employment in any tobacco processing establishment, not covered under entry No. 3.

Explanation.-For the purpose of this entry, the expression "processing" includes packing or unpacking, breaking up, sieving, thrishing, mixing, grading, drying, curing or Otherwise treating the tobacco (including tobacco leaves and stems) in any manner.

Entry 3 to which entry 19 refers reads:

Employment in any tobacco (including bidi making) manufactory.

It is clear from the Explanation to entry 19 that there could be no other way or manner of "processing" besides what is stated as included in that expression. Though 'include' is generally used in interpretation clauses' as a word of enlargement, in some cases the context might suggest a different intention. Pottery is an expression of very wide import, embracing all objects made of clay and hardened by heat. If it had been the legislature's intention to bring within the entry all possible articles of pottery, it was quite unnecessary to add an Explanation. We have found that the Explanation could not possibly have been introduced to extend the meaning of potteries industry or the articles listed therein added ex abundanti cautela. It seems to us therefore that the legislature did not intend everything that the potteries industry turns out to be covered by the entry. What then could be the purpose of the Explanation? The Explanation says that, for the purpose of entry 22, potteries industry 'includes' manufacture of the nine articles of pottery named therein. It seems to us that the word 'includes' has been used here in the sense of 'means', this is the only construction that the word can bear in the context. In that sense it is not a word of extension, but limitation; it is exhaustive of the meaning which must be given to potteries industry for the purpose of

entry 22. The use of the word 'includes' in the restrictive sense is not unknown. The observation of Lord Watson in Dilworth v. Commissioner of Stamps (1899) A.C.105, which is usually referred to on the use of 'include' as a word of extension, is followed by these lines :

"But the word 'include' is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to 'mean and include', and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions".

It must therefore be held that the manufacture of Mangalore pattern roofing tiles is outside the purview of entry 22."

23.4. In ***Associated Indem Mechanical (P) Ltd. v. W.B. Small Industries Development Corpn. Ltd. and Others***[57], it was observed that whether the term "includes" is expansive or restrictive depends upon the purpose, context, and scheme of the enactment. The following paragraph is apposite:

*"**13.** As the language shows, the definition of the word "premises" as given in Section 2(c) of the Act is a very comprehensive one and it not only means any building or hut or part of a building or hut and a seat in a room, let separately, but also includes godowns, gardens and outhouses appurtenant thereto and also any furniture supplied or any fittings or fixtures affixed for the use of the tenant in such building, hut or seat in a room, as the case may be…."*

23.5. In ***N.D.P. Namboodripad (Dead) by LRs. v. Union of India and Others*** [58] this Court held that although "includes" is generally a word of enlargement, in certain contexts, it may also signify "means and includes", "comprises" or "consists of". The following paragraph is pertinent:

*"**18.** The word "includes" has different meanings in different contexts. Standard dictionaries assign more than one meaning to the word "include". Webster's Dictionary defines the word "include" as synonymous with "comprise" or "contain". Illustrated Oxford Dictionary defines the word "include" as: (i) comprise or reckon in as a part of a whole; (ii) treat or regard as so included. Collins Dictionary of English Language defines the word "includes" as: (i) to have as contents or part of the contents; be made up of or contain; (ii) to add as part of something else; put in as part of a set, group or a category; (iii) to contain as a secondary or minor ingredient or element. It is no doubt true that generally when the word "include" is used in a definition clause, it is used as a word of enlargement, that is to make the definition extensive and not restrictive. But the word "includes" is also used to connote a specific meaning, that is, as "means and includes" or "comprises" or "consists of."*

23.6. In ***S.Vanitha v. Deputy Commissioner, Bengaluru Urban District and Others***[59]**,** this Court held as under:

*"**27**……The definition of the expression "shared household" in Section 2(s) uses the familiar legislative formula of a "means and includes" definition.*

28. *Where the definition of an expression in an enactment adopts a 'means and includes' stipulation, it is intended to be exhaustive. The 'means' part of the definition indicates what would normally fall within the ambit of the expression, while the 'includes' element gives it an extended meaning. Together they indicate that the legislature has provided for an exhaustive enumeration of what falls within the ambit of the definition.*

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[57] (2007) 3 SCC 607 : AIR 2007 SC 788
[58] (2007) 4 SCC 502
[59] (2021) 15 SCC 730

28.1. .Justice G P Singh in his seminal treatise on the Principles of Statutory Interpretation 21 observes:

The Legislature has the power to define a word even artificially. So the definition of a word in the definitions Section may either be restrictive of its ordinary meaning or it may be extensive of the same. When a word is defined to "mean" such and such, the definition is prima facie restrictive and exhaustive.

28.2. On the other hand, "includes" is titled so as to comprehend an extensive meaning:

Whereas, where the word defined is declared to "include" such and such, the definition is prime facie extensive. When by an amending Act, the word "includes" was substituted for the word "means" in a definitions section, it was held that the intention was to make it more extensive.....

28.3. The use of the expression "means" is intended to make it exhaustive. On the other hand, the use of the expression "includes" is intended to make it more extensive. The legislature by using an expression "includes" evinces, notwithstanding the meaning of the phrase, an intention:

to enlarge the meaning of the words or phrases occurring in the body of the statute.

"Includes" is utilized so as to comprehend:

not only such things as they signify according to their nature and import but also those things which the interpretation Clause declares that they shall include.

28.4. However, when a statutory definition incorporates the 'means and includes' approach, the intent is to make the definition exhaustive. Further, a definition may be in the form of 'means and includes', where again the definition is exhaustive."

