

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/APPEAL FROM ORDER NO. 122 of 2022****With****R/APPEAL FROM ORDER NO. 123 of 2022****FOR APPROVAL AND SIGNATURE:****HONOURABLE MS. JUSTICE NISHA M. THAKORE**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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SANJAY BHULABHAI PATEL
Versus
PANKAJ VINODKUMAR PATNI

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Appearance:

MR SALIL THAORE, ADVOCATE WITH MR YASH J PATEL(11240) for the Appellant(s) No. 1

MR SP MAJMUDAR(3456) for the Respondent(s) No. 1

MR SS ACHARYA(3272) for the Respondent(s) No. 2

SHASHVATA U SHUKLA(8069) for the Respondent(s) No. 1

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CORAM:HONOURABLE MS. JUSTICE NISHA M. THAKORE**Date : 02/08/2022****ORAL JUDGMENT**

1. Heard Mr. Salil Thakore, the learned advocate appearing with Mr. Yash J. Patel, the learned advocate on record for the original appellants; Mr. S.P. Majmudar, the learned advocate appearing alongwith Mr. Shashvata Shukla, the learned advocate for the respondent no.1 and Mr. S.S. Acharya, the learned advocate appearing for the respondent no.2.

2. When the present Appeal from Order was taken up for hearing Mr. S.P. Majmudar the learned advocate appearing on behalf of the respondent no.1 has raised preliminary objection with regard to maintainability of present appeals on the ground of pecuniary jurisdiction.

3. Mr. Majmudar has drawn attention of this Court to the copy of the plaint, more particularly, the title of the suit, the prayer sought for in Regular Civil Suit No.161 of 2022 and considering the subject matter, the valuation of the suit filed for declaration and permanent injunction. He submitted that the Appeal from Order would not be maintainable before the trial Court. He submitted that the respondent no.1 is the original plaintiff, who has derived ownership right in the suit-property pursuant to the three registered sale-deeds dated

30.08.2021 executed by the defendant no.1. He further submitted that the cause of action arose for the plaintiff to approach the Court of Civil Judge, Vadodara when the defendant no.2 - appellant herein had stop the entry of the original plaintiff as well as had restrained labourers of the plaintiff to enter the building by taking recourse using force with the help of anti-social ailments, which led to filing of Criminal Complaint against the defendants in December 2021. He further submitted that as per the terms and conditions of the aforesaid registered sale-deeds, the plaintiff is entitled to the use of common amenities of building as well as legal right to have access to the building by ingress and egress through staircase. By making aforesaid submissions, Mr. Majmudar submitted that the suit has rightly been valued considering the subject matter at Rs.1,000/- and the court fees of Rs.300/- has also been paid. In absence of any objection being raised by the Registry of Court of Civil Judge, Vadodara, the same has been registered as Regular Civil Suit No.161 of 2022. He invited attention of this Court to the Notification dated 14.10.2014 and submitted that in case of suit valued more than Rs.50,00,000/-, in that case only, the Appeal from Order

would lie before the High Court. He therefore submitted that the original suit being valued at Rs.1,000/-, the present Appeals from Order may not be entertained as the same would lie before the District Court at Vadodara.

4. At this stage, Mr. Majmudar referred to the chronology of the events to demonstrate that the appellant herein has not approached this Court with clean hands and the present appeals may not be entertained only on the ground of suppression of material facts by the original defendant no.2 i.e. appellant herein. Mr. Majmudar has placed on record the order dated 26.06.2022 passed by the 8th District Judge, Vadodara below Exh.1 in Misc. Civil Appeal No.15 of 2022. He submitted that the original civil suit was filed by the respondent no.1 herein on 22.03.2022. It was initially registered as Regular Civil Suit No.161 of 2022. Considering the averments made in the plaint and upon hearing the learned counsel appearing for the original plaintiff, the learned Additional Senior Civil Judge, Vadodara was pleased to grant ex-parte ad-interim relief vide order dated 26.03.2022. Upon service of summons alongwith ex-parte ad-interim relief granted by the learned Additional Senior Civil

Judge, Vadodara, the original defendant no.2 - appellant herein had approached the District & Sessions Court, Vadodara by filing Appeal under Order-43 of Code of Civil Procedure, 1908, which was registered as Misc. Civil Appeal No.15 of 2022. The said appeal was presented before the District & Sessions Court, Vadodara on 29.03.2022. He further submitted that in response to the summons, the original defendant no.2 - appellant herein had tendered an application seeking injunction against the original plaintiff vide Exh.19. Alongwith the prayer of interim injunction, the original defendant no.2 - appellant herein had also raised counter-claim praying for cancellation of three registered sale-deeds executed in favour of original plaintiff i.e. respondent no.1 herein. The aforesaid application seeking injunction against the original plaintiff filed by the original defendant no.2 - appellant herein was heard alongwith the plaintiff's interim injunction application Exh.5. The learned Additional Senior Civil Judge, Vadodara upon hearing the respective parties as well as considering the averments made in the respective applications has allowed the Exh.5 application and has rejected the interim injunction application

preferred by the original defendant no.2 - appellant herein [Exh.19]. The learned Civil Judge had further directed not to restrain the original plaintiff from having ingress and egress, use of the suit property from fixing furniture, applying whitewash, use of staircase as well as for bringing materials for installation and implantation machinery, material necessary for use of the suit property. The learned Civil Judge restrained the defendants jointly and severally and further permitted plaintiff to use common amenities in separate building right from the ground floor to 5th floor. The Court had considered the nature of mandatory reliefs sought for and therefore, expedited hearing of the suit within a period of two months from the date of passing of such order.

5. Mr. Majmudar by referring to impugned order dated 11.05.2022, submitted that the appellant herein at no stage had disclosed about having preferred appeal under Order 43 of C.P.C. before the learned District & Sessions Court, Vadodara. He further submitted that the appellant herein ought to have placed on record in the present appeal the relevant material details as regards the filing of the appeal under Order 43 of C.P.C. before the learned District &

Sessions Court, Vadodara. By referring to the order dated 26.06.2022, Mr. Majmudar submitted that unilateral statement was made before the appellate Court, whereby, the permission was sought for to withdraw the said appeal on the ground that the settlement had been arrived outside the Court. He further submitted that the present Appeal from Order was preferred before this Court on 18.06.2022 and thereafter, the matter was listed for admission hearing on 21.06.2022. He further submitted that even thereafter when the present appeal was heard before this Court, the appellant herein had failed to disclose about the filing of the appeal and the manner, in which the said appeal came to be withdrawn by the present appellant.

6. Mr. Majmudar had further submitted that on one hand the appellant had approached before the District & Sessions Court, Vadodara being conscious of the fact that the suit was valued at Rs.1,000/- and having withdrawn the said appeal, the appellant has approached this Court in the form of Appeal from Order under Order 43 of the Code of Civil Procedure by contending that the counter claim being valued at amount of Rs.1,20,00,000/-, the appeal would lie before this Court. He

submitted that having suppressed the material facts about filing of the appeal and the manner in which the appeal was withdrawn, the present appeals may not be entertained.

7. Mr. Majmudar has placed on record the case status details of the aforesaid appeal in support of his submission. He has further submitted that pursuant to the impugned order, issues were framed by the learned Civil Judge, Vadodara and the trial has already started with recording of evidence, whereby, on last date of hearing, the matter was listed for cross-examination of the original plaintiff. He further submitted that in view of the directions issued by the learned Principal Civil Judge, Vadodara, the hearing of suit has substantially progressed and the court may not entertain the present Appeal from Order against the order passed below interim injunction application.

8. Apart from the aforesaid submission of suppression, Mr. Majmudar has tendered written submission on behalf of the respondent No.1 as the aspect of preliminary objection of maintainability:-

I. The present Appeals are not maintainable on a plain and literal reading of the provisions of Order XX, Rule 19 (2) of the Code of Civil Procedure, 1908.

8.1 On a plain and literal reading of the provision of Order XX Rule 19(2) of the Code of Civil Procedure, it is expressly laid down that where any set-off or counter claim is actually preferred, the decree would be subject to the same provisions in respect of appeal as if no such counter claim had been preferred.

8.2 Mr. S.P. Majmudar, the learned advocate appearing for the respondent no.1 has relied upon the following decisions:-

(I) AIR 1955 SC 376

Jugalkishore Saraf v. M/s. Raw Cotton Co. Ltd.

(II) 2016 SCC OnLine All 2762

Ashok Kumar Singh Sengar Vs. Om Prakash Chaturvedi and Others

(III) (2019) 5 SCC 192

Giriraj Garg Vs. Coal India Limited and Others

(IV) 2011 (1) Mh.L.J. 969

Dilip s/o Kisanrao Khasbage Vs. Leeladhar s/o Pandurang Ganorkar and others

(V) 2007 (6) Mh.L.J. 127

Teofilo Barreto Vs. Sadashiva G. Nasnodkar and Others.

II. The Court must so interpret a statute as to promote the object and purpose of the enactment.

9.1 Mr. Majmudar submitted that the Hon'ble Supreme Court has held in several decisions, most notably in the case of ***M/s. Girdharilal & Sons Vs. Balbir Nath*** reported in ***AIR 1986 SC 1499*** that the primary and foremost task of a court interpreting a statute is to ascertain the intention of the legislature, actual or imputed. Parliamentary intention may be gathered from several sources including the Statement of Objects and Reasons and regard may be had to the legislative history behind the enactment. Once parliamentary intention has been ascertained and the object and purpose of the legislation known, it then becomes the duty of the court to give the statute a purposeful and functional interpretation.

9.2 The Legislative Object behind the enactment of Order XX, Rule 19(2) is to send appeals arising from decrees where set off or counter claim is claimed to the same court where an

appeal from the suit would lie.

9.3 At this stage, Mr. Majmudar invited attention of this Court to the legislative history of Order XX, Rule 19(2) of the CPC clearly suggests the purpose for which it was enacted. The provisions of the old Code of Civil Procedure, 1882 (i.e. prior to the Code of Civil Procedure, 1908) contained Section 216, which read as under :-

“Section 216: If the defendant has been allowed a set-off against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff and what amount (if any) is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

The decree of the Court, with respect to any sum awarded to the defendant, shall have the same effect, and be subject to the same rules in respect of appeal or otherwise, as if such sum had been claimed by the defendant in a separate suit against the plaintiff.

The provisions of this section shall apply whether the set-off is admissible under Section 211 or otherwise.”

9.4 Thus, Section 216 of the old CPC provided that where set-off is claimed by the Defendant, the amount of decree passed in favour of the Defendant was to determine the forum of appeal. A Special

Committee was thereafter appointed by the Governor General in Council to consider amendments to the Code of Civil Procedure, 1882. The aforesaid Special Committee submitted its report which was accepted and published in the Gazette of India (Part V) September, 1907. The Code of Civil Procedure, 1908 came to be enacted to consolidate and amend the laws relating to procedure of the Civil Courts. This new Code received the assent of the Governor General of India on 21.3.1908. As a result of the new Code, the amended provisions of Order XX, Rule 19 CPC relating to a decree where set-off is allowed came on the statute book in place of Section 216 of the old Code. The statement of Objects and Reasons and Notes on Clauses for enacting Order XX, Rule 19(2) in its present form is substitution of Section 216 of the old Code reads as under :-

“The Committee has introduced an amendment to give effect to the view that appeals from decrees relating to set-off should lie to the Courts to which appeal in respect of the original claim would lie.”

9.5 Mr. Majmudar submitted that the above extracted legislative history of the Code of Civil Procedure, 1908 shows that in the old Code of 1882, it was provided that where set-off was claimed by the Defendant, the amount of the decree

relating to set-off was to determine the forum of appeal. The old Code of Civil Procedure came to be replaced with the new Code and Order XX, Rule 19 (2) CPC came to be inserted with a view to provide appeal from decrees relating to set-off to the same Court to which appeal in respect of the original claim would lie. At the time when the Code of Civil Procedure 1908 was introduced, there was no provision in relation to counter claim. The provision for filing counter claim by Defendant was introduced for the first time by the 1976 amendment to the Code of Civil Procedure, 1908 and consequently, Order VIII, Rule 6-A to 6-G came to be inserted by virtue of which now counter claims can be set up by the Defendant. As a result of the inclusion of counter claim in the Code of Civil Procedure, the Legislature also amended Order XX, Rule 19 and to include the words "counter claim" following the word "set-off". Thus, by a subsequent amendment i.e. by the Amending Act No.104 of 1977, the CPC came to be amended and counter claim was brought on the same platform as the set-off.

9.6 By virtue of the amendment, set-off and counter claim are treated at par and with equal status. Therefore, while

interpreting Order XX, Rule 19 (2), the same treatment which is given to a decree of set-off will now have to be given to a decree in the suit in which counter claim is claimed. It is submitted that the legislative object which led to the deletion of Section 216 and the enactment of Order XX, Rule 19 in respect of a decree of set-off shall also hold good in respect of a decree from a counter claim. Such a decree passed in suit where counter claim is preferred is to be treated subject to the same provisions in respect of appeal to which it would have been subject if no counter claim had been preferred [*Ashok Kumar Singh Sengar (Supra)*].

9.7 The argument of the appellant relying upon the table seeking to explain the provisions of the old code and the new code also does not take the appellant's case any further. The appellant's reliance on the phrase "shall have the same effect" and its subsequent omission does not alter the consequence of the legislative change affected by the introduction of Order XX Rule 19(2). The appellant's attempt at the play of words does nothing to defeat the legislative view authoritatively brought into force by the enactment of Order XX Rule 19(2). Thus, a decree wherein a set-off or a counterclaim is claimed

should go before the same appellate forum to which it would have been subject in the normal course in the absence of a counterclaim or set-off.

9.8 Since the legislative view is that the decree wherein set-off is claimed, should go before the same appellate forum, to which it would have been subject, in the normal course, in the absence of a claim for set-off, then so far as counter claim is concerned, it is submitted that the same treatment is required to be accorded to a decree passed in a suit where a counter claim is preferred. Resultantly, even on a purposive interpretation of Order XX, Rule 19 of the CPC keeping in mind the legislative object, it is clear that the present appeal are not maintainable and are required to be filed before the learned District Court since the plaint is valued at Rs.1000/-.