[See in this context the decisions in Jagir Singh v. State of Bihar; MANU/SC/0689/1975 : AIR 1976 SC 997, pp. 999, 1001 :1976 SCC (Tax) 204 : (1976) 2 SCC 942; Kasilingam v. P.S.G. College of Technology, supra, Bharat Coop. Bank (Mumbai) Ltd. v. Coop. Bank Employees Union, MANU/SC/1574/2007 : (2007) 4 SCC 685 (para 23) : (2007) 4 JT 573 : (2007) 2 LLJ 825 : AIR 2007 SC 2320; Paul Enterprise v. Rajib Chatterjee and Co., MANU/SC/0031/2009 : (2009) 3 SCC 709 para 28 : (2009) 1 JT 632]".

23.7. In the present case, while explaining the category of persons standing in a fiduciary capacity, the legislature has specified identifiable classes such as trustee, executor, partner, director, depository participant, and has further expressly reserved power to the Central Government to notify additional categories. The conferment of such specific delegated power is a significant indicator that enlargement beyond the enumerated classes was intended to occur through notification rather than unrestricted judicial expansion.

23.8. Accordingly, for the purposes of the Act, the expression "fiduciary capacity" must receive a restricted and controlled construction. Persons expressly enumerated would undoubtedly fall within the exception, and any additional category would ordinarily require notification by the Central Government. In the absence thereof, the scope of the exception cannot be widened merely on equitable considerations.

(G) <u>EXEMPTION UNDER THE ACT ON ACCOUNT OF FIDUCIARY RELATIONSHIP</u>

24. The Plaintiff, apart from contending that the suit is founded upon the Will, has also pleaded that there existed a fiduciary relationship between him and the

deceased K. Raghunath. According to the Plaintiff, acting in trust and confidence, he entered into various MOUs with K. Raghunath, transferred funds to him for the purchase of agricultural lands in the latter's name, to be held for the benefit of the plaintiff, thereafter converted into non-agricultural lands, and ultimately reconveyed or transferred in favour of the plaintiff. For the said arrangement, a consideration of Rs. 2,50,000/- per acre was allegedly fixed.

24.1. Reliance has been placed by the learned Senior Counsel for the plaintiff on the decisions in ***Pawan Kumar v. Babulal*** *(supra),* ***P.V. Guru Raj Reddy v. P. Neeradha Reddy*** *(supra),* ***Marcel Martins v. M. Printer*** *(supra) and the judgments in* ***Liverpool & London S.P. & I Assn. Ltd*** *(supra),* ***Hardesh Ores (P) Ltd*** *(supra),* ***Vinod Infra Developers Ltd.*** *(supra),* ***Shaifali Gupta v. Vidya Devi Gupta*** *(supra),* and ***Bharti Cellular Ltd v. CIT***[60], to contend that the existence or otherwise of a fiduciary relationship is a mixed question of fact requiring trial.

24.2. There can be no quarrel with the proposition that disputed questions of fact are ordinarily to be adjudicated upon trial. However, there equally exists a duty upon the Court, while considering an application for rejection of plaint, to ascertain whether any real dispute of fact arises at all and whether the suit is barred by law even if the averments in the plaint are taken at their face value. The Court must satisfy itself that the plaint discloses a genuine triable issue and not a mere illusion of cause of action.

24.3. We have already held that the plaint must be given a meaningful reading so as to determine whether it discloses a real cause of action and whether any statutory bar is attracted. In the present case, though the plaint does not expressly employ the phrase "fiduciary relationship", the plaintiff seeks to infer such relationship on the basis that the deceased K. Raghunath was a loyal employee in the group of companies run by the plaintiff's father and therefore, the relationship between the plaintiff and the deceased was fiduciary in character. We are unable to agree with the said contention.

24.4. Firstly, an employer-employee relationship does not, by itself, fall within the recognized categories of fiduciary relationship for the purpose of exemption under the Benami legislation. Secondly, the law does not ordinarily recognize a fiduciary relationship between a company and its employee, or between a director and an employee of the company, in the sense sought to be projected here. Rather, the recognized fiduciary duty is that of a director towards the company since a director is bound to act in the interests of the company.

24.5. A company is a distinct juristic entity, separate from its directors, though it necessarily acts through them. Likewise, directors are not ordinarily fiduciaries of individual shareholders, except in special circumstances where personal advice is tendered and relied upon in good faith. The limited fiduciary obligations that may arise in an employment relationship, such as duties relating to confidentiality, trade secrets, loyalty during service, or acts done in the course

[60] (2024) 462 ITR 247

of employment, cannot be expanded so as to validate or transform an otherwise prohibited property arrangement into a fiduciary holding exempt from the statute.

24.6. In the present case, the plaintiff himself pleads that the deceased was an employee in companies run by his father. There is no pleaded personal relationship of employer and employee between the plaintiff and the deceased K. Raghunath. Even otherwise, such relationship cannot, in law, be elevated to a fiduciary relationship so as to attract the statutory exception. Hence, the contention that the matter necessarily requires trial is liable to be rejected.

24.7. In this regard, it would be useful to refer to ***Sangramsinh P. Gaekwad and others v. Shantadevi P. Gaekwad (Dead) through LRs and others***[61]**,** wherein this Court explained that fiduciary duty arises where one person is bound to protect the interests of another and must not derive personal gain from that position of trust. The Court further held that a director stands in fiduciary capacity vis-à-vis the company, but not ordinarily vis-à-vis individual shareholders, save in special circumstances. The following paragraphs are apposite:

*"**FIDUCIARY DUTY:***

…..