9.9 Mr. S.P. Majmudar, the learned advocate appearing for the respondent no.1 has relied upon the following decisions:-

(I) AIR 1986 SC 1499

M/s Girdharilal & Sons Vs. Balbir Nath

(II) AIR 1990 SC 2114

Shashikant Laxman Kale and another Vs. Union of

India and Another

(III) (2002) 7 SCC 631

Govt. of Andhra Pradesh and Others Vs. P. Venku Reddy

(IV) 2016 SCC OnLine All 2762

Ashok Kumar Singh Sengar Vs. Om Prakash Chaturvedi and Others

(V) 2007 (6) Mh.L.J. 127

Teofilo Barreto Vs. Sadashiva G. Nasnodkar and Others.

(VI) Statement of Objects and Reasons published in Part V, The Gazette of India, September 7, 1907, Page No. 179- 203.

III. The Appellant's argument in favor of clubbing the valuations of the suit and the counter claim is contrary to well settled legal principles and deserves to be rejected.

10 Mr. Majmudar submitted that if the interpretation suggested by the applicant were to be adopted and if the applicant were to be permitted to club the valuations of the suit and counter claim for the purposes of jurisdiction and determination of the forum of appeal, it would be contrary to two well settled principles relating to the right of appeal established by a long line of precedent.

10.1 The first legal principle is that the Plaintiff of the suit has a vested right of appeal. Such right is determined keeping in view the date of the filing of the suit. This right of appeal has been recognized by judicial decisions which vests in a suitor at the time of the institution of the original proceedings. Thus, when a person files a civil suit, his right to prosecute the same in terms of the provisions of the Code of Civil Procedure as also his right by way of first appeal and second appeal are preserved. It is submitted that the judicial decisions have consistently held that such vested right of appeal, which includes the right to forum of appeal, cannot be curtailed far less taken away except by reason of an express provision contained in a Statute [*Garikapati Veeraya (Supra)*]. If the interpretation suggested by the Appellants were to be accepted, the right of Second Appeal of Respondent No.2 - Original Plaintiff would be taken away merely on the presentation of a counter claim by the Defendant. It is respectfully submitted that such an interpretation is untenable since the Hon'ble Supreme Court in a series of decisions has held that a vested right of appeal cannot be curtailed except by an express provision contained

in a Statute [*Nahar Industrial Enterprises Limited (Supra)*].

10.2 As to the second legal principle, it is equally well settled that where a Plaintiff fixes a certain sum as the amount of his claim, then such valuation must be considered as the value of the original suit and an appeal would lie accordingly. In other words, the forum of appeal is to be determined according to the value of the original suit in which the decree was made. It is ultimately, therefore, the valuation of the Plaintiff controls the jurisdiction not only of the first Court but also of the Appellate Court. This principle has been authoritatively accepted by a Full Bench of the Hon'ble Calcutta High Court [*Ijjatulla Bhuyan (Supra)*] and the same principle has also been relied upon by the Hon'ble Allahabad High Court in [*Ashok Kumar Singh (Supra)*] while citing with approval another Full Bench decision of the Hon'ble Bombay High Court in *Kazi Syed Saifuddin v. Kasturehand Abhayrajji Golchha* reported in *2000 4 Bom CR 582*, laying down the same principle that once the suit is valued and jurisdiction of the court is thus determined at the stage when the suit is instituted, that will be the valuation for the subsequent proceedings in the suit, and an appeal being a continuation of

the suit, the valuation will govern the appeal as well for the purpose of the forum of appeal.

10.3 The rule of law contained in Order XX, Rule 19 (2) CPC is the consequence and statutory embodiment of these two fundamental principles namely - that a right of appeal vests in the Plaintiff at the time of filing of the suit and it is the valuation of the Plaint which controls the jurisdiction not only of the first Court but also of the Appellate Court. It is submitted that the Appellant's interpretation to the contrary would disturb these well settled legal principles established by a long line of judicial pronouncements getting back as far as 1907. Thus, it is respectfully submitted that the provisions of Order XX, Rule 19 (2) CPC are clear and unambiguous as a consequence of which the present appeals are not maintainable before this Hon'ble Court.

10.4 Mr. S.P. Majmudar, the learned advocate appearing for the respondent no.1 has relied upon the following decisions:-

(I) AIR 1957 SC 540

Garikapati Veeraya Vs. N. Subbiah Choudhry and Others

(II) (2014) 5 SCC 219

Himachal Pradesh State Electricity Regulatory Commission and Another Vs. Himachal Pradesh State Electricity Board

(III) (2009) 8 SCC 646

Nahar Industrial Enterprises Limited Vs. Hongkong and Shanghai Banking Corporation

(IV) (1907) ILR 34 Cal 954

Ijjatulla Bhuyan Vs. Chandra Mohan Banerjee

(V) 2016 SCC OnLine All 2762

Ashok Kumar Singh Sengar Vs. Om Prakash Chaturvedi and Others

IV. The Gujarat Civil Courts Act, 2005 is not an enactment on pecuniary jurisdiction.

11.1 At the outset, it is submitted that the Gujarat Civil Courts Act, 2005 (also referred to as “the Act”) is not an enactment which is principally concerned with determining the pecuniary jurisdiction of Courts. As stated in the preamble of the Act itself, it is “an act to consolidate and amend the law relating to Civil Courts in the State of Gujarat”. The Gujarat Civil Courts Act, 2005 deals with several aspects of the functioning of Civil Courts such as the establishment and constitution of Civil Courts in the State of Gujarat, determining the local limits of their territorial jurisdiction as well as setting out limits of pecuniary jurisdiction, providing for matters

pertaining to judicial conduct and administration of justice, vacation and holidays etc. It is submitted that merely because the Act also contains certain provisions with respect to jurisdiction of Civil Courts does not make pecuniary jurisdiction the subject of the enactment.

11.2 It is submitted that on a plain reading of Section 15, it is clear that the section does not apply to any appeal arising out a counter claim that may be filed by the Defendant but is limited to appeals arising out of suits and proceedings of civil nature. It is further submitted that the expression “suit” cannot be read so as to include within its ambit a “counter claim” as the same would amount to supplying a casus omissus which is impermissible in law. Furthermore, the Hon’ble Calcutta High Court, while interpreting a similar provision under the Bengal, Agra and Assam Civil Courts Act, 1887 has held that the expression “proceeding” also is to be interpreted to be a proceeding similar to that of a regular suit and not a proceeding arising out of a suit such as a counter claim. [*Amitabha Datta (Supra)*].

11.3 Section 15 being a general provision must yield to Order

XX Rule 19(2) which is a special provision. Section 15 of the Gujarat Civil Courts Act, 2005 is only one among the several provisions in the Act that deals with appeals in general arising out of civil suits and other proceedings of civil nature. In contrast, Order XX, Rule 19 (2) of the CPC deals specifically with appeals from decrees relating to set-off and counter claim. In this respect, Order XX, Rule 19(2) is a special provision whereas Section 15 is a general provision and on a harmonious construction of both the provisions, Order XX Rule 19(2) should prevail over Section 15.

11.4 It is submitted that the interpretation of the Appellant, if accepted, would lead to a head on conflict between Section 15 of the Gujarat Civil Courts Act, 2005 on the one hand, and Order XX Rule 19 (2) on the other. It is well settled that in case of conflict, a general provision should yield to special provision and to that extent, Order XX, Rule 19 (2) CPC should be read as an exception to the general rule purportedly laid down in Section 15 of the Gujarat Civil Courts Act, 2005 in so far as appeals from decrees relating to counter claims are concerned [*P.V. Hemalatha (Supra)*].

11.5 It is submitted that the judicial approach in all such cases is to find out which of the two apparently conflicting provisions is more general and which is more specific and to construe the more general one and to exclude the more specific [*Managing Director, Chattisgarh State Co-operative Bank Maryadit (Supra)*].

11.6 It is submitted that Section 15 of the Gujarat Civil Courts Act, 2005, being a State enactment on a concurrent subject (Entry No.13 and 46 of List III of the 7th Schedule to the Constitution of India) cannot prevail over the provisions of Order XX, Rule 19(2) CPC which is a Central enactment on the same subject. It is submitted that the Appellant has tried to argue that Section 15 and Order XX Rule 19(2) operate in different spheres and that therefore there is no repugnancy. However, that argument is defeated by the Appellant's own case.

11.7 It is submitted that the case of the Appellant rests on the premise that Section 15 alone determines the forum of appeal, and to that extent, on the Appellant's own interpretation, Section 15 purports to operate in the same sphere as Order

XX, Rule 19 (2). The Legislative object behind the enactment of Order XX, Rule 19 (2) CPC is clear and it is to give effect to the view that all appeals from decrees relating to set-off or counter claim should lie to the Court to which appeals in respect of the original claim would lie. The contention of the Appellant creates an apparent conflict between Section 15 of the Act and Order XX, Rule 19 (2) of the CPC. In case of such conflict, in view of Article 254 of the Constitution of India, the provision in the State enactment being repugnant to the provision in the Central enactment, both purporting to operate in the same sphere for determination of the forum of appeal, cannot co-exist and the State enactment in so far as it is in conflict with the Central enactment would be deemed to have been repealed as held by the Hon'ble Supreme Court in the decision of *Kulwant Kaur and Others v. Gurdial Singh Mann (Dead) By LRS. and Others* reported in *2001 (4) SCC 262*.

11.8 The reliance placed on Section 6 of the Code of Civil Procedure, 1908 is also untenable as it is not applicable to appeals and in any case cannot prevail over the specific provision of Order XX Rule 19(2).

11.9 Mr. Majmudar submitted that Order XX, Rule 19 (2) CPC is a special provision specifically dealing with the subject matter of appeal where set-off or counter claim is allowed whereas Section 6 of CPC pertains only to suits with no mention of appeals or counter claims. Without prejudice to the aforesaid and in the alternative, even if Section 6 were to be interpreted liberally, it would at the most be a general provision with respect to pecuniary jurisdiction, and in the same manner as Section 15 of the Gujarat Civil Courts Act, 2005, Section 6 of CPC would not prevail over the more specific provision respect to appeals in respect of counter claims under Order XX, Rule 19(2) CPC. Resultantly, the word “suit” in Section 6 of the Code cannot be interpreted so as to apply to appeals or to control or govern the clear and unambiguous language of Order XX, Rule 19(2) of the CPC.

11.10 Mr. S.P. Majmudar, the learned advocate appearing for the respondent no.1 has relied upon the following decisions:-

*(I) 2011 SCC OnLine Cal 263
Amitabha Datta Vs. Kiran Rasaily*

(II) (2002) 5 SCC 548

P.V. Hemalatha Vs. Kattamkandi Puthiya Maliackal Saheeda & Anr.

(III) (2020) 6 SCC 411

Managing Director, Chattisgarh State Co-operative Bank Maryadit Vs. Zila Sahkari Kendriya Bank Maryadit and Others

(IV) (2004) 4 SCC 766

Raichurmatham Prabhakar and another Vs. Rawatmal Dugar

(V) 2001 (4) SCC 262

Kulwant Kaur and Others Vs. Gurdial Singh Mann (Dead) By LRS. and Others

(VI) AIR 1961 SC 1170

J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. State of U.P. & other

(VII) AIR 1966 KER 318

Chandravathi Amma and Ors. Vs. Cheripuram Payapattillah

V. The reliance placed by the Appellant upon various decisions:-

12.1 In distinguished in *Pampara Philip Vs. Koorithottiyil Kinhimohammed* reported in *AIR 2007 Ker 69* is misplaced and untenable in law and other authorities cited by the Appellant are not applicable to the issue on involved in the present case. The decision in *Pampara Philip (Supra)* is per incuriam and passes sub silentio as it proceeds without

consideration of Order XX Rule 19(2) of the CPC.

12.2 It is submitted that the decision in the case of *Pampara Philip vs Koorithottiyil Kinhimohammed* reported in *AIR 2007 Ker 69* is per incuriam and is therefore not binding precedent since it ignores the provisions of Order XX Rule 19 (2) and does not deal with the same. It is submitted that a close reading of the judgment in *Pampara Philip (Supra)* would reveal that the Hon'ble Court has not dealt with Order XX Rule 19 (2) although attention of the Hon'ble Court was drawn to the same and to that extent the aforesaid provision has escaped in the judgment without occasion or consideration. It is submitted that the Hon'ble Supreme Court in the case of *State of UP v. Synthetics and Chemicals Limited* reported in (1991) 4 SCC 139 has held that "a conclusion without reference to the relevant provision of the law is weaker than even a casual observation". The decision cannot be taken as authority for the proposition that claim and counter claim can be clubbed together for determining the appellate forum while excluding the legislative mandate of Order XX Rule 19 (2) to send appeals from decrees where counter claim is filed to the same court where the appeal from

the suit would lie.

12.3 It is submitted that the decision in *Pampara Philip (Supra)*, though cited before the Hon'ble Bombay High Court in the case of *Dilip v. Leeladhar* reported in *2011 (1) MhLJ 969* and the Hon'ble Allahabad High Court in the case of *Ashok Kumar Singh (Supra)* has not been followed and the preferred view of the majority of the Hon'ble High Courts is that parties should not be permitted to club suit and counterclaim for the purposes of the jurisdiction and determining the forum of appeal.

12.4 The decisions cited by the Appellant are distinguishable being limited to their own peculiar facts and are not applicable to the present case.

12.5 It is submitted that the judgments cited by the appellant for the proposition that suit and counterclaim are unified proceedings and therefore may be aggregated relying upon certain passages in cases of *Barthels & Luders Gambh v. M.V. Dominique* reported in *1988 Mh.L.J. 728*, *Vidyapoornachary Sons, T.K.V.S. Vs. M.R. Krishnamachary* reported in *96 LW*

140 and NEPC Micon Limited v. Siemens Ltd. reported in *2003 SCC OnLine MAD 793* do not pertain to the issue at hand. It is submitted that it is well settled that counterclaim is to be treated as a separate suit and this principle has also been statutorily recognized in section 3(2) (b) of the Limitation Act, 1963. Without prejudice to be aforesaid even if it is assumed for the sake of argument that a suit and counterclaim is a unified proceeding, such unification is for the limited purpose of administrative convenience of the trial and the same cannot be relied upon to club their respective valuation for the purposes of determining the forum of appeal. The decision in *Barthels & Luders Gambh (Supra)* was concerned with an application for exclusion of a counterclaim raised in an admiralty suit and the issue as to whether a counterclaim that did not arise under admiralty jurisdiction and that had arisen outside the jurisdiction of the High Court could be entertained. It was in that context, that the Hon'ble Bombay High Court while refusing to exclude the counterclaim made the observation now sought to be relied upon by the appellants. It is submitted that same has no applicability to the issue involved in the present case.