42. *A Director of a Company indisputably stands in a fiduciary capacity vis--vis the Company. He must act for the paramount interest of the company. He does not have any statutory duty to perform so far as individual shareholders are concerned subject of course to any special arrangement which may be entered into or a special circumstance that may arise in a particular case. Each case, thus, is required to be considered having regard to the fact situation obtaining therein and having regard to the existence of any special arrangement or special circumstance.*

43. *The question came up for consideration as far back in 1901 in Percival v. Wright, 1902 (2) Ch. 421. In that case, the shares of the company were in few hands which were transferable only with the approval of the Board of Directors. The shares did not carry any market price and were not to be quoted at the stock exchange. The plaintiffs therein intended to dispose of certain shares where for they offered 12 / 5 s. per share purported to be based on a valuation which they had obtained from independent valuers a few months prior thereto. The said offer was accepted. The transaction pertaining to the said agreement was entered into but it was later on discovered by the plaintiffs that prior to and during their own negotiations for sale the Chairman and the Board were approached by one Holden with a view to purchase the entire undertaking of the company with a view to resell the same at a profit to a new company. The question of fiduciary obligation on the part of the Directors arose therein when the plaintiff brought an action against the Chairman and the two other purchasing Directors asking for setting aside the sale on the ground that the defendants as Directors ought to have disclosed the feature of negotiations with Holden when negotiating purchase of their shares. The question therein posed was: Assuming that directors are, in a sense, trustees for the company, are they trustees for individual shareholders? The Chancery Division despite holding that the Directors must act bonafide and for the best interest of the company did not accept the argument that the relationship between the shareholders inter se are the same as that of partners in an unincorporated company holding : "...The contrary view would place directors in a most invidious position, as they could not buy or sell shares*

[61] (2005) 11 SCC 314 : AIR 2005 SC 809

without disclosing negotiations, a premature disclosure of which might well be against the best interests of the company. I am of the opinion that directors are not in that position. There is no question of unfair dealing in this case. The directors did not approach the shareholders with the view of obtaining their shares. The shareholders approached the directors, and named the price at which they were desirous of selling."

44. *Percival (supra) was noticed by a 4-Judge Bench of this Court in Nanalal Zaver and Anr. v. Bombay Life Assurance Co. Ltd. and Ors. MANU/SC/0003/1950 : [1950] 1 SCR 391 in the following terms:*

"It is clear that until the Singhania group get their names entered in the register of the members they are not shareholders but are complete strangers to the company. It has been held in Percival v. Wright, L.R. (1902) 2 Ch. 421 that ordinarily the directors are not trustees for the individual shareholders. Even if the directors owe some duty to the existing shareholders on the footing of there being some fiduciary relationship between them as stated in some cases [see for example In re Gresham Life Assurance Society] [L.R. 8 Ch. App. 446] I see no cogent reason for extending this principle and imputing any kind of fiduciary relationship between the directors and persons who are complete strangers to the company. In my judgment, therefore, the conduct of the respondents 2 to 9 cannot be judged on the basis of any assumed fiduciary relationship existing between them and the Singhania group. In my opinion, the respondents 2 to 9 owed no duty to the Singhania group and, therefore, the motive to exclude them cannot be said to be mala fide per se."

…

48. *In Palmer's Company Law, 23 rd edition, page 848, it is stated: "64-02.Relationship is with company: The fiduciary relationship of a director exists with the company: the director is not usually a trustee for individual shareholders. Thus, a director may accept a shareholder's offer to sell shares in the company although he may have information which is not available to that other, and the contract cannot be upset even if the director knew of some fact which made the offer an attractive proposition.…*

49. *In Pennington's Company Law 6 th Edn. at page 608-09, it is stated : "Directors owe no fiduciary or other duties to individual members of their company in directing and managing the company's affairs, acquiring or disposing of assets on the company's behalf, entering into transactions on its behalf, or in recommending the adoption by members of proposals made to them collectively. If directors mis-manage the company's affairs, they incur liability to pay damages or compensation to the company or to make restitution to it, but individual members cannot recover compensation for the loss they have respectively suffered by the consequential fall in value of their shares, and they cannot achieve this indirectly by suing the directors for conspiracy to breach the duties which they owed the company. However, there may be certain situations where directors do owe a fiduciary duty and a duty to exercise reasonable skill and care in advising members in connection with a transaction or situation which involves the company or its business undertaking and also the individual holdings of its members."*

50. *In Dawson International plc v. Coats Patons plc, 1988 SLT 854 Percival(supra) was relied upon holding that the Directors are, in general, under no fiduciary duty to shareholders and in particular current shareholders with respect to the disposal of their shares in the most advantageous way as directors are not their agents and as such are not normally entrusted with the management of their shares. It was, however, observed that if the directors take it upon themselves to give advice to current shareholders they have a duty to act in good faith and not fraudulently nor can mislead the shareholders whether deliberately or carelessly, in which event, they may have a remedy.*

51. *A distinction, thus, has been carved out as regards the fiduciary duty of thedirectors with regard to the property and funds of the company as contradistinguished from the duty of directors to current shareholders as sellers of their shares. In case of conflict between two*

interests, the company's interest must be protected. The directors, however, will have a fiduciary relation if they have taken unto themselves the burden of giving advice to current shareholders.

52. *The aforementioned principles of law found favour with the Court in NeedleIndustries (India) Ltd. and Ors. v. Needle Industries Newey (India) Holding Ltd. and Ors. MANU/SC/0050/1981 : [1981] 3 SCR 698 wherein it was held: "Where directors of a company seek, by entering into an agreement to issue new shares, to prevent a majority shareholder from exercising control of the company, they will not be held to have failed in fiduciary duty to the company if they act in good faith in what they believe, on reasonable grounds, to be the interests of the company. If the directors' primary purpose is to act in the interests of the company, they are acting in good faith even though they also benefit as a result."*

55. *Fiduciary duty of the Directors to the company should not be equated withthe duty to the shareholders.*

56. *In Peskin and Anr. v. Anderson and Ors., [2001] 1 BCLC 372, Percival(supra) as also other decisions taking similar or contrary view were noticed by the Court of Appeal including the judgment of the Court of Appeal in New Zealand in Coleman v. Myers as also Court of Appeal of New South Wales in Brunninghausen v. Glavanics,(1999) 46 NSWLR and held that the directors had no fiduciary duty to the shareholders in the facts and circumstances obtaining therein. However, observations were made therein that such duties may arise in special circumstances demonstrating the salient features and well-established categories of fiduciary relationship such as agency which involves duties of trust, confidence and loyalty.*

24.8. Further, the pleadings and the documents filed along with the plaint disclose that the alleged transfer of funds for purchase of property was based on contractual arrangements embodied in the MOUs. The transaction is commercial in nature. A fixed consideration of Rs. 2,50,000/- per acre was allegedly agreed upon. Such an arrangement, involving consideration and reciprocal commercial obligations, cannot be equated with property being held in trust for the benefit of another so as to constitute a fiduciary holding. A commercial arrangement, breach of which may entitle remedies in contract or common law, does not become a fiduciary relationship merely because confidence is asserted by one party. Consequently, we reject the contention of the Respondent / Plaintiff that there existed any fiduciary relationship between him and K. Raghunath so as to exempt the transaction from the rigour of the Benami law.

(H) BAR TO SUCCESSION TO THE ESTATE OF THE DECEASED

25. The learned senior counsel for the Appellants submitted that the Respondent is disentitled to inherit the estate of the deceased K. Raghunath by virtue of the disqualification contained in Section 25 of the Hindu Succession Act, 1956. On the other hand, the learned senior counsel appearing for the Respondent relying upon the judgment of the Karnataka High Court in *Ramaiah's* case (supra) contended that execution of a Will does not amount to a transfer of property and therefore, the bar under Section 25 would not apply.

25.1. Before adverting to the rival submissions, it is necessary to notice the relevant provisions of the Hindu Succession Act, 1956, as follows:

"5. Act not to apply to certain properties

This Act shall not apply to

(i) any property succession to which is regulated by the Indian Succession Act, 1925 (39 of 1925), by reason of the provisions contained in section 21 of the Special Marriage Act, 1954 (43 of 1954);

(ii) any estate which descends to a single heir by the terms of any covenant or agreement entered into by the Ruler of any Indian State with the Government of India or by the terms of any enactment passed before the commencement of this Act;

(iii) the Valiamma Thampuran Kovilagam Estate and the Palace Fundadministered by the Palace Administration Board by reason of the powers conferred by Proclamation (IX of 1124) dated 29th June, 1949, promulgated by the Maharaja of Cochin.

25. Murderer disqualified

A person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder.

27. Succession when heir disqualified

If any person is disqualified from inheriting any property under this Act, it shall devolve as if such person had died before the intestate.

***30. Testamentary succession**:*

Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so disposed of by him or by her, in accordance with the provisions of the Indian Succession Act, 1925 (39 of 1925), or any other law for the time being in force and applicable to Hindus."

25.2. As per Section 5 of the Hindu Succession Act, the provisions of the Act do not apply only to the categories expressly excluded therein. Apart from the said exceptions, there is nothing in the Act which excludes the application of its provisions to a Hindu, who succeeds to the estate of a deceased by testamentary succession.

25.3. It is trite law that disposition by Will is contemplated under Section 30 of the Hindu Succession Act, 1956 and Part VI of Indian Succession Act,1925. In ***N.P. Saseendran v. N.P.Ponnamma and others***[62]**,** while considering whether a document was a Will or a settlement, this Court held that a Will is a testamentary instrument intended to take effect after the death of the testator and remains revocable during his lifetime. The relevant paragraphs read as under:

"11.2. *Will is a testamentary document dealt under the Indian Succession Act, 1925. Part VI of the Act deals with the Testamentary Succession. We will consider only the relevant provisions applicable to this case. Will is defined under Section 2(h) as a legal declaration of the intention of the testator to be given effect after his death. Such declaration is with respect to his property and must be certain. As per Section 59, every person of sound mind, not being a minor, may dispose of his property by executing a Will. Section 61 states the circumstances under which a Will is void. Section 62 enables a person to revoke or alter a Will at any time while he is competent to dispose of his property by will. Needless to say, since the Will comes into effect only after his life time, he is at full liberty to revoke or alter his earlier Will any number of times as long as he is in sound state of mind and not hit by the circumstances enumerated under Section 62…*

[62] 2025 Livelaw SC 345

Interplay between Gift and Will

11.4. *As we have seen, a will is the declaration of the intention of the testator to give away his property. Such will comes into force after the death of the testator. The most important requirement for a valid will is that it must again be a voluntary disposition in sound mind, which must be explicit from the instrument itself. Therefore, it can be concluded that every will also has an element of gift, with the difference being the disposition deferred until the death of the testator. Insofar as the revocation is concerned, the testator is at liberty to revoke or alter the will any number of times until his demise, but it is essential that he remains of sound mind while doing so."*

25.4. However, in the present case, we are not concerned with a mere transfer of property, but with inheritance and succession to the estate of the deceased. Succession to the estate of the deceased devolves in two ways, namely: (i)intestate succession, and (ii) testamentary succession. Intestate succession takes place in accordance with the rules of personal law governing inheritance. Testamentary succession takes place when property is bequeathed through a Will.

25.5. Section 25 of the Hindu Succession Act provides that a person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which such person committed or abetted the commission of murder. Section 27 further declares that where a person is so disqualified, the property shall devolve as if such person had predeceased the intestate. Section 30 recognises testamentary succession and enables any Hindu to dispose of property by Will or other testamentary disposition in accordance with the Indian Succession Act, 1925 or any other applicable law. Thus, the Hindu Succession Act contemplates both intestate and testamentary succession. Consequently, the bar under Section 25 applies equally to a person who seeks to inherit the estate of the deceased through testamentary succession.

25.6. The principle underlying Section 25 is founded upon public policy, justice, equity and good conscience, namely, that no person can be permitted to profit from his own wrong. The statutory provision merely incorporates a longsettled equitable doctrine. The bar against a murder inheriting the estate of the deceased existed even prior to the coming into force of the Hindu Succession Act, 1956. A person must not be permitted to profit from or take advantage of his own wrong. This principle is reflected in the maxim *ex turpi causa non oritur actio* and the rule that no man may benefit from his own wrong.