Similarly in the matter of Vidyapoornachary Sons (Supra), the issue involved was whether, in the case of an ex-parte decree where there was also a dismissal for default of the counterclaim by the defendants, there could be a single motion to set aside the ex-parte decree and dismissal for default. The aforesaid issue also does not arise in the present case and the observations of the Hon'ble Madras High Court must be treated with limited to the facts of that case. In the matter of NEPC Micon Limited (Supra), the issue involved was the validity of a decree on admission under Order XII Rule 6 of the CPC that was passed against the defendants therein and it was argued by the defendants that notwithstanding the admission they were entitled to set-off the value of their counterclaim against the admissions made by them. The Hon'ble Division Bench while rejecting the contention of the defendants approved certain observations of the single judge regarding the separation of the suit claim from counterclaim under Order VIII Rule 6(C) of the CPC and the same has no bearing or relevance on the issue of clubbing of the valuations of claim and counterclaim for the purposes of determination of the forum of appeal.

12.6 The observations of the full bench in *A.Z. Mohammed Farooq v. The State Government* reported in *AIR 1984 Ker 126* relied upon in Pampara Philips (supra) also do not consider the provision of Order XX Rule 19 of the CPC and admittedly do not express any definite view on the larger aspect of aggregation of suit and counterclaim. Similarly, the judgement of the *State of Maharashtra Vs. Krishnaawatar Daulatsingh Madan* reported in *2012 SCC OnLine Bom 324* relied on by the appellant was concerned only with whether a single appeal filed as First Appeal before the Hon'ble High Court rejecting the counterclaim and decree in the suit of the Plaintiff was maintainable. The aforesaid decision is not an authority for the proposition that the valuation of the suit and counterclaim can be clubbed for the purposes of determination of forum of appeal. In any event, the aforementioned decision is moot in the facts of the present case and would be of no help to the appellant, since the appellant has already filed two separate appeals before this Hon'ble Court.

12.7 The decisions cited by the appellants regarding the

inadmissibility of the Statement of Objects and Reasons as an aid to construction do not take into account subsequent decisions where the Hon'ble Supreme Court has not only permitted but encouraged the use and aid of all such sources of information including the legislative history and the statement of objects and reasons for understanding the purpose and object of the enactment. The rule of literal interpretation is rapidly being replaced by the rule of purposive interpretation as the golden rule of construction. In fact, one of the decisions cited by the appellant itself viz. ***Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and others*** reported in ***1987 (1) SCC 424*** says that a statute should be construed after ascertaining the legislative intent.

12.8 Mr. S.P. Majmudar, the learned advocate appearing for the respondent no.1 has relied upon the following decisions:-

(I) (1991) 4 SCC 139

State of U.P. Vs. Synthetics and Chemicals Limited

(II) 2011 (1) MhLJ 969

Dilip Vs. Leeladhar

(III) 2016 SCC OnLine All 2762

Ashok Kumar Singh Sengar Vs. Om Prakash Chaturvedi & Ors.

(IV) 2007 (6) Mh.L.J. 127

Teofilo Barreto Vs. Sadashiva G. Nasnodkar & Ors.

(V) AIR 1976 MAD 36

A. Vadivelu Vs. A. Munuswami

(VI) 2011 SCC OnLine Cal 263

Amitabha Datta Vs. Kiran Rasaily

VI. The Appellant's objection to the valuation of the suit is also unsustainable and cannot be raised by the Defendant in the present Appeal.

13.1 With respect to the contention of the Appellant that the suit is allegedly undervalued by the Plaintiff, it is submitted that the same cannot be raised in appeal in view of Section 11 of the Suit Valuation Act, 1887 and Section 21 of the Code of Civil Procedure, 1908. It is submitted that Defendant No.2 having failed to take any objection with regard to valuation of suit in the Court of first instance cannot be permitted to raise such an objection before this Hon'ble Court. It is submitted that Defendant No.2 has not been able to show that the alleged undervaluation of the suit has prejudicially affected the dismissal of the suit on merits and therefore the conditions of Section 11(1)(b) do not stand satisfied in the

facts of the present case. It is submitted that a Full Bench of the Hon'ble Patna High Court in the matter of *Deonath Missir & Ors. v. Chandraman Missir & Ors.* reported in *AIR 1958 Patna 430*.

13.2 The Hon'ble Patna High Court has further been pleased to hold that even in cases where the question of valuation of the suit goes to the very root of the jurisdiction of the Court, the matter of valuation cannot be reopened as a matter of right even in the Appellate Court, save for the limitation provided under Section 11 of the Suit Valuation Act. The requirement of Section 11 of the Suits Valuation Act having not been met, the contention raised by the Defendant No.2 cannot be permitted to raise the contention of alleged under valuation before this Hon'ble Court.

13.3 Without prejudice to the aforesaid, it is submitted that the determination of the correct valuation of any suit is required to be made as per the provisions of the Gujarat Court Fees Act, 2004 for which purpose an inquiry is required to be held under Section 8 by Inspecting Officer specially appointed for that purpose, and subject to the provisions of Sections 8 to

14 of the aforesaid Act.

13.4 Mr. S.P. Majmudar, the learned advocate appearing for the respondent no.1 has relied upon the following decisions:-

(I) AIR 1958 Patna 430

Deonath Missir & Ors. Vs. Chandraman Missir & Ors.

LEGAL SUBMISSION ON BEHALF OF THE APPELLANT:-

14. On the other hand, Mr. Salil Thakore, the learned advocate appearing with Mr. Yash J. Patel, the learned advocate on record for the original appellants - original defendant no.2 has at the outset disputed the correct/ under valuation of the suit filed by the respondent no.1 herein - original plaintiff. He invited attention of this Court to the three registered sale-deeds placed alongwith the paper-book. He submitted that such sale-deeds were executed by the respondent no.2 only i.e. Bipinbhai Patel in favour of the plaintiff purportedly for sale of Unit Nos.301, 401 and 501 in 'Konark Scheme'. He further invited attention of this Court to the sale-consideration purportedly paid by the original plaintiffs i.e. Rs.38 Lakh of each unit, therefore, the cumulative value of such unit as per the sale-deed, if

calculated comes to Rs.1.40 Crore. At this stage, he invited attention of this Court at Page Nos.50, 55 & 100 of the sale-deed, wherein, it is mentioned that “the actual possession will be handed over by us, the executor to you/ executant after construction will completed”. He therefore submitted that in absence of any Building Use Permission being given till date and by virtue of Section-263 of the Gujarat Provincial Municipal Corporations Act, nobody can occupy the property. He therefore submitted that the claim put forward by the original plaintiff to be in possession is not legally recognized right of possession in eye of law. He further invited attention of this Court to the prayer sought for by the original plaintiff and submitted that the plaintiff infact prayed for directions against the defendants including the present appellant to complete the amenities of the building [the entire building]. He emphasized the use of word ‘TOTO’ in reference to the compliance of the terms and conditions of the three sale-deeds which if correctly interpreted leads to seeking prayer of possession of units and considering the value of all the three units for an amount of Rs.1.40 Crores, the suit being valued for an amount of Rs.1,000/- is under valued or atleast not

correctly valued. He therefore submitted that this Court may take cognizance of under-valuation of the subject matter of the original suit. He therefore submitted that this Hon'ble Court has wide powers to look into whether the valuation of the plaint is an absurd figure and can be considered as not in excess of the pecuniary jurisdiction of this Court of Rs.50 Lakh. He therefore submitted that even on the basis of plaint, this Court has jurisdiction to entertain the appeal inasmuch as the consideration of the three units i.e. the suit property is Rs.1.40 Crores i.e. more than Rs.50 Lakhs.

15. The Code of Civil Procedure, 1908 ('Code') is, as the name and preamble indicate, 'an Act to consolidate and amend the laws relating to the procedure of the Courts of Civil judicature'. However, the Code is not and does not even purport to be a statute to govern the pecuniary jurisdiction of courts or fix the territorial limits of the jurisdiction of the courts. The scheme of the Code, as emerging from a reading of the Code as a whole, reveals that the Code does not purport to regulate matters relating to the pecuniary jurisdiction of courts. The Parliament's intention to not regulate matters relating to pecuniary jurisdiction is explicitly revealed in

Section 6 of the Code. Matters relating to the pecuniary jurisdiction are left to the State legislatures.

16. Mr. Thakore referred to and relied upon Para-42 of the decision of the Five Judges Bench of the Hon'ble Supreme Court in the case of *Jamsed N. Guzdar Vs. State of Maharashtra* reported in *(2005) 2 SCC 591*.

16.1 The Appellant places reliance on the Report of the 79th Law Commission headed by Justice H. R. Khanna. Reliance is placed on Paras 11.6, 11.7, 18.1 to 18.3, 18.5 to 18.10 and 99. The Appellant also placed reliance upon the report wherein, it clearly transpires that matters relating to pecuniary jurisdiction of courts are always left to the States considering the different conditions prevailing in States, for the purpose of showing that rationale why appeals from higher value suits are given to the High Courts and in support of the contention that a direct appeal to the High Court is not detrimental but advantageous to the parties.

A) The Gujarat Civil Courts Act, 2005 - Scheme and Purpose

17. The Gujarat Civil Courts Act, 2005 ('GCCA') is the statute

that governs the pecuniary jurisdiction of the civil courts and the appellate courts. Chapter II provides for the establishment and constitution of civil courts. Chapter III contains provisions fixing the pecuniary as well as territorial limits of the jurisdiction of the civil courts (Sections 11 to 13). Section 15 fixes the pecuniary limits of the appellate courts i.e. the High Court and the District Court for appeals arising from original proceedings.

18. Order-8, R. 6A(2) contains the words “to pronounce a final judgment in the same suit both on the original claim and on the counter claim”. Order 20 R. 19(1) provides that “the decree shall state what amount is due to the plaintiff and what amount is due to the defendant”. The words ‘same suit’, ‘a judgment’ and ‘decree’ are used in the singular. Therefore, when a counterclaim is filed in a suit, there will not be two judgments and two decrees. There will be a single judgment and single decree dealing with both the plaint and the counterclaim. This is because though the suit has two components within itself, it is still one suit, one unified proceeding. The fact that there will be one judgment and one decree militates against any argument that a counter claim is

an independent /separate suit.

19. The biggest indication that a counter claim is not an independent suit but is a part of the same suit is in Order 8 R. 6C. Under Order 8 R. 6, the plaintiff has the option to file an application “contending that the claim made in the counter claim ought not to be disposed of by way of counter-claim but in an independent suit”. Such an application can be filed before the issues are settled in relation to the counter claim. If such an application is filed, the court can pass an order directing that the counterclaim be heard as “an independent suit”. Where Order 8 R. 6C is invoked and the court passes an order directing that the counter claim be heard as an independent suit, the counter claim would get numbered as a separate suit, would indeed be a separate suit and cease to be a counter claim. However, where Order 8 R. 6C is not invoked, the counter claim is not an ‘independent suit’ but is a claim made within the same suit. In the present case, common issues have already been framed on the plaint and counter claim and no such application had been filed.

20. It is submitted that except in cases where Order 8 R. 6C is

invoked and the court directs that the counter claim be treated as an independent suit, a counter claim is not an independent suit but is part and parcel of the same unified proceeding.

21. In the case of ***Barthels and Luders Gmbh Vs. M.V. Dominique*** reported in ***1987 SCC Online Bom 333***.

"Order 8, Rule 6A provides that the counter-claim is to be treated as a plaint and is to be governed by the rules applicable to plaints, it is not to be treated as a completely separate suit. In fact under Order 8, Rule 6A, sub-rule (2) the counter-claim is to be treated as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim, so that both the proceedings can be disposed of by a common judgment. This provision emphasises by implication that as a general rule a suit claim and a counter-claim ought properly to be regarded as constituting a unified proceeding".

22. In the case of ***T. K. V. S Vidyapoornachary Sons v. M. R. Krishnamachary*** reported in ***96 LW Chennai 140 (from SCC Online): AIR 1983 Mad 291***.

"This provision emphasises by implication that as a

general rule a suit claim and a counter-claim ought properly to be regarded as constituting a unified proceeding. The exceptional provisions in R. 6-C only illustrate the homogeneity of the suit claim and the counter-claim as a single proceeding".

23. In the case of ***NEPC Micon Limited v. Siemens Ltd.*** reported in ***2003 SCC Online Mad 793.***

"In this judgment, a Division Bench of the Madras High Court referred to T.K.V.S. Vidyapoornachary Sons v. M.R. Krishnamachary, AIR 1983 Mad 29 and after examining O. 8 R. 6A and 6C observed that it is in full agreement with the said decision.

The Appellant submits that the judgment cited by the respondents (AIR 1976 Madras 38) was delivered by a Learned Single Judge prior to the introduction of Order R. 6A to 6G in the Code. The Learned Judge had no occasion to consider those provisions. Both the subsequent judgments of the Madras High Court have held that the Code was, prior to 1976, "was quite innocent of the category of pleadings called counter-claims". Therefore, AIR 1976 Madras 38 has no bearing today as it was delivered without taking into consideration provisions that exist today. Moreover, the Division Bench judgment of the Madras High Court will

prevail over AIR 1976 Madras 38, a single judge judgment".

B) Section 15 of the GCCA - the governing section

24. By virtue of the High Court notification dated 16.9.2019 read with Section 15(2) of GCCA, the District Court has jurisdiction to hear appeals (where the value of the subject matter of the original proceeding is less than Rs. 50 lac) and the High Court has jurisdiction to hear appeals (where it is Rs. 50 lac or more).

25. The crucial words in the provision are "value of the subject matter of the original suit or proceedings". For the reasons given above, the plaint and the counter claim are not separate suits but part of the same suit. Being a single unified suit, such a suit would in its entirety fall under the word "suit" appearing in Section 15. The "value of the subject matter" of such a suit would be the aggregate of the subject matter of its two elements/components: the plaint and the counter claim. In the present case, the aggregate of the plaint (even if taken as Rs. 1000) and the counter claim (Rs. 1.2 crore) comes to at least Rs. 1,20,01,000. Therefore, the "value of the subject

matter” of the present suit (i.e. the aggregate of the plaint and the counterclaim) is far in excess of Rs. 50 lac. Therefore, the High Court alone will have jurisdiction. The District Court will not have jurisdiction to hear the appeals.

26. The submission that to find out the value of the subject matter of a suit (which has a plaint and a counterclaim), one must make an aggregate of the subject matter of the plaint and of the counterclaim flows the principle that the plaint and the counterclaim are a single/unified proceeding and not separate/independent suits.

27. In the case of *Pampara Philip v. Koorithottiyal Kinhimohammed* reported in *2006 SCC Online Ker 251*, the Hon'ble Kerala High Court had made observations in Paragraphs-4, 5, and 6. The relevant are as under-

"The Full Bench of the Kerala High Court considered the implication of Order VIII, Rule 6-A to 6G and in paragraph 17 refers to the fact that the counter-claim should be treated as a plaint and governed by the rules applicable to plaints. In paragraph 18 this Court observed that "having regard to the aforesaid provisions,

it is possible to hold that the 'subject-matter' of the suit would be the aggregate of the amounts claimed on the plaint and in the written statement by way of counter-claim". So the subject-matter of an appeal to be preferred under Section 52 of the Court Fees Act, would be the aggregate of the amounts claimed on the plaint and written statement. It is this 'subject-matter' that will govern the jurisdiction".

28. In the case of ***A.Z. Mohammed Farooq vs The State Government*** reported in ***1984 SCC Online Ker 15*** (Full Bench judgment), the Hon'ble Court observed in Para- 18 as under-

"18. Having regard to the aforesaid provisions, it is possible to hold that the 'subject-matter' of the suit would be the aggregate of the amounts claimed on the plaint and in the written statement by way of counter-claim".

29. In the case of ***State of Maharashtra Vs. Krishnaawatar Daulatsingh Madan*** reported in ***2012 SCC Online Bom. 324***, the Hon'ble Division Bench observed in Paras-109 and 110.

30. At this stage, Mr. Thakore has tried to distinguish the ***Allahabad High Court judgment relied on by respondent No.1***

reported in *2016 SCC Online All 2762* to contend that the Allahabad High Court has disagreed with the aggregating principle laid down in *2006 SCC Online Ker 251 (Pampara Philip v. Koorithottiyal Kinhimohommed)*. This judgment actually supports the Appellant's submissions and does not at all disagree with the Kerala judgment. It is necessary to note that in the Allahabad case, the plaintiff had lost in the suit but had won in the counter claim. Consequently, what was challenged before the court in appeal was the dismissal of the plaint. The plaintiff had no reason to challenge the dismissal of the counter claim. Paragraphs 24 to 26 make it clear that Allahabad High Court has not disagreed with the Kerala High Court.

31. Mr. Thakore has further tried to distinguish the decision of the *Bombay High Court Single judge judgment relied on by Respondent No.1* in the case of *Teofilo Barreto v. Sadashiva Nasnodkar (2007 (6) MHLJ 127)*, which was delivered without taking into consideration the *1987 SCC Online Bom 333*, which is binding Single judge judgment). Moreover, even in this case, the plaintiff had lost the suit but had won in the counter claim. Therefore, like in Allahabad, what was

challenged in appeal was only the dismissal of the plaint.

32. So far as the Calcutta High Court judgment is concerned, it does not contain any discussion on the provisions in the Code relating to counter claim though it was argued before the court.

33. Mr. Thakore further tried to counter the submission made by advocate for respondent No.1 as regards submitted that a counterclaim cannot fall in the word "suit" appearing in Section 15(2) and that only plaintiff's 'plaint' can fall in the word "suit". The Appellant submitted that the word used in Section 15(2) is 'suit' and not 'plaint'. There is a difference between the words 'suit' and 'plaint'. A 'plaint' is a pleading in a suit (O. 6. R. 1). The term 'suit' is something far more comprehensive and includes everything from the beginning till the decree and even beyond. Reliance is placed on **AIR 1962 SC 214** (para 6) in support of the contention that the word "suit" is a comprehensive term:

"6. The word "suit" has not been defined in the Code; but there can be little doubt that in the context the plain and grammatical meaning at the word would include the

whole of the suit and not a part of the suit, so that giving the word "suit" its ordinary meaning it would be difficult to accept the argument that a part of the suit or an issue in a suit is intended to be covered by the said word in the material clause. ..."

34. Therefore, the words "value of the subject matter of the original *suit*" cannot be read to mean "value of the subject matter of the *plaint*".

35. The word 'original suits' appears in Sections 12(2), 13 and 14 of GCCA. It is by virtue of Sections 12(2), 13 and 14 that the lower courts get original jurisdiction to hear suits which are legal actions of an original nature (original because they are original actions decided by courts having original jurisdiction as against appellate jurisdiction). It can be nobody's case that the civil courts have no jurisdiction to decide counter claims under Sections 12(2), 13 and 14 of GCCA.

36. As submitted above, a suit (which contains a plaint and a counterclaim) must in its entirety fall under the words 'original suit'. However, if for any reason it is held not to fall

the said words, then in that case, the suit would in its entirety fall under the words 'original proceedings'. The word 'proceedings' is not defined, however, Mr. Thakore placed reliance upon Para-11 in *AIR 1982 SC 818*.

37. The Appellant reiterates that his primary submission is that a suit (which contains a plaint and a counterclaim) must in its entirety fall under the words 'suit' in Section 15(2). Without prejudice to this submission, the Appellant submits that if for any reason it is held not to fall within the word 'suit', then it must be held in its entirety to fall within the words 'proceedings'.

38. A suit (which contains a plaint and a counterclaim) **must in its entirety** fall within one of the two terms appearing in Section 15(2)(b) ('suit' or 'proceeding') **and must not be subdivided between the two.**

39. It is humbly submitted that Section 15 of GCCA cannot be interpreted to mean that the plaint would fall under the word 'suit' and the counter claim would fall under the word 'proceedings'. The following are the reasons why the suit in its

entirety must fall under one of the terms and not be separated between the two:

a) It will result in strange consequences. For illustration, if the plaint is of Rs 50 crore and the counterclaim is of Rs. 5000, then under Section 15(2)(b), the lesser of the two will be the counterclaim of Rs. 5000. The resultant effect will be either of these two strange consequences:

i) One appeal will come to the High Court and the other will go to the District Court. This will result in proceedings before different courts, conflicting decisions and will bring confusion in the system.

OR

ii) The lesser of the two being the counterclaim of Rs. 5000, even the appeal from the plaint of Rs. 50 crore will go to the District Court.

b) Treating the plaint and counterclaim as separate proceedings runs contrary to the legal position that the counter claim is not an independent suit (except where O. 8 R. 6C is invoked) and the position that it is part of the same suit and is decided by a single judgment and decree.

c) The resultant effect of placing the plaint under word 'suit' and the counterclaim under word 'proceedings' will be to divide a single decree into decrees.

d) If only the plaint is placed under the word 'suit', it will amount to rewriting Section 15(2)(b) as "subject matter of the original plaint or proceedings" instead of "subject matter of the original suit or proceedings". As stated above, the term 'suit' is a comprehensive term whereas 'plaint' is a pleading within a suit. They have different meanings.

40. It is, therefore, submitted that the suit in its entirety must be held to fall under the word 'suit' and if not so, then in its entirety under the word 'proceeding'. The plaint and the counter claim should not be separated or divided between the two different terms appearing in Section 15(2).

C) Submissions on Order 20, R. 19

i) Order 20 R. 19 must be interpreted keeping in mind the scheme of the Code:

A provision must be interpreted keeping in mind the scheme of the statute in which it appears and not de hors the scheme.

ii) The interpretation of O. 20, R. 19 of the Code

The respondents' contention appears to be that O. 20 R. 19 means that the decree passed in a suit in which a counter claim is claimed "shall have effect as if no set off or counter claim had been claimed". There are no such words in R. 19. There is nothing in O. 20 R. 19 to alter/change the effect of the decree. Before examining O. 20 R. 19, it is necessary to examine S. 216 (2nd Para) of the 1882 Code. Both S. 216 (2nd Para) of the 1882 Code and O. 20 R. 19(2) of the 1908 Code are reproduced below side by side:

<p><i>2nd para of Section 216 of the 1882 Code (old provision)</i></p>	<p><i>Order 20, Rule 19(2) of the 1908 Code (new provision)</i></p>
<p>"The decree of the Court, with respect to any sum awarded to the defendant, shall have the same effect, and be subject to the same rules in respect of appeal or otherwise, as if such sum had been claimed by the defendant in a separate suit against the plaintiff."</p>	<p>"Any decree passed in a suit in which a set-off or counter-claim is claimed shall be subject to the same provisions in respect of appeal to which it would have been subject if no set-off or counter-claim had been claimed."</p>

Heading of provision: Effect of decree as to sum awarded to defendant	Heading of provision: Appeal from decree relating to set off or counter claim
-----------------------------------------------------------------------	-------------------------------------------------------------------------------

41. Section-216 (2nd Para) of the 1882 Code has two distinct components and governs two different issues:

1. Effect of decree: It provides that the decree "shall have the same effect" as if sum had been claimed by the defendant in a separate suit against the plaintiff.

2. Applicability of provisions: Provides as to which provisions of law will apply.

42. However, while O. 20 R. 19 provides that the decree "*shall be subject to the same provisions in respect of appeal to which it would have been subject if no set off or counter claim had been claimed*", it ***maintains total silence on what effect the decree will have***. The word 'effect' was appearing in the heading of S. 216 but is not there in the heading of R. 19, therefore, does not at all legislate on what effect the decree shall have. There is nothing in it to show that it modifies/alters the 'effect' of the decree.

43. On a conjoint reading of O. 8 R. 6A, 6C and O. 20 R. 19(1), it is evident that in a suit with a counter claim, there is a single judgment and single decree dealing with both the plaint and the counter claim. Such a decree is a single but comprehensive/unified decree on both points. O. 20 R. 19 does not alter the effect of the decree because it does not say that “Any decree passed in a suit in which a set-off or counter-claim is claimed **shall have effect as if no set-off or counter-claim had been claimed.**”.

44. Therefore, it is wrong to contend that by virtue of O. 20 R. 19, the decree is to have effect as if it is a decree passed in a suit without a counter claim. The decree continues to be a comprehensive / unified decree on both the plaint and the counter claim. R. 19 does not alter this status and has no bearing on the issue.

iii) There is nothing “expressly provided” in O. 20 R. 19 that operates to give any court jurisdiction which exceeds the pecuniary limits of its ordinary jurisdiction.

As already submitted, O. 20 R. 19 does not govern matters

relating to pecuniary jurisdiction and does not alter the effect of the decree.

45. Mr. Thakore further draw attention of this Court to Section-6 of the Code, except where “expressly provided”, no provision in the Code can operate to give any court jurisdiction over suits, the value of the which exceeds its pecuniary limits.

46. The word ‘expressly’ has been explained to mean something that is provided in clear, specific and unambiguous terms, something expressly provided, not something that requires a process of construction or reasoning. He referred to and relied upon the following decisions:-

1) 2004 (1) SCC 215; Para-18

2) AIR 1956 Pepsu 40; Para - 8

3) AIR 1966 All 161: Para-9

47. Without prejudice to the submission that O. 20 R. 19 neither changes the effect of the decree nor governs matters relating to pecuniary jurisdiction even by implication, the appellant submits that there is certainly nothing ‘expressly

provided' in R. 19 to touch any matter relating to pecuniary jurisdiction. The respondents contended that S. 6 does not apply to appeals. It is a settled principle that an appeal is only a continuation of the hearing of the suit. Reliance is placed on ***Para 7 of (2000) 3 SCC 607***: "*In theory the appeal is only a continuation of the hearing of the suit. Accordingly, the word 'suit' in the Order has to be understood to include an appeal....*" Though the observations are made in the context of another statute, the principle is quite well settled. Even otherwise, on a true interpretation, neither the Code nor R. 19 purports to govern issues relating to pecuniary jurisdiction.

iv) The appellant's interpretation of O. 20 R. 19 will not make O. 20 R. 19 otiose.

48. By virtue of O. 20 R. 19, all the provisions of the Code in respect of appeals viz. Sections 96 on-wards and Orders 41 to 43 are applicable to suits which contain counter claims. By the appellant's interpretation, O. 20 R. 19 will not become otiose/ redundant as these provisions do apply and will continue to apply.

v) The respondents' interpretation of O. 20 R. 19 will result in absurd consequences that could have never been intended.

49. According to the respondents, O. 20 R. 19 has to be read to mean that a decree passed in a suit in which a counter claim is claimed must have effect as if no set off or counter claim had been claimed. As explained above, this contention is not borne out from the language of the provision. Moreover, if accepted, it will result in the absurd consequences.

50. The policy of the law in giving appeals arising from high value suits to the High Court will stand frustrated. Taking the above illustration, instead of the High Court, the District Court will end up deciding high value proceedings.

51. The Appellant submits that the law should never be interpreted in a manner that results in absurd consequences and create complications.

vi) O. 20 R. 19 must be interpreted by resorting to internal aids of construction, to the Mischief rule and without taking recourse to the Statement of Objects and Reasons of the 1908 Bill.

52. It is a settled principle of interpretation that while trying to find out the meaning of a provision, recourse must first be had to the internal aids of construction namely the provisions of the Act, the preamble of the Act and the name of the Act and to Heydon's Rule (the Mischief Rule). What is passed by the Parliament is the Act and not other things (like Statement of Objects and Reasons, Debates, etc.). The Parliament expresses its legislative intention through the Act and the Act alone. Therefore, to interpret a provision, the court must first take recourse to internal aids of construction. It is only and only if the internal aids of construction fail in giving an answer that the question may arise of looking at external aids of construction, if at all it is permissible to do so.

53. At this stage, Mr. Thakore also relied upon the decision cited by the respondents in *AIR 1986 SC 499; Para-7*.

54. The purpose and true interpretation of O. 20 R. 19 can be arrived at by applying the Mischief rule i.e. by examining the evil/mischief that the Parliament sought to remedy by enacting O. 20 R. 19. On the Mischief rule, the appellant relies

on 2004 (1) SCC 702 (Para 22 and 23). Therefore, in the present case, no need at all arises to take recourse to external aids of construction like the Statement of Objects and Reasons of the 1908 Bill.