25.7. It would be appropriate to refer to the judgment of this Court in ***Union of India and others v. Major General Madan Lal Yadav***[63]**,** which explain the underlying principle, as follows:

"28. *Even if narrow interpretation is plausible, on the facts in this case, we have no hesitation to conclude that the trial began on 25-2-1987 on which date the court martial assembled, considered the charge and the prosecution undertook to produce the respondent who was found escaped from the open detention, before the Court. It is an admitted position that GCM*

[63] (1996) 4 SCC 127 : 1996 SCC (Cri) 592

assembled on 25-2-1987. On consideration of the charge, the proceedings were adjourned from day to day till the respondent appeared on 2-3-1987. It is obvious that the respondent had avoided trial to see that the trial would not get commenced. Under the scheme of the Act and the Rules, presence of the accused is a precondition for commencement of trial. In his absence and until his presence was secured, it became difficult, nay impossible, to proceed with the trial of the respondentaccused. In this behalf, the maxim nullus commodum capere potest de injuria sua propria — meaning no man can take advantage of his own wrong — squarely stands in the way of avoidance by the respondent and he is estopped to plead bar of limitation contained in Section 123(2). In Broom's Legal Maxim (10th Edn.) at p. 191 it is stated:

"… it is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure."

The reasonableness of the rule being manifest, we proceed at once to show its application by reference to decided cases. It was noted therein that a man shall not take advantage of his own wrong to gain the favourable interpretation of the law. In support thereof, the author has placed reliance on another maxim frustra legis auxilium invocat quaerit qui in legem committit. He relies on Perry v. Fitzhowe [(1846) 8 QB 757 : 15 LJ QB 239] . At p. 192, it is stated that if a man be bound to appear on a certain day, and before that day the obligee puts him in prison, the bond is void. At p. 193, it is stated that "it is moreover a sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned". At p. 195, it is further stated that "a wrong doer ought not to be permitted to make a profit out of his own wrong". At p. 199 it is observed that "the rule applies to the extent of undoing the advantage gained where that can be done and not to the extent of taking away a right previously possessed".

25.8. The aforesaid principle was reiterated in ***Municipal Committee Katra and others v. Ashwani Kumar***[64]**,** as follows:

*"**18.** The situation at hand is squarely covered by the latin maxim 'nullus commodum capere potest de injuria sua propria', which means that no man can take advantage of his own wrong. This principle was applied by this Court in the case of Union of India v. Maj. Gen. Madan Lal Yadav…*

***19.** It is beyond cavil of doubt that no one can be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is a sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, 'a wrong doer ought not to be permitted to make profit out of his own wrong'. The conduct of the respondent-writ petitioner is fully covered by the aforesaid proposition."*

25.9. Similarly, in ***Binod Pathak and others v. Shankar Choudhary and others***[65]**,** this Court explained the distinction between right arising from wrongdoing and advantages flowing from wrong doing, and reiterated that courts must not validate gains derived from abuse of process or wrongful conduct. The following paragraphs are pertinent:

***"45.** The genesis of the provision of Rule 10A of the Order XXII lies in the doctrine of 'clean hands'. The doctrine of 'clean hands' originates from the Roman Law, and finds expression in two latin maxims being (i) ex injuria ius non oritur and (ii) nullus commodum capere potest*

[64] 2024 SCC OnLine SC 840
[65] 2025 SCC OnLine SC 1411

de injuria sua propia, which mean "from wrong, no right arises" and "no one can take advantage of their own wrong", respectively. [See: Schwebel, Stephen M. "Clean Hands, Principle" Eds., Rüdiger Wolfrum, Oxford University Press, 2009].

46. *Although the aforesaid two maxims, semantically appear to be one and the same, with the courts often applying the two interchangeably, yet there lies a very fine but pertinent distinction between the two maxims. The two maxims are comparable to each other but they are not interchangeable, and differ in their scope. Aaron X. Fellmeth and Maurice Horwitz in the "Guide to Latin Maxims in International Law" 1st Ed., Oxford University Press, has explained the maxim ex injuria ius non oritur as follows: -*

"A right does not arise from wrongdoing." A maxim meaning that one cannot generally rely on a violation of law to establish a new legal right or to confirm a claimed right. E.g., "As Lauterpacht has indicated the maxim ex injuria ius non oritur is not so severe as to deny that any source of right whatever can accrue to third persons acting in good faith. Were it otherwise the general interest in the security of transactions would be too greatly invaded and the cause of minimizing needless hardship and friction would be hindered rather than helped." Advisory Opinion on Legal Consequences For States Of The Continued Presence Of South Africa In Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), 1971 I.C.J. Rep. 16, 167 (separate opinion of Judge Dillard). An alternative formulation is Ius ex iniuria non oritur. Compare with Nullus commodum capere (potest) de sua iniuria propria."

48. *A perusal of the aforesaid makes it abundantly clear, that while the maxim 'ex injuria ius non oritur' is a principle governing the general spirit of the jurisprudence of "rights", that a right cannot emanate or emerge from a wrongful act, the maxim 'nullus commodum capere potest de injuria sua propria', on the other hand, confirms the general rule of equity and prudence that no one can benefit from their own wrongdoing. The scope of the latter is wider than the former. The first maxim explains that the legitimacy of a right stands vitiated if such right, which otherwise would have been legitimately exercisable, accrues from a wrongdoing of the person claiming under or exercising such right. Although, under the law, a right may arise even if from a wrongdoing, yet if exercise of such right is allowed, it would malign the very jurisprudential underpinning of 'right' and 'duty'. A right has a legal sanctity and backing to it, in order for it to have a legitimising effect, since the jural correlative of a right is duty. More particularly, the term "right" is very specific to not include every benefit, profit or advantage. The maxim solidifies the faith in law that no wrong action will be given a legal validity. The legal validity of a right flows from other legal norms or from a source of law [See: Niel MacCormick, "Rights in Legislation", Law, Morality and Society: Essays in Honour of H.L.A. Hart, P.M.S. Hacker, and Joseph Raz (eds). 189-206, Oxford: Clarendon Press (1977)].*