55. Even otherwise, whether the Statement of Objects and Reasons can be referred to as an aid of construction is highly questionable. The Statement of Objects and Reasons is a document signed by the mover of the Bill. At best, it may reveal the reasons that induced that particular member of the Bill (the mover) to introduce the bill in the house. The objective that he had in mind may not correspond with the objective that the majority of the members of the Parliament had in mind when they passed the law. Therefore, it is indeed very dangerous to rely upon the Statement of Objects for determining the meaning of a provision lest it may happen that the will of one member may end up being treated as the will of the entire Parliament.

56. Mr. Thakore further submitted that infact the judgment cited by the respondent in *AIR 1990 SC 2114* (Parity) fortifies his view.

57. Also, in ***AIR 1952 SC 369***, a Five Judges Bench of the Hon'ble Supreme Court observed:

“32. As regards the propriety of the reference to the Statement of objects and reasons, it must be remembered that it seeks only to explain what reasons induced the mover to introduce the Bill in the House and what objects he sought to achieve. But those objects and reasons may or may not correspond to the, objective which the majority of members had in view when they passed it into law. The Bill may have undergone radical changes during its passage through the House or Houses, and there is no guarantee that the reasons which led to its introduction and the objects thereby sought to be achieved have remained the same throughout till the Bill emerges from the House as an Act of the Legislature, for they do not form part of the Bill and are not voted upon by the members. We, therefore, consider that the Statement of objects and reasons appended to the Bill should be ruled out as an aid to the construction of a statute.”

58. ***The mischief sought to be remedied by O.20, R.19:*** Under S.216 of the 1882 Code, it was provided that “the decree of

the Court, with respect to any sum awarded to the defendant, shall have the same effect... as if such sum had been claimed by the defendant in a separate suit against the plaintiff.” This was resulting in appeals arising from suits (which contained set offs) going to different courts. It is this evil/mischief that the Parliament had in mind while enacting O. 20 R. 19. The intention of the Parliament in enacting O. 20 R. 19 was only that the appeal must go to the same forum. In fact, the Statement of Objects and Reasons of 1907 Bill reveals in para 4(A) that its object is to cut down on multiplicity of suits and to treat the suit as a comprehensive proceeding.

59. It is necessary to bear in mind that when O. 20 R. 19 was enacted, it was for set offs. A set off is an adjustment / deduction sought by the defendant against the claim made by the plaintiff. Necessarily, a set off amount cannot be higher than the plaint amount. The plaint value necessarily has to be higher. The Statement of Objects (Page 195) does not reveal any intention to legislate upon pecuniary jurisdiction but only reveals at best the sole possibility existing at that time. The Statement of Objects of the 1907 Bill if construed in its proper perspective does not militate against the interpretation placed

by the appellant.

vii) Appellant's response to the respondent's contention that O. 20 R. 19 will prevail over Section 15 of the GCCA (that S. 15 of the GCCA is repugnant to O. 20 R. 19 of the Code)

60. The Code operates to govern matters relating to procedures in suits, appeals, etc. and not matters relating to pecuniary jurisdiction. Matters relating to pecuniary jurisdiction are determined and regulated by State legislatures and in Gujarat, by the Gujarat Civil Courts Act, 2005. S. 15 of the GCCA governs matters relating to the pecuniary jurisdiction of the appellate courts. Therefore, the Code of Civil Procedure, 1908 and the Gujarat Civil Courts Act, 2005 operate in different fields. The subject matter and dominant intention of the two legislation are different. There is no conflict between O. 20 R. 19 of the Act and S. 15 of the GCCA because they operate in different fields. Therefore, the question of repugancy does not arise. Reliance is placed on ***(2020) 9 SCC 548***, (Head notes A & B, Paras 13, 24 and 25).

viii) The contention that O. 20 R. 19 is a special provision that

prevails over S. 15, a general provision is misconceived.

D) The respondents' contention that the Appellant paid court fee later has no relevance.

61. The appellate jurisdiction of the court depends on the “value of the subject matter of the suit or proceeding” and not on when the court fee is paid. The valuation of the suit *inflates the moment at which the counter claim is lodged* (irrespective of whether and when the court fee is paid). Mr. Thakore relied upon Section 149 of the Code, once the court allows a party to pay court fees, “upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.”. Reliance is placed on (2015) 1 SCC 680 (Para 15) and (1970) 1 SCC 769 (Para 22).

E) The respondents' contention that he loses a stage of appeal and is, therefore, put to prejudice is incorrect and has no relevance.

F) The respondent's contention that the appellant has filed two appeals has no relevance.

The Plaintiff's own valuation:-

62. All of the above submissions are on the basis/assumption that the plaint has a valuation of Rs.1,000/-. In light of the above submissions, even if the plaint is treated to be valued at Rs.1,000/-, the value of the subject matter of the suit is above Rs.50 lac. Therefore, this Hon'ble Court has the jurisdiction to entertain the appeals.

63. However, the fact is that the value of the subject matter of the plaint itself far exceeds Rs. 50 lac for the reasons given in the Brief Facts. Mr. Thakore placed reliance in ***Para-7 of (1988) 2 SCC 575***, to contend that the Court owes duty to reject such a valuation.

64. He also relied upon ***1987 (35) Bihar Law Journal 451 (Md. Alam Vs. Gopal Singh)***, wherein the Full Bench of Bihar High Court has observed "*Held, where the plaintiff manifestly and deliberately undervalues and underestimates the case, the Court is not a silent and impotent spectator thereof and has clear jurisdiction to interfere.*"

65. In the case of *Chillakuru Reddy v. KanupuruGhenchuram Reddy (Full Bench of Andhra Pradesh)*, the court held that the court has the necessary powers in such situations. This judgment was cited with approval by the Supreme Court in *(1980) 1 SCC 616 (Para 7)*. In the Andhra judgment, the court has relied on a Para-38 of Nagpur judgment which is on the tendency of a litigant to deliberately undervalue his plaint to avoid the appellate forum.

66. Mr. Thakore submitted that in the present case, the plaintiff has put a ridiculously low figure which is tantamount to not exercising his right. Therefore, by virtue of the above judgment, the figure of Rs. 1000 is as good as not existing on the plaint. The present plaint has to be treated to be a plaint which bears no figure of valuation or atleast a figure of valuation which is, on the face of it, absurd. He therefore urged that this Court has the jurisdiction to decide whether this appeal does or does not fall within its pecuniary appellate jurisdiction. He further submitted that the valuation of the plaint is clearly above Rs. 50 lacs and therefore, even on the basis of the plaint, this Hon'ble Court has the jurisdiction to entertain the appeals.

67. While addressing on the issue of undervaluation being not raised before the Trial Court, he submitted that since the first day, the suit has been pending in the Senior Civil Judge who certainly has the jurisdiction to hear the suit, he is not for a moment contending that the Senior Civil Judge does not have jurisdiction over the suit. He therefore submitted that the reliance placed by respondents on S. 11 of the Suits Valuation Act and S. 21 of the Code has no relevance (as both provisions relate to objections raised to the jurisdiction of the court).

68. In view of above submissions, he urged the Court to reject the preliminary objections and to hold that the appeals are maintainable before this Hon'ble Court.

***WRITTEN SUBMISSION ON BEHALF OF RESPONDENT
NO:2:-***

69. Mr. Acharya, the learned advocate submitted that on the date of the impugned order the suit was treated as a regular civil suit ie. registered as RCS No: 161/2022 and after presentation of the counter claim, the said suit was renumbered as a Special civil suit. He further invited attention

of this Court to Order dated 18.05.2022 delivered by Civil Court.

70. He further submitted that it is apparent that the impugned order was passed in a regular civil suit and not in a special civil suit and as on the date of the impugned order, the counter claim was not yet registered.

71. The learned counsel relied upon decision of this Court in the case of *Khursheed Cyrus Medhora Vs. Cyrus Ratanshaw Medhora & Anr.* reported in *2015 Lawsuit (Guj) 1302* and submitted that the date relevant to consider for deciding the jurisdiction of this Court would be the date of the impugned order.

72. He has further submitted that Section 15 of the Gujarat Civil Courts Act defines the Jurisdiction of the Court of Appeal. The provisions of the said section is subject to the provisions of Section 12(2) of the said Act.

73. He invited attention of this Court to Section-12(2) and submitted that the jurisdiction of the District Judge is subject to the provisions of the Code of Civil Procedure and therefore

the governing provision for the jurisdiction of the District judge to act as an appellate forum would be as per O.20 R.19 of CPC. He therefore submitted that the District Court is bestowed with the Jurisdiction to try the present Appeal.

74. He submitted that the word "suit" is not defined in C.P.C. The word "suit" means any proceeding arising out of presentation of a plaint and therefore an original suit means a proceeding arising out of the presentation of the original plaint. Mr. Acharya further concluded that the original plaint in the present case was the plaint submitted by the Respondent No.1 and the same was accepted and admitted as a Regular Civil Suit No.161 of 2022. The Respondent thereafter filed a counterclaim and the same was ordered to be registered as a Special Civil Suit No.114 of 2022 on 16/05/2022. He therefore submitted that the original suit would relate to valuation of the plaint of R.C.S No.161 of 2022.

75. He further submitted that the C.P.C does not define proceedings but sec.94 defines Supplemental proceedings. Original proceedings would mean a proceeding arising out of

presentation of applications other than a plaint.

76. He referred to and relied upon the decision of the Hon'ble Division Bench of Punjab and Haryana High Court has in ***Prem Nath L Ganesh Dass V/S Prem Nath L Ram Nath 1962 Lawsuit(P&H)93*** in Para-3.

77. He also placed reliance upon the decision of the Calcutta High Court in case of ***Ratindra Nath Bose V/S Jyoti Bikash Ghosh 1975 Lawsuit(Cal)105 in para 12.***

78. He placed reliance upon Chapter XVII Rule 268 of Civil Manual which defines Miscellaneous Judicial proceedings as those proceedings not forming part of the Proceedings of a suit.

79. Mr. Acharya therefore submitted that by no stretch of imagination a Counter-Claim be treated as falling in category of "proceedings", but has to be considered part of the "original suit". It is merely clothed with the characteristics of a plaint for the right to the Plaintiff to file a W.S. and for the purpose of obtaining a decree and to avoid multiplicity of suits.

80. He therefore submitted that the provisions of Section-15(2) of the Gujarat Civil Courts Act would apply to a counterclaim not independently but considering the same as a part of the original suit i.e. R.C.S No.161 of 2022.

81. He further relied upon the decision of the Division Bench of Hon'ble Allahbad High court has in ***Raghunath International Ltd. V/S U.O.I and Another 2012 Lawsuit(All)808*** .

82. By applying the aforesaid principle the word "or" occurring in " Original Suit or Proceedings" in Section 15(2) (a) read with the main Section 15(2) would mean "And" meaning that the decrees or orders arising from either Original suit and Original Proceedings and since the counter claim is not an original proceedings but arising out of Original Suit and also being a part of the Original Suit, any decree or order passed in the counterclaim is essentially to be treated as a decree or order arising out of an original suit and accordingly shall be appealable in a forum which has jurisdiction to hear appeal from orders or decree arising out

of the original suit i.e. in the present case R.C.S No.161 of 2022.

83. He further submitted that alternatively in the event the Counter Claim is considered as a part of "Proceedings", then the provisions of Section 15(2)(a) would read as "*either of the suit value or the value of counterclaim is below Rs.50 lakhs*", then The Appellate Forum for the Decrees and orders passed by the Civil Court shall be the Court of District Judge.

Mr. Acharya lastly submitted that all the arguments canvassed by the learned advocate for the Respondent No.1 is adapted by the present Respondent No.2. He further urged not to entertain the present Appeal from Order.

ISSUES WHICH ARISES FOR CONSIDERATION:-

84. In the above background, the preliminary question has been raised by the learned counsel appearing for the respective respondents as regards maintainability of present appeals from order directly before the High Court, against the common order allowing Plaintiff's interim injunction (Exh.5) and rejecting Defendant no.2 cross interim injunction

application (Exh.19), the Court is undoubtedly required to look into the question of jurisdiction as it is a moot question of law which goes to the root of the case and is therefore required to be decided at the outset.

85. As submitted by the learned counsel appearing for the Appellant, Section 9A of CPC provides that if, at the hearing of any application for granting or setting aside an order granting any interim relief, an objection to the jurisdiction of the Court to entertain such a suit is taken by any of the parties to the suit, the Court shall proceed to determine at the hearing of such application the issue as to the jurisdiction as a preliminary issue before granting or setting aside the order granting the interim relief. It provides that any application shall be heard and disposed of by the Court expeditiously as possible and shall not in any case adjourn the hearing of the suit. The provisions of law contained in Subsection (2) of Section 9A further empowers the Court to grant any such interim relief as it may consider necessary, pending determination by it of the preliminary issue as to the jurisdiction. However, since the question raised is as regards the jurisdiction of this Court, the Court in its discretion at this

stage has decided the same at outset, before granting interim as the same would require this Court to enter into the merits of the case. In view of the controversy raised, treating as preliminary issue, the following questions arises for determination by this Court :

1. Whether the District Court (Appellate Court) lacks jurisdiction to entertain, hear and decide appeal from order when the valuation of counterclaim in the suit exceeds the pecuniary jurisdiction of the District Court(Appellate Court).?

2. Which provision of law ie. the Gujarat Civil Courts Act, 2005 or the Code of Civil Procedure, 1908 determines and regulates the forum of appeal, based on pecuniary jurisdiction, against the challenge to the decree and order passed in the original suit and proceedings?

3. Whether there is any conflict between the State legislation ie. the Gujarat Civil Courts Act, 2005

and the Code of Civil Procedure Code, 1908, in the matters relating to determination of forum of appeal, for pecuniary purpose ?

4. Whether order XX rule 19 of the Code of Civil Procedure carves out an exception to section 15 of the Gujarat Civil Courts Act, 2005 to determine the forum of appeal in case of suit proceedings wherein counterclaim is filed ?

5. Whether suit and counterclaim exist independently or are treated as unified proceedings ?

ANALYSIS:

86. Before examining aforesaid issues, it would be necessary to understand the relevant provisions of the Code of Civil Procedure, 1908 which are more concerned with the jurisdiction of the Civil Court. (in short, “the Code”.)

86.1 The object of the Code of Civil Procedure is an Act to consolidate and amend the laws relating to the procedure of the Courts of civil judicature.

86.2 **Section 6** : defines Pecuniary Jurisdiction.-Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any Court jurisdiction over suits the amount or value of the subject-matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction.

86.3 **Section 9: Courts to try all civil suits unless barred:**

The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation I.—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Explanation II: For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.

86.4 ***Section 15. Court in which suits to be instituted:*** Every suit shall be instituted in the Court of the lowest grade competent to try it.

16. Suits to be instituted where subject matter situate.-

Subject to the pecuniary or other limitations prescribed by any law, suits- (c) for the recovery of immovable property with or without rent or profit, (d) for the partition of immovable property, (e) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property, (f) for the determination of any other right to or interest in immovable property, (g) for compensation for wrong to immovable property, (h) for the recovery of movable property actually under distraint or attachment, shall be instituted in the Court within the local limits of whose jurisdiction the property is situate: Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the

local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain. Explanation.—In this section —property means property situated in India.

86.5 *Section 17. Suits for immovable property situate within jurisdiction of different Courts:* Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different Court, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate: Provided that, in respect of the value of the subject matter of the suit, the entire claim is cognizable by such Court.

86.6 *Section 18. Place of institution of suit where local limits of jurisdiction of courts are uncertain.-* (1) Where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more courts any immovable property is situate, any one of those courts, may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and there upon proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall

have the same effect as if the property were situate within the local limits of its jurisdiction: Provided that the suit is one with respect to which the Court is competent as regards the nature and value of the suit to exercise jurisdiction. (2) Where a statement has not been recorded under sub-section (1), and an objection is taken before an Appellate or Revisional Court that a decree or order in a suit relating to such property was made by a Court not having jurisdiction where the property is situate, the Appellate or Revisional Court shall not allow the objection unless in its opinion there was, at the time of the institution of the suit, no reasonable ground for uncertainty as to the court having jurisdiction with respect thereto and there has been a consequent failure of justice.

86.7 Section 19. Suits for compensation for wrongs to person or movables:- Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business or personally works for gain, within 164 the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts.

86.8 Section 20. Other suits to be instituted where defendants reside or cause of action arises:- Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction— (f) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or (g) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or (h) the cause of action, wholly or in part, arises.

Explanation —A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

86.9 ***Section 21. Objections to jurisdiction:-*** (1) No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues 165 are settled at or before such settlement, and unless there has been a consequent failure of justice. (2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice. (3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice.

87. Thus, considering the aforesaid provisions, the jurisdiction of civil courts can be divided on the basis of pecuniary, territorial and subject matter. Section 15 of the civil

procedure code provides that every suit shall be instituted in the court of the lowest grade competent to try it. Section 16 to 20 of C.P.C deals with Territorial jurisdiction of a court. Whereas Section 16 to 18 relates to immovable property and Section 19 deals with suit for compensation for wrongs to persons or movable property. Section 20 of C.P.C is residuary provision and covers all cases not falling under Section 16 to 19.

88. In light of the aforesaid provisions of Civil Procedure Code, let us understand the scheme of the Gujarat Civil Courts Act, 2005. A brief reference is made to the establishment and constitution of Civil Courts under the Gujarat Civil Courts Act, 2005 (in short, "the Act, 2005"). The object of the Act, 2005 as mentioned in the preamble is to consolidate and amend the law relating to Civil Courts in the State of Gujarat.

88.1 Section 3 thereof provides for the classes of Civil Courts and lays down that in addition to the courts established under any other law for the time being in force, there shall be following classes of Civil Courts in the State, namely, (a) court

of a District Judge. (b) court of a Senior Civil Judge and (c) court of a Civil Judge.

88.2 Establishment of courts of District Judges is provided under section 4 of the said Act. Clause (ii) of sub-section (3) of section 3 provides for appointment of Additional District Judges who would exercise all powers of the court of a District Judge.

88.3 Section 5 thereof provides for establishment of courts of Senior Civil Judge and section 6 provides for establishment of courts of Civil Judge. By virtue of sub-section (2) of section 5, the Courts of Civil Judge (Senior Division), existing immediately prior to the appointed date, shall, with effect from the appointed date, be deemed to be Courts of Senior Civil Judge established under the Act. A similar provision is made whereby the Courts of Civil Judge (Junior Division) are deemed to be Courts of Civil Judge established under the Act.

88.4 Section 12 of the said Act provides for jurisdiction of a court of District Judge and lays down that a Court of a District Judge shall be the principal civil court of original jurisdiction

within the local limits of its jurisdiction.

88.5 Section 13 provides for the jurisdiction of the court of a Senior Civil Judge.

88.6 Section 14 of the Gujarat Civil Courts Act which provides for the jurisdiction of a Court of Civil Judge postulates that the jurisdiction of a Court or Civil Judge shall extend to all original suits and proceedings of a civil nature, not otherwise excluded from the jurisdiction of a Court of a Civil Judge by any other law, the value of the subject matter of which does not exceed two lakh rupees or such other sum as the High Court may, from time to time specify. Thus, the pecuniary jurisdiction of the court of Civil Judge is limited to suits the subject matter of which does not exceed two lakh rupees.

88.7 Sub- section (2) of Section 15 provides that appeals from the decrees and orders passed by a Court of a Senior Civil Judge in original suits and proceedings of civil nature shall, when such appeals are allowed by law, lie to - (a) the Court of District Judge of the district when the amount or value of the subject matter of the original suit or proceedings is less than

fifty lakhs of rupees or such other sum as the High Court may, from time to time, specify, and (b) to the High Court in other cases. Thus, sub-section (2) of Section 15 of the Act clearly provides that an appeal against a decree and order passed by a Court of Senior Civil Judge would lie to the Court of the District Judge of the district when the amount or value of the subject matter of the original suit or proceedings is less than fifty lakhs of rupees, and in other cases, to the High Court.

89. The Suit Valuation Act, 1887, lays down the principles for valuation of the subject-matter of a suit for the purpose of jurisdiction. In every suit or proceeding of a civil nature, the subject-matter has to be valued in terms of money for the purpose of jurisdiction. It may be that under the Bombay Court-Fees Act, 1959, where the subject-matter of a suit or proceeding is not susceptible of monetary evaluation, the Legislature may have provided a fixed court-fee, but so far as valuation for the purpose of jurisdiction is concerned, there has to be a valuation of the subject-matter.

89.1 Section 8 of the Suit Valuation Act provides that in the suits other than those referred to in the Court Fees Act, 1870,

Section 7, paragraphs No.V, VI and IX and paragraph X Clause (d), Court fees are payable Ad Valorem under the Court Fees Act, the value as determinable for the computation of the Court fees and the value for the purpose of jurisdiction shall be the same. The words and figures "Section 7 paragraphs No.V, VI, and IX and paragraph No.X Clause (d)" stood substituted under the Gujarat Extension and Amendment Act, 1964 by "clause (d) of paragraph (IV), paragraphs (V), (VI), (VII) and (X) and clause (d) of paragraph (XI) in Section 6 of the Bombay Court Fees Act, 1959".

90. In light of the aforesaid provisions of the Code and the Act, 2005, a question arises as to whether there is any conflict or inconsistency between the two enactments, so far as it regulates the pecuniary jurisdiction of filing appeal in higher forum is concerned. On broad interpretation of the aforesaid provisions of the Code of Civil Procedure and the Gujarat Civil Court Act, 2005 and more particularly Section 6 of the Code, it does not prescribe the mode of the valuation of the subject matter of the suit for the purpose of determining jurisdiction that is within the domain of the Suit Valuation Act. Generally, the value of the suit for the purpose of jurisdiction is

determined by the valuation in the plaint. The expression "*subject matter*" means not the property involved in the suit but the relief claimed and it is its value that determines the jurisdiction. As held by the High Court of Andhra Pradesh , in the case of ***Sidramappa Vs. Sangappa***, reported in ***AIR 1966 AP 66*** :

"Further though both Section 6 C. P. C. and Section 12 of the Madras Civil Courts Act refer to the amount or value of the subject matter, there is no provision any where in either of the enactments which goes to direct the mode in which the amount or value of the subject matter of the suit is to be calculated. This is because there is a special enactment known as the Suits Valuation Act, which must hold the field in the absence of any prohibition in either of the Central Acts. In fact the words "save in so far as is otherwise expressly provided" employed in Section 6 C. P. C. are pregnant with meaning and are a clear pointer that this provision should be read subject also to the provisions of the Suits Valuation Act which prescribes the mode of valuing certain suits for purposes of determining jurisdiction.

Thus section 6 C. P. C. in its ultimate analysis does no more than declare in general terms the avowed object of the Code not to give jurisdiction over suits to any Civil Court wider than that determined by the pecuniary limits, if any, of its ordinary jurisdiction. This, of course, as the opening clause of the section shows, is subject to the express provision if any to the contrary made in any statute. Further Section 6 is not primarily concerned with actual fixation of pecuniary limits of ordinary jurisdiction. That is essentially within the province of the Civil Courts Act. Nor is it concerned with the mode of valuation of the subject-matter of the suit for purposes of determining jurisdiction that being preeminently within the domain of the Suits Valuation Act."

91. Thus, the Court observed that in fact the words "*save in so far as is otherwise expressly provided*" employed in Section 6 C. P. C. are pregnant with meaning and are a clear pointer that this provision should be read subject also to the provisions of the Suit Valuation Act which prescribes the mode of valuing certain suits for purposes of determining jurisdiction and the Gujarat Civil Courts Act, 2005, which prescribes limits of pecuniary jurisdiction of Civil Courts

based on such valuation.

92. A similar question arose before the Full bench of the High Court of Calcutta, in the case of ***R. Ray vs V.G. Dalvi And Ors.*** reported in ***AIR 1963 Cal 380***. The High Court held as under :

"22. In Poyser v. Minors, (1881) 7 QBD 329 (333) Lush, L. J., has held that "procedure" denotes the mode of proceeding by which a legal right is enforced, as distinct from the law which gives or defines the right, and which by means of the proceedings the Court is to administer the machinery, as distinct from its product. The learned Judge points out that the words "practice" and "procedure" as applied to this subject were convertible terms. As pointed out in Behram v. Ardeshir, ILR 27 Bom 563 (569), "procedure", by repetition eventually develops into "practice", Section 20(c) of the C.P.Code lays down the rules as to where a suit shall be instituted. So far as the Courts are concerned, the Civil Procedure Code does not establish them or define their pecuniary jurisdiction. That has been done by other Statutes like the Bengal Agra and Assam Civil Courts Act, 1887 (Act XII of 1887). Section 20 of the C.P.Code lays down the rules as to where a suit shall be instituted. It relates to a form of action known as "personal action", distinct from a "real action" and gives a

choice of forum to be selected by the plaintiff. Such rules are rules of procedure and not of substantive law. This has been pointed out by Sulaiman, C. J., in Bunny Pandy vs. Brahmadeo Pandy where the learned Chief Justice points out that the rule as to the appropriate forum for a particular kind of suit is one of procedure and not substantive right. In Attorney-General v. Sillem, (1864) 10 L.T.N.S. 434 the Lord Chancellor states that the right to bring an action is very distinct from the regulations that apply to the action when brought, and which constitute the practice of the Court in which it is instituted. Whether a particular provision of law creates the right or is merely the "cursus curiae" or regulation of the proceedings, is often a question of verbal nicety depending on the nice shape or meaning of a word. As has been stated above, Holland lays down that the selection of the proper forum to file an action, itself constitutes a matter of procedure or practice. Section 20 gives a choice of alternative forums to the plaintiff in the case of a personal action. Under Section 20(c) , a suit may be brought, where the cause of action wholly or in part arises. It will be observed that this provision of law does not create or regulate the cause of action itself. All it lays down is that, provided the cause of action arises wholly or in part within the local limits then, a suit may be instituted. The plaintiff may wholly ignore this provision of law and choose to institute his suit in a

Court where the defendant resides or carries on business. In short Section 20(c) does not by itself create the right to sue but tells the litigant where to institute a suit, that is to say, lays down the mode of its exercise. This, in my view, relates to procedure and practice and not to substantive law. Sections 15 to 20 of the C.P.Code have been grouped under the heading "place of suing". These rules, which regulate the forum for the institution of suits, have always been considered as laying down rules of proceeding. See Bhamboomal v. Ram Narain, AIR 1928 Lah 297, Thus, the rule laid down in Section 15, that every suit shall be instituted in the Court of the lowest grade competent to try the same, is only a rule of procedure and not of jurisdiction."

93. In the light of the aforesaid legal position, the Code of Civil Procedure creates a right of appeal i.e. in the form section 104 read with Order 43 rule1, section 100 read with Order 41, Section 96 read with Order 41. However, as provided under the code itself i.e. Section-6 and Section-15 of the Code, 2005, the suit proceedings are made subject to various extrinsic but relevant factors i.e. territorial jurisdiction, pecuniary jurisdiction, subject matter which regulates the forum of appeal. The inception of filing of suit

defines the further mode of appeal, as the appeal is continuation of suit. In the opinion of this Court, both the Code and the Act, 2005 operate in different fields and there is no conflict between the provisions of the Code of Civil Procedure and the Gujarat Civil Courts, 2005. On brief glance of the various provisions of the Gujarat Civil Courts Act, 2005, it is procedural law which defines the constitution of court their hierarchy based on limits of pecuniary jurisdiction of the Civil Courts, though the right to institute the civil suit is prescribed under section 6 of the Code but as observed earlier it is itself not self contained or complete provision. Thus, as held by the Hon'ble Constitutional Bench in the case of *Jamshed N. Guzdar vs. State of Maharashtra* reported in *(2005) 2 Scc 591* the actual fixation of pecuniary limits of deciding jurisdiction is the province of Civil Courts Act. In fact, provisions have been made in the Suits Valuation Act as well as in the Gujarat Civil Courts Act in order to leave no scope for any ambiguity regarding the forum where the suit is to be filed and consequently the forum before which the decree can be challenged. The Court therefore holds that section 15 of the Gujarat Civil Courts Act regulates the *forum*

of appeal against the decree and the order based on the amount or value of the subject matter of the original suit and proceedings.