49. *The maxim, 'nullus commodum capere potest de injuria sua propria', on theother hand, lays itself as a rule of equity. An advantage falling from wrongdoing may be a legal or illegal advantage. The maxim dictates that, be that as it may, no profit or advantage of a person's wrongful act may be validated by the seal of law. It may very well happen, that the advantage may be legal or illegal, but the validation of law will not be extended to it by the law. Thus, the courts that have the discretion to allow or disallow the availment of such advantage in ordinary circumstances, are constrained to not permit a person who has committed a wrongful act to benefit from the advantageous position afforded to him because of such wrongful action as a matter of justice, equity and fairness. Fellmeth and Horwitz rightly extend an illustration, that when a person himself destroys evidence, he cannot take shelter of the defence of lack of evidence. The advantage falling from the wrong will not be validated by the courts of law. 50. The interpretation of Order XXII Rule 10A is a manifestation of the latter and not the former i.e., the cornerstone of its nature and the effect is the maxim 'nullus commodum capere potest de injuria sua propria' or no one should derive benefit from their own wrong. This is because of the procedural nature of the provision as held in Kanan Bala*

(supra) and a catena of other decisions of this Court. Although, the provision aims to do justice over technicalities by casting a duty upon the pleader to apprise the court as-well as all parties about the demise of his client, yet it does not prescribe any penalty for the noncompliance of the same, wilful or inadvertent. A pleader may not be put to the perils of any penalty for his failure in performing the duty under Rule 10A in law, yet it does not mean that such failure would also be of no bearing in equity or of inconsequence to the ultimate abatement of the suit or appeal.

…….

53. *We would like to remind the High Court of this very important legal maximof 'nullus commodum capere potest de inuria sua propria'. It is the duty of the court to ensure that dishonesty or any attempt to abuse the legal process must be effectively curbed and the court must ensure that there is no wrongful, unauthorised or unjust gain for anyone by abusing of the process of the court. No one should be permitted to use the judicial process for earning undeserved gains for unjust profits. The courts' constant endeavour should be to ensure that everyone gets just and fair treatment.*

54. *We may clarify with a view to obviate any possibility of confusion that themaxim 'ex injuria ius non oritur' is different from the maxim 'nullus commodum capere potest de inuria sua propria' for the reason that the former pertains to a 'right' that may become available to a wrongdoer due to the wrongful act and the latter relates to an 'advantage' or 'benefit' that a wrongdoer may derive from his wrongful conduct. Although both are in essence a byproduct of the doctrine of equity and share a common genealogy under the doctrine of clean hands, the field in which they operate are different and distinct. In case of the first maxim, had the right not emanated from a wrongful act, it would have been cemented in law and the person in whose favour such right had accrued, could have pleaded for vindication of the same, with sufficient guarantee, that his plea would be accepted by the court. However, in the case of the second maxim, if the advantage was not being derived from a wrongful act, the courts would nevertheless still have the discretion to hold whether the person in whose favour such advantage had arisen, could avail such advantage or not. While in such a case there would be no embargo on the courts to deny the advantage to the person eligible to benefit from the same, the courts could still rule that such person could not avail the benefit. Having considered the cases in which there is no wrong done by the person deriving the right or benefit from their actions, we shall now see how the wrongful action affects the conclusion of the courts in both such scenarios as-well. The answer to this is straightforward. In the first case, when a right accrues to the person who has committed the wrongful act due to such act, and while the law regards it as an enforceable right, yet the courts are armed with power to deny the vindication of such rights, which they ordinarily could not have done. Put it differently, while the existence of such rights is undeniable in the eyes of law, yet the exercise or enforceability of such rights would nevertheless be deniable by the courts in equity. The way the maxim envisages the application of this principle is based on one another wellknown principle; that equity cannot supplant the law. When the courts deny the right that may have accrued by a wrongdoing, the courts in essence are not denying the right itself i.e., they are not supplanting the right emanating from a law, rather, they are drawing upon the reservoir of equity within their conscience, to withhold its enforcement, not to contradict the law, but to ensure that the law does not become an instrument for legitimizing its own violation through the hands of courts who are expected and reposed of the faith to uphold the law in the first place. Hence, under the first maxim, the courts cannot deny such rights, as they flow from the law, but any vindication or enforcement can be if they require the touch of courts, by invoking a higher standard of fairness that guards against the instrumentalization of legal rights as vehicles of injustice."*

25.10. Further, Section 25 does not envisage a situation where the person claiming inheritance must necessarily stand convicted in a criminal case. The

disqualification operates against a person who commits murder or abets the commission of murder. The provision does not make conviction a condition precedent. The provision imposes a civil consequence against a wrongdoer and the issue may be examined on the standard of preponderance of probabilities, independent of the strict standard of proof applicable to criminal prosecution.

25.11. We take judicial notice of the judgments by various High Courts following the law laid down by this Court, holding that the expression "murder" occurring in Section 25 would include culpable homicide. Reference may be made to ***Anil Behari Ghosh v. Latika Bala Dassi and others***[66]***, Nannepuneni Seetharamaiah and others v. Nannepuneni Ramakrishnaiah***[67]***, Chaman Lal v. Mohan Lall and others***[68]***, Minoti v. Sushil Mohan Singh Malik and another***[69]and ***M. Nagarajan v. V.M. Nagammal***[70]*.*

25.12. The reliance placed upon *Ramaiah*'s case to contend that there is no transfer of property is misplaced. We are concerned here with inheritance and succession, and not with a mere *inter vivos* transfer. The execution of a Will is an expression of the intention of the testator that the property shall devolve upon the beneficiary after his lifetime. As held in *N. Saseendran v. N.P. Ponnammal and others* (supra), the disposition takes effect upon the death of the testator, subject to revocation during his lifetime. In any event, the judgment in *Ramaiah'*s case does not advance the case of the Respondent / Plaintiff as the present controversy concerns disqualification from succession and not transfer simpliciter.

25.13. In the present case, the Plaintiff has been accused of the murder of K. Raghunath and a CBI investigation is stated to be pending. The said fact has been suppressed by the Plaintiff in the pleadings. We have already held that a person guilty of suppression of material facts is not entitled to be heard and that the plaint is also liable to be rejected. We have further held that an application under Order VII Rule 11 CPC and a preliminary issue on a pure question of law may be considered together. Since the suppression is apparent on a plain reading of the plaint, we deem it unnecessary to relegate the parties to the trial Court again for adjudication of any question of law as a preliminary issue. The matter can appropriately be decided at this stage itself.

(I) <u>WHETHER THE OBJECT OF THE CONTRACT IS LAWFUL</u>

26. As per Sections 10 and 23 of the Indian Contract Act, 1872, a contract without lawful consideration or with an unlawful object is void. The relevant provisions read as under:

"10. What agreements are contracts*.—All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.*

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[66] (1955) 1 SCC 638
[67] AIR 1970 AP 407
[68] AIR 1977 DELHI 97
[69] AIR 1982 BOMBAY 68
[70] Second Appeal No. 225 of 2006 decided on 23.12.2011, Madras High Court

Nothing herein contained shall affect any law in force in India and not hereby expressly repealed by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents."

***"23. What considerations and objects are lawful, and what not**.—The consideration or object of an agreement is lawful, unless— it is forbidden by law; or*

is of such a nature that if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void."

26.1. In the present case, the averments in the plaint, read conjointly with the documents filed therewith, disclose that the object of entering into the four MOUs was to circumvent the provisions of the Karnataka Land Reforms Act, 1961, particularly Sections 79A and 79B thereof, which imposed financial restrictions on persons or families seeking to purchase agricultural lands. The provisions also required that the holder personally cultivate the lands.

26.2. The pleadings further disclose that since the Plaintiff or his company was disentitled from directly purchasing the lands, a mechanism was devised whereby the Plaintiff allegedly funded the purchase in the name of another, caused the lands to be converted for non-agricultural use, and thereafter sought transfer in his own favour. The Plaintiff also claims to have paid the entire consideration. Such an arrangement was plainly intended to defeat the statutory mandate of the Karnataka Land Reforms Act and is therefore hit by Section 23 of the Contract Act. The MOUs, being founded upon an unlawful object, are illegal and void, and no rights can arise therefrom.

26.3. That apart, the transaction, in substance, bears all the indicia of a benami arrangement of the kind sought to be prohibited under the Benami Act. What cannot be done directly cannot be permitted to be achieved indirectly. The Plaintiff through careful drafting, seeks to portray the suit as one founded solely on the Will. However, the pleadings in the plaint, as also the recitals in the Will, expressly refer to the MOUs and thereby reveal the underlying illegal arrangement between the Plaintiff and the deceased. Though the expression "benami" is not used in the plaint, a meaningful and substantive reading unmistakably discloses such an arrangement. It is trite that substance must prevail over form. Courts are not bound by mere labels in pleadings and must read between the lines to ascertain the true nature of the transaction. The plaint, therefore, was wholly unsustainable in law, and the trial Court was justified in rejecting the same.

(J) <u>RELIEFS TO WHICH THE APPELLANTS ARE ENTITLED</u>

27. Though the plaint is liable to be rejected, the appellants cannot, for that reason alone, claim entitlement to the suit schedule properties. Their case is that the said properties were the self-acquired properties of the deceased K. Raghunath, who is stated to have executed a registered Will dated 28.01.2016 bequeathing the same in favour of his wife, pursuant to which the appellants

claim to have secured mutation in the revenue records and to be in peaceful possession thereof. The appellants have substantially relied upon the averments contained in the plaint filed by the Respondent and the criminal cases registered against him.

27.1. We have already held that the transactions in question are benami in nature. Once such finding is returned, the properties become liable to confiscation in accordance with law. In that view of the matter, the appellants have failed to establish that the suit properties were acquired from the independent funds of the deceased.

V. FINDINGS

28. We are of the considered view that experience shows property is often acquired in the name of another, not out of necessity, but to circumvent statutory restrictions, defeat creditors, conceal beneficial ownership or avoid the rigours of law. Such arrangements, though outwardly innocuous, are designed to separate ostensible title from real control, enabling persons to enjoy benefits while evading corresponding legal obligations. The Prohibition of Benami Property Transactions Act, 1988, as amended, was enacted precisely to dismantle such structures and to ensure that substance prevails over form.

28.1. Courts, in the discharge of their adjudicatory function, must therefore remain vigilant against attempts to secure judicial recognition of what the law expressly prohibits. The judicial process cannot be employed as an instrument to enforce rights founded upon transactions forbidden by statute. Courts are dutybound to pierce the veil of form and ascertain the real nature of the transaction, for what cannot be done directly cannot be permitted to be achieved indirectly through the medium of legal proceedings.

28.2. At the same time, the power to reject a plaint at the threshold under Order VII Rule 11 CPC is a serious jurisdiction to be exercised with due circumspection. While genuine causes must not be shut out prematurely, courts are equally bound to prevent misuse of judicial process where the pleadings, on their own showing, disclose no enforceable right or reveal a claim barred by law. The provision thus serves as an important filter, balancing access to justice with the need to prevent frivolous, vexatious, or legally untenable claims from being carried to trial.