94. Mr. Majmudar learned counsel for the respondent no.1 very fervently argued that appeals arising from decrees relating to set off or counterclaim should lie to the court to which appeals in respect of the original claim would lie. He has also emphasized by reading order X rule 19 (20 of the CPC. Before dealing with the aforesaid issue , it would be germane to quote relevant observations of the Hon'ble Constitutional Bench in the case of ***Jamshed N. Guzdar vs. State of Maharashtra*** reported in ***(2005)2 Scc 591***, where the constitutional validity of the Bombay City Civil Court and Bombay Court of small causes (Enhancement of Pecuniary jurisdiction and Amendment) Act, 1986 (Maharashtra Act no. V of 1987) (for short 'the 1987 Act') was challenged. It was contended that the said Act was beyond the competence of the State legislature. Similar contentions were raised as regards loss of right of appeal on the ground that a right of appeal is a substantive right and one appeal as facts and law is necessary ingredient of the system of justice. Moreover, it was also

argued that abolition of the Letters Patent Appeal denies the litigant on the original side of the High Court as provided under central statutes. The Hon'ble Constitutional Bench giving the widest amplitude meaning to the words "administration of justice " appearing in Entry 11-A in the concurrent list of the Constitution, thus held as observed in relevant paras 37, 38, 42, 72, 73, 74 , which reads as under :

"37. As is clear from the Entries extracted above, Entry 77 in List I deals with the constitution, organization, jurisdiction and powers of the Supreme Court. Entry 78 relates to only constitution and organization of the High Courts and not with the jurisdiction and powers of the High Courts unlike in Entry 77 dealing with the jurisdiction and powers of Supreme Court in addition to constitution and organization. Jurisdiction and powers of High Court are dealt with as a separate topic under Entry 11A of List III, which was in Entry 3 of List II prior to 42nd Constitution Amendment Act. The general jurisdiction of the High Courts falls in 'administration of justice', i.e., under Entry 11A in the Concurrent List. Entry 95 of the Union List, Entry 65 of the State List and Entry 46 of the Concurrent List refer to special

jurisdictions of the courts relating to the matters contained in the respective lists. Entry 95 deals with the power of Parliament to confer jurisdiction and powers of all the courts except the Supreme Court with respect to any of the matters in List I. Similarly, Entry 65 of the List II deals with the power of State Legislature to confer jurisdiction and powers on all the courts except the Supreme Court with respect to the matters contained in the said list. Entry 46 in the Concurrent List refers to the power and jurisdiction of all the courts except the Supreme Court with respect to all the matters contained in the Concurrent List. It may be noted here that one of the items in the Concurrent List is Civil Procedure Code under Entry 13.

38. In our view, the State Legislature has power to confer general jurisdiction on all the courts except the Supreme Court under Entry 11A in the Concurrent List falling within the meaning of 'administration of justice'. Hence, the 1987 Act is within the competence of the State Legislature in the light of the discussion and reasons to follow.

42. The general jurisdiction of the High Courts is dealt

with in Entry 11A under caption 'administration of justice', which has a wide meaning and includes administration of civil as well as criminal justice. The expression 'administration of justice' has been used without any qualification or limitation wide enough to include the 'powers' and 'jurisdiction' of all the courts except the Supreme Court. The semicolon (;) after the words 'administration of justice' in Entry 11A has significance and meaning. The other words in the same Entry after 'administration of justice' only speak in relation to 'constitution' and 'organisation' of all the courts except the Supreme Court and High Courts. It follows that under Entry 11A State Legislature has no power to constitute and organize Supreme Court and High Courts. It is an accepted principle of construction of a constitution that everything necessary for the exercise of powers is included in the grant of power. The State Legislature being an appropriate body to legislate in respect of 'administration of justice' and to invest all courts within the State including the High Court with general jurisdiction and powers in all matters, civil and criminal, it must follow that it can invest the High Court with such general jurisdiction and powers including the territorial and pecuniary

jurisdiction and also to take away such jurisdiction and powers from the High Court except those, which are specifically conferred under the Constitution on the High Courts. It is not possible to say that investing the city civil court with unlimited jurisdiction taking away the same from the High Court amounts to dealing with 'constitution' and 'organization' of the High Court. Under Entry 11A of List III the State Legislature is empowered to constitute and organize city civil court and while constituting such court the State Legislature is also empowered to confer jurisdiction and powers upon such courts inasmuch as 'administration of justice' of all the courts including the High Court is covered by Entry 11A of List III, so long as Parliament does not enact law in that regard under Entry 11-A. Entry 46 of the Concurrent List speaks of the special jurisdiction in respect of the matters in List III. Entry 13 in List III is '...Code of Civil Procedure at the commencement of the Constitution...'. From Entry 13 it follows that in respect of the matters included in the Code of Civil Procedure and generally in the matter of civil procedure the Parliament or the State Legislature, as provided by Article 246(2) of the Constitution, acquire the concurrent legislative competence. The 1987 Act deals

with pecuniary jurisdiction of the courts as envisaged in the Code of Civil Procedure and as such the State Legislature was competent to legislate under Entry 13 of List III for enacting 1987 Act.

72. In the light of the various decisions referred to above, the position is clear that the expression "Administration of Justice" has wide amplitude covering conferment of general jurisdiction on all courts including High Court except the Supreme Court under Entry 11-A of List III. It may be also noticed that some of the decisions rendered dealing with Entry 3 of List II prior to 3.1.1977 touching "Administration of Justice" support the view that conferment of general jurisdiction is covered under the topic "Administration of Justice". After 3.1.1977 a part of Entry 3 namely "Administration of Justice" is shifted to List III under Entry 11-A. This only shows that topic "Administration of Justice" can now be legislated both by the Union as well as the State Legislatures. As long as there is no Union Legislation touching the same topic, and there is no inconsistency between the Central legislation and State legislation on this topic, it cannot be said that State Legislature had no competence to pass 1987 Act and 1986 Act.

73. It may be added that the State Legislature was also competent to enact the 1987 Act under Entry 13 read with Entry 46 of List III. Entry 13 of List III relates to Civil Procedure Code. The jurisdiction of civil court, particularly pecuniary jurisdiction of civil courts, was specially covered by the Civil Procedure Code on the date of commencement of the Constitution. Entry 46 of List III relates to jurisdiction and power of all courts except the Supreme Court i.e. including the city civil court and High Court with respect to any matter in List III including Civil Procedure Code in Entry 13. The contention that merely constituting and organizing High Courts without conferring jurisdiction to deal with the matters on them does not serve any purpose, cannot be accepted. The Constitution itself has conferred jurisdiction on High Courts, for instance, under Articles 226 and 227. This apart, under various enactments both of Central and State, certain jurisdiction is conferred on High Courts. The High Courts have power and jurisdiction to deal with such matters as are conferred by the Constitution and other statutes. This power of "Administration of Justice" has been included in the Concurrent List after 3.1.1977 possibly to enable both

Centre as well as States to confer jurisdiction on High Courts under various enactments passed by the Centre or the State to meet the needs of the respective States in relation to specific subjects. Thus, viewed from any angle, it is not possible to agree that the 1987 Act and 1986 Act are beyond the competence of the State Legislature.

74. We are, therefore, of the view that there is no merit in the contention that the State Legislature did not have competence to enact the two legislations, the constitutionality of which has been challenged before us.”

Thus, in view of the aforesaid decision, undoubtedly by virtue of Entry 11-A, list III, state legislation is empowered to confer jurisdiction and powers upon all courts within the state including the High court. It is in exercise of this powers that the Gujarat Civil Courts act, 2005 has been enacted to consolidate and amend the law relating to Civil Courts in the State of Gujarat. Such powers conferred upon State is exercised in consultation with the High court, who is otherwise conferred power under Constitution under the

connotation of "Administration of Justice"

95. Now coming back to the main controversy involved in the present matter, whether the determination of forum of appeal in case of decree drawn in suit with counter claim be governed exclusively by Order XX Rule 19 of C.P.C. in absence of any expressive language of reference to word counterclaim in section 15 of the Civil Courts Act. In other words, whether order XX rule 19 of the Code carves out an exception to section 15 of the Act, 2005, in case of determination of appeals from original suit and proceedings where counterclaim is filed.

95.1 Before dealing with the said issue, it would be appropriate to look into the provisions of section 15 of the Gujarat Civil Courts Act, 2005.

***Section 15** (1) Appeals from the decrees and orders passed by a Court of District Judge in original suits and proceedings of civil nature shall, when such appeals are allowed by law, lie to the High Court.*

(2) Appeals from the decrees and orders passed by a Court of Senior Civil Judge in original suits and

proceedings of civil nature shall, when such appeals are allowed by law, lie -

(a) to the Court of the District Judge of the district when the amount or value of the subject matter of the original suit or proceedings is less than fifty lakhs of rupees or such other sum as the High Court may, from time to time, specify

(b) to the High Court in other cases.

(3) Appeals from the decrees and orders passed by a Court of Civil Judge in original suit or proceedings of a civil nature, shall, when such appeals are allowed by law, lie to the Court of District Judge of the district:

Provided that the High Court may, in consultation with the State Government, by notification, direct that such appeals against decrees and orders may lie to the Court of Senior Civil Judge when the amount or value of the subject matter of the suit or proceeding is less than one lakh of rupees and thereupon appeals shall be preferred accordingly.

(4) The provisions of this section will apply to all decrees and orders made after the appointed date irrespective of the fact whether the suits or proceedings in which they are made were instituted before or after the appointed

date.

95.2 One of the most basic rules of interpretation is the Literal rule of Interpretation of statutes where the court interprets the words appearing in the provision as it is. However, there may be certain loopholes which may be found in the law due to which it does not interpret a straight-forward understanding of the language of the statutes. It may lead to ambiguity and absurdity if the courts interpret the natural meaning of the language used in the statute. It would be relevant to first understand the literal meaning if given to the words used in section 15 of the Act, 2005.

- The use of the word “amount” or “value” has its significance. In common use of these words, the term “amount” means to total or evaluate while the term “value” means to estimate the value. General rule is that where the plaintiff definitely fixes a certain sum as the amount of his claim then it must be considered as the value of the original suit and the appeal forum will be governed accordingly. But when approximately fixed and prays for ascertainment of his claim then the

amount as may be determined by the Court is to be regarded as the value of the original suit, for the purpose of deciding the forum of appeal. It is a settled position of law that for the purpose of valuation in the suit, the plaintiff is dominus litus and unless it is found by the trial Court that the plaintiff has unreasonably fixed the lower valuation for payment of less Court fee, the Court will go with the valuation put by the plaintiff.

- The use of the term “subject matter” of the original suit or proceedings, appearing in section 15 of the Civil Courts Act, relates to the valuation based on reliefs sought for and not the value of the property involved. As discussed earlier, the term “subject matter” of the original suit or proceedings, appearing in section 15 of the Civil Courts Act, relates to the valuation based on reliefs sought for in the suit and not the value of the property involved.
- It has been held by the learned Single Judge of Bombay High Court in the case of **Teofilo Barreto vs. Sadashiva G. Nasnodkar and ors.**, reported in 2007(6) MAHLJ 127, that the words "Subject matter" appearing under section

15 of the Court Act, 2005 are held to necessarily mean subject matter of the suit and not subject matter of the appeal. The jurisdiction of the appellate court is found not dependent on the fluctuating valuation of the claim in appeal. The valuation of claim in appeal is held to have relevance only for the purposes of court fee. The valuation for the purposes of determining jurisdiction and for the purpose of court fees are two distinct factors. They need not be identical or common.

- Then comes the most important terms i.e. “original suit” and “proceedings” appearing in section 15 of the Civil Courts Act, 2005. The said terms have great significance. Considering the controversy involved and the arguments canvassed by the learned advocates appearing for the respective parties, the moot question arises for consideration is whether the term “suit” means “plaint only” or also includes “plaint and counterclaim” or the term “proceedings” includes “counterclaim” or “plaint and counterclaim” or “suit” means comprehensive proceedings including right from plaint followed by counterclaim?

- The term “suit” “counterclaim” “proceedings” have neither been defined under the Code of Civil Procedure, 1908 or Gujarat Civil Courts Act, 2005. Ordinarily, “suit” under the CPC is **a civil proceeding instituted by the presentation of a plaint**. Under Section 26(1) of the Code, every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed. Thus, the term suit is a comprehensive term which includes whole proceedings of the trial. At this stage, the question arises as to **whether counterclaim has to be treated part of the suit, for the purpose of deciding pecuniary jurisdiction of the appellate court?**

The term “counterclaim” is dealt under Order VIII Rules 6-A to 6-G of the Code of Civil Procedure, 1908. It is a **claim which is separate and independent from that of the plaint**. It is also cross-claim but does not necessarily arise out of the same cause of action contained in the plaint. Before the amendment act 1976, there was no specific provision for a counterclaim in the code. The Constitution Bench of Supreme Court, however, even prior to amendment has recognised counterclaim as a

statutory right of the defendant as held in the case of **Laxmidas vs. Nanabhai, AIR 1964 SC 11**. Before the Amendment Act of 1976, no counterclaim or set-off could be claimed except in money suits. Subsequently by Law commission's 27th report, the Law Commission recommended avoiding multiplicity of proceedings, right to the defendant to raise a plea of set-off in addition to a counterclaim in the same suit. The main objects of counterclaim are to save the time of the courts, for avoiding the multiplicity of the suit, for excluding the inconvenience to the parties to the litigation, for deciding all disputes between the same parties and to avoid prolong trials, etc.

At this stage, it would be apt to look into the relevant provisions of counter claim provided under the Civil Procedure Code. The same are reproduced as under :

Order VIII Rule 6

6A. Counterclaim by defendant. - (1) *A defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of counter-claim against the*

claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired. whether such counter-claim is in the nature of a claim for damages or not :

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.

(2) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counterclaim.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counterclaim of the defendant within such period as may be fixed by the Court.

(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.

6B. Counter-claim to be stated. - *Where any defendant*

seeks to rely upon any ground as supporting a right of counterclaim, he shall, in his written statement, state specifically that he does so by way of counterclaim.