28.3. In the present case, though the plaint is ostensibly framed as one founded upon a testamentary instrument and succession to the estate of the deceased, a meaningful and holistic reading shows that the real foundation of the claim is the assertion that the suit properties were purchased by the deceased with funds allegedly provided by the plaintiff and were thereafter held for his benefit. The claim is thus inseparably intertwined with an assertion of beneficial ownership arising from an arrangement which squarely attracts the mischief of the Benami Act.

28.4. We have already held that the initial transactions of purchase were benami transactions, against which the statutory bar continues even after the

amendment. Therefore, the plaintiff cannot assert any claim thereto. The purchase of the properties by K. Raghunath is not protected by any of the exceptions contained in Sections 3 or 4 of the Benami Act, either before or after amendment, and the object of the MOUs relied upon is illegal and void. Equally, the appellants / defendants, claiming as legal heirs, are not entitled to derive any advantage therefrom, having failed to establish that the suit properties were acquired from the independent funds of the deceased.

28.5. The suit schedule properties are consequently liable to confiscation under Section 27 of the Act. Since the bar under Sections 45 and 65 does not operate against the High Court or this Court, it is unnecessary to relegate the parties to the Adjudicating Authority once a competent judicial determination declaring the transaction benami has attained finality. In such circumstances, confiscation may follow as a consequence of that declaration.

29. The conspectus of our discussion and findings may be summarised thus:

(i) An application under Order VII Rule 11 can be taken up along with a preliminary objection and decided together by the trial Court;

(ii) Admission of a plaint is not automatic; trial Courts shall verify whether the plaint satisfies the requirements of Order VII Rule 11 CPC before issuing summons. However, merely because the plaint has been admitted and summons issued, the defendants are not precluded from seeking rejection of the plaint or raising a preliminary objection;

(iii) A disputed question of fact requiring the adducing and appreciation of evidence cannot ordinarily be decided as a preliminary objection or while considering an application for rejection of plaint. However, this does not preclude the Court from examining whether the very basis of such question is legally sustainable before relegating the parties to the ordeal of trial;

(iv) There is no fiduciary relationship between a director of a company and an employee of the company. Rather, the relationship between the company and its director is fiduciary in nature. Contractual relationships supported by valid consideration also stand outside the fiduciary exception, being commercial transactions and not arrangements founded merely on trust;

(v) The bar under Section 25 of the Hindu Succession Act, 1956 applies to both intestate and testamentary succession. A person accused of the murder of one from whom inheritance is claimed, is disentitled from asserting rights, not only under Section 25 but also on the principles of justice, fair play and equity. Strict proof is not indispensable in civil proceedings if the preponderance of probabilities points to commission of the offence;

(vi) A contract entered into for the purpose of circumventing the law is illegal and cannot be enforced or relied upon in a court of law;

(vii) Courts below must curtail frivolous suits which are barred by law, and cases where the cause of action disclosed is illusory, by piercing the veil of clever drafting and giving a meaningful and wholesome reading to the plaint and accompanying documents, preferably at the earliest stage of the suit;

(viii) A curative or declaratory amendment is retrospective in operation. The scheme of the Benami Act does not prescribe any timeline for initiation of action by issuance of notice. The amendments introduced in 2016 are retrospective in operation and the provisions can be invoked in respect of earlier benami transactions as well;

(ix) Confiscation is a civil consequence and does not amount to prosecution under the scheme of the Act. Confiscation and prosecution contemplated under the Benami Act operate in distinct spheres and are governed by different procedures. Hence, Article 20(2) of the Constitution is not attracted;

(x) Once a transaction is declared to be benami in judicial proceedings and such declaration attains finality, the property is liable to confiscation, and recourse to the procedure under Sections 24 to 26 of the Act need not be followed, since the Adjudicating Authority cannot sit in appeal over a judicial determination. Prosecution may thereafter proceed in accordance with Chapter VII of the Act, if not already initiated.

(xi) Trial Courts, where any matter touching upon a benami transaction is pending, shall take up the issue as a preliminary issue and decide it at the earliest point of time, and if a prima facie case is made out, transfer the matter to the Adjudicating Authority or the Appellate Tribunal, as the case may be.

VI. CONCLUSION

30. Before parting, we deem it appropriate to observe that it is not uncommon in legal history that whenever the law seeks to prohibit, human ingenuity seeks to disguise. From the use of proxies in earlier times to modern layered transactions, the separation of real ownership from ostensible title has long been employed as a device to evade legal restraints. Benami transactions are but a contemporary manifestation of that tendency, where legality is outwardly simulated though never truly intended. Courts, however, are concerned not with the façade, but with the substance that lies beneath it. The judicial process cannot be invoked to validate, protect, or perfect that which the law itself declares impermissible.

30.1. It is this interplay between form and reality that falls for consideration in the present case, where a claim ostensibly founded upon a testamentary instrument was, in substance, an attempt to secure judicial recognition of a transaction prohibited by law. Such an approach cannot be countenanced by this Court. Where the statute not only prohibits such transactions but also provides for stringent consequences, the Court would be failing in its duty if it were to remain a silent spectator.

30.2. The power of confiscation is not merely punitive in character, but serves a larger public purpose, namely to preserve the sanctity of lawful ownership, deter colourable devices, and ensure that no person derives advantage from transactions structured to defeat the mandate of law. Stern enforcement of the statute, wherever warranted, alone would send a clear message that benami

transactions shall neither receive judicial indulgence nor escape statutory consequences.

31. In view of the above, the impugned judgment dated 22.02.2024 passed by the High Court in R.F.A. No. 2216 of 2023 (DEC/INJ) is set aside. The Central Government is directed to appoint an Administrator and take over the suit properties, in accordance with law, within a period of eight weeks from the date of receipt of this judgment. It is made clear that since the judicial determination declaring the transaction to be *benami* has attained finality, no court shall entertain any claim in respect of the subject properties arising out of or founded upon such *benami* transaction.

32. With the aforesaid directions, the Civil Appeal stands disposed of. There is no order as to costs.

33. Pending application(s), if any, shall stand disposed of.

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