6C. Exclusion of counterclaim. - *Where a defendant sets up a counterclaim and the plaintiff contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent suit, the plaintiff may, at any time before issues are settled in relation to the counterclaim, apply to the Court for an order that such counter-claim may be excluded, and the Court may, on the hearing of such application make such order as it thinks fit.*

6D. Effect of discontinuance of suit. - *If in any case in which the defendant sets up a counterclaim, the suit of the plaintiff is stayed, discontinued or dismissed, the counter-claim may nevertheless be proceeded with.*

6E. Default of plaintiff to reply to counterclaim. - *If the plaintiff makes default in putting in reply to the counterclaim made by the defendant, the Court may pronounce judgment against the plaintiff in relation to the counterclaim made against him or make such order in relation to the counterclaim as it thinks fit.*

6F. Relief to defendant where counterclaim succeeds. -
Where in any suit a set-off or counterclaim is established as defense against the plaintiff's claim and any balance is found due to the plaintiff or the defendant, as the case may be, the Court may give judgment to the party entitled to such balance.

6G. Rules relating to written statement to apply. -
The rules relating to a written statement by a defendant shall apply to a written statement filed in answer to a counterclaim.]

In light of the relevant provisions of the Gujarat Civil Courts Act and the Code of Civil procedure, the following broad principles can be culled out :

- On plain reading of provisions related to Counterclaim under order VIII rule 6A to 6G of the CPC, makes it abundantly clear that the counterclaim in a suit will have all the characteristics of a cross suit including the vulnerability of suffering. Thus, the broad principles which emerges are that a counter claim is treated like cross suit in the same suit and a final common judgment is passed. Thus, it is a unified

proceedings.

- Now, so far as the word “proceedings” appearing in section 15 of the Act is concerned , it connotes wide meaning and generally in common parlance it is considered as the course of legal action. The meaning of word “proceedings” has to be given in context of the scheme of the statute as a whole. The word “District Judge ” appearing in section 15 has its significance when read in context with the word “proceedings”. It is a rule now firmly established that the intention of the legislature must be found by reading the statute as a whole. In section 24 of the Act, power is invested to Senior Civil Judges with jurisdiction under certain Acts. This includes cases under Divorce Act, 1869, the Succession Act, 1925, the Special Marriage Act, 1954 or the Guardians and Wards Act. In most of the aforesaid legislation the appeal power is vested with the “District Judge”, which has been defined under the special enactment. Another aspect which may be noted is that under section 15 of the Gujarat Civil Courts Act, the forum

of appeal is the Court of the District Judge and not the district court. For example in the Hindu Marriage Act, there is a clear distinction between a "district court" as defined under section 3(b) of the Act and a "District Judge" as envisaged under section 4 of the Gujarat Civil Courts Act. The expression "district court" as defined under section 3(b) of the Act is an inclusive one and also includes the civil court and the principal civil court of original jurisdiction when notified by the Government. The forum of appeal against decrees of the court made in exercise of its original civil jurisdiction is provided under section 15 of the Gujarat Civil Courts Act, 2005.

- The attention of this Court was also invited to the various miscellaneous proceedings requiring judicial inquiry as provided under chapter XVII in Civil Manual. The close reading of the various provisions covered under the aforesaid miscellaneous proceedings if required to be challenged in appeal, the same will be governed under CPC. Thus, the Court finds that the course of legal action ie. the word "proceedings" is more

general in nature which arise in the aforesaid Acts or as described under the Civil Manual, mainly in the form of petition or an application but definitely not strictly construed in the form of the term “suit”, which is very specific in nature.

- The overall reading of the scheme of the Gujarat Civil Courts Act as along with the various provisions appearing under the Code of Civil Procedure, the Court finds that the counterclaim being treated as cross suit with all impregnate suit cannot be treated as part of “proceedings” as rightly pointed by Mr. Thakore that such interpretation will lead contrary to the scheme envisaged under order VIII rule 6 CPC. Thus, the Court is of the opinion that counterclaim has its distinct existence in the form of cross suit with distinct valuation of subject matter than of the subject matter of plaint, and treated as unified proceedings to serve the object will form part of the “original suit” and not “proceedings”.
- The use of words “amount” and “value” appearing in section 15 of the Act has its significance in as much as

when distinct subject matter appearing in plaint and counterclaim are ascertain, it would be the computation of the valuation of both the subject matter of plaint and the counterclaim, at the time of it's institution, which would be required to be determined for jurisdictional purpose and the same shall govern the forum of appeal.

1. Again, whether the word "and" "or" appearing in section 15 of the Act has to be read vice versa to give effect to the manifest intention of the legislature. The Court finds that on proper construction of the aforesaid terms being construed in light of the intention of the legislation leaves no ambiguity in use of the aforesaid terms appearing in section 15 of the Act.

96. The issue with regard to forum of appeal in case of suit where counterclaim is filed, indisputably the suit governs the filing of appeal. If one looks into Section 15 of the C.P.C. , it provides that every suit shall be instituted in the court of lowest grade competent to try it. The court of lowest grade which has a jurisdiction with regards to pecuniary value shall have original jurisdiction to deal with the case at first instance. The view reiterated by the Full Bench of Bombay

High Court in the case of *Kazi Syed Saifuddin Vs. Kasturchand Abhayraji Golchha* reported in *2000 (12) LJSOFT 13 : 2000 (4) Bom.C.R. 582* has rightly held that the valuation of the suit determines the forum of the appeal and not the valuation of decree. In light of the aforesaid discussion as regards interpretation of section 12, 13 , 14 and 15 of the Gujarat Civil Courts Act, the question as regards the determination of forum of appeal in case of arising from Senior Civil Judge is concerned may lie to the District Court or the High Court base on the valuation of the suit. As per valuation of subject matter of suit in case where counterclaim is concerned, for the analysis made herein under, it has to be an aggregate of both the value of the subject matter of the suit and the counterclaim.

97. In light of the controversy raised, the interpretation of section 15 of Gujarat Civil Courts Act, 2005 vis-a-vis order 8 rule 6A to 6G and order XX rule 19 of the Code becomes crucial at this stage. At this stage, it would be appropriate to look into the provisions of Order XX rule 19 of the Code of Civil Procedure, which reads as under :

“ ORDER XX Judgment and Decree

Rule 19. DECREE WHEN SET-OFF OR COUNTER-CLAIMS IS ALLOWED.

(1) Where the defendant has been allowed a set-off or counter-claim against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff and what amount is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

(2) Appeal from decree relating to set-off or counterclaim— Any decree passed in a suit in which a set-off or counter-claim is claimed shall be subject to the same provisions in respect of appeal to which it would have been subject if not set-off or counter-claim had been claimed.

(3) The provisions of this rule shall apply whether the set-off is admissible under rule 6 order VIII or otherwise.”

98. The plain and literal construction of the aforesaid provision can be derived from the very existence of this provision under the Order XX which pertains to “Judgment

and Decree” and in particular relates to decree drawn wherein there is set-off or valid counterclaim raised in the suit. Sub-rule (2) in rule 19 provides that decree passed in the suit where set-off or counterclaim raised shall have effect as if no set-off or counterclaim has been claimed. The respective counsels appearing for the parties have made submissions on interpretation of Order XX rule 19 in juxtaposition to section 216 of the Code, 1882. The Court has carefully perused the statement of objects and reasons and the legislative history as urged by the Learned Counsel appearing for the respondent. The legislative intention behind section 216, as reflected, is that where the set-off is claimed by the defendant , the amount of decree passed in favour of the defendant be subject to the same rules in respect of appeal or otherwise , as if such claim was made in a separate suit against the plaintiff. Again reliance is made on statement of objects and reasons while enacting Order XX rule 19(2) of the Code, 1908 by referring to the Special Committee decision substituting section 216 of the old code. The same is reproduced as under :

“The Committee has introduced an amendment to give

effect the view that appeals from decrees relating to setoff should lie to the courts to which appeal in respect of original claim would lie”.

99. The submission of the Learned Counsel for respondents that a decree in set-off or counterclaim is claimed should go before the same appellate forum to which it would have been in the normal course in the absence of the counterclaim or set-off, cannot be accepted. First, the legislative intention which can be gathered from the provisions of Order XX Rule 19 of the Code, keeping in mind the very intention of the legislation, is to treat suit and counterclaim as unified proceedings as per the scheme of Order VIII Rule 6A to 6G, except where objection raised as per Rule 6C. Noticeably, the aforesaid provision is placed under Order XX which pertains to Judgment and Decree and it comes into play once counterclaim is allowed. The harmonious interpretation of the provisions of Order VIII Rule 6A to 6G with the provisions of Order XX Rule 19 leads to only intention to treat the suit and counterclaim as unified proceedings. Thus, submission of the Learned Counsel for the respondents to read Order XX Rule 19(2) of CPC. The plain literal meaning of Order XX Rule 19 of

CPC confers substantive right of appeal in suit where counterclaim is filed. In other words, what emerges from plain reading of Order XX Rule 19 is that any decree which is passed in suit, in which a counterclaim is claimed shall be subject to the same provisions in respect of appeal, to which it would have been subject if no counter-claim has been made. The provision of appeal under CPC in respect of decree in suit is governed by Section-96 read with Order XLI of CPC. As held by the Full Bench of the High Court of Calcutta, in the case of *R. Ray (Supra)*, I am of the view that Order XX Rule 19 envisages a procedure of appeal and does not prescribe jurisdiction. As recorded by this Court in Para-94, ultimately a substantive right of appeal is conferred, however, there is no expressive language in Order XX Rule 19(2), whereby it provides about pecuniary limits for filing of such appeal.

100. The expression "save in so far as is otherwise expressly provided" employed in Section 6 of the CPC declare in general terms the avowed object of the Code not to give jurisdiction over suits to any Civil Court wider than that determined by the pecuniary limits, if any of its ordinary jurisdiction. As

rightly held by the High Court of Andhra Pradesh in the case of ***Sidramappa (Supra)***, Section 6 is held not primarily concerned with actual fixation of pecuniary limits of ordinary jurisdiction and is essentially within the province of the Civil Courts i.e. Gujarat Civil Court Act, 2005. The Hon'ble Constitutional Bench in the case of ***Jamshed N. Guzdar vs. State of Maharashtra*** (Supra) has in uncertain terms upheld the power of the State Legislature to legislate all the matters relating to 'administration of justice' including power to make Law with respect to jurisdiction of Court i.e. territorial and pecuniary. Thus, in light of the aforesaid decision, I am of the view that Order 20 rule 19 of the Code prescribed only the procedure of appeal which is in consonance with the scheme envisaged with regard to counter-claim as provided under Order 8 rule 6A - 6G and the same is further regulated by the extrinsic factor i.e. pecuniary jurisdiction, which falls in exclusive domain of Gujarat Civil Court Act. Again, the use of term "Appeal" used in Section-15 of the Gujarat civil Court Act includes within its sweep all kinds of appeals provided under code of Civil Procedure as well as other statutory appeals provided under the Special Law.

101. According to the dictionary meaning, “suit” is a generic term of comprehensive signification referring to any proceeding by one person or persons against another or other in a court of law wherein, the plaintiff pursue the remedy which the law affords him for the redress of any injury or the enforcement of a right, whether at law or in enquiry. So far as the Code of Civil Procedure is concerned, the term “suit” means a civil proceeding instituted in a civil court by the presentation of a plaint (S. 26), and it would not be possible to call any proceeding a suit even if it is a proceeding instituted in the Civil Court, if it is not done by a plaint.

102. The term “plaint” has not been defined under the Civil Procedure Code, however, reading of section 26 of the Code makes it apparent that a plaint is a document by presentation of which a suit is instituted. Whenever a cause of action arises, the plaintiff having such a claim of right, presents it to the court. It is basically the pleading of the plaintiff and henceforth, the entire case, from facts to relief claimed is construed as a plaint.

103. On the other hand, Section 2 (c) of the Gujarat Court fees

act, 2004 defines the term "Plaint". It has given comprehensive meaning, as "Plaint" includes a written statement pleading a set off or counterclaim.

104. The Supreme Court in the case of N.D.P. Namboodiripad (Dead) By Lrs. vs. Union of India and Others, reported in (2007) 4 SCC 502, illustrates that the word "includes" may be used to connote a specific meaning and may be used to mean "comprises" or "consists of". Justice G.P. Singh's treatise on Principles of Statutory Interpretation (10th Edn., 2006) also states that the reference of term "includes" in a definition is prima facie considered having extensive meaning, but the word "includes" when used while defining a word or expression may also be construed as equivalent to "mean and include" and hence becomes exhaustive in nature.

105. The valuation of the suit depends on the valuation of thereof. Order VIII rule 6A(4) of CPC provides that the counterclaim shall be treated as plaint for all purposes including the rules applicable to the plaint.

106. The Suit Valuation Act, 1887 prescribes the mode of

valuing certain suits for the purpose of determining the jurisdiction of Courts with respect thereto. As per section 8 of the Suit Valuation Act, the value as determinable for the computation of court-fees and the value for purposes of jurisdiction shall be the same. Generally, the determination of the court fees for the purpose, where more than one relief is sought each having a distinct value and an entirety by itself, each of those reliefs should be valued separately and court fee collected should be on the total value of such reliefs. In suit where the reliefs are in the alternative, plaintiff should be liable to pay fee only on that relief which is chargeable with higher court fee. If the relief sought is only ancillary to main relief the plaint shall be chargeable only on the main relief. Where a suit comprises two or more separate or distinct causes of action and distinct reliefs are sought in respect of each cause of action, the plaint shall be chargeable with total court fee that would be chargeable if separate suits were filed in respect of each such cause of action.

107. At this stage, it would be apt to look into the provision viz. Section 18 of the Gujarat Civil Courts act, 2004, which deals with charging of court fees in case of suit involving two

or more subject matter.

“Section 18. Where a suit embraces two or more distinct subjects, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in suits embracing separately each of such subjects would be liable under this Act.

Nothing in the former part of this section shall be deemed to affect the power conferred by the Code of Civil Procedure, 1908, Schedule I, Order II, rule 6.”

Thus, on plain reading of the aforesaid Sec.18 of Court Fee Act it emphasis mainly on same or different causes of action and more than one relief independent or in alternative and main relief and ancillary (consequential) reliefs. Thus, Sec.18 deals with suits for distinct reliefs based on same cause of action for example, suits involving alternative reliefs based on same cause of action or suit involving distinct reliefs based on single or more than one relief based on different and distinct causes of action whether out of the same transaction

and against the same person or otherwise. The cause of action to understand is a bundle of essential facts and refers entirely to the media upon which the plaintiff asks the court to arrive at the conclusion in their favour. Both the learned counsels appearing for the parties have extensively argued and debated on applying the cardinal principles of interpretation of statutes ie. legislative intention , legislative history, statement and reasons, literal meaning, purposive interpretation. Much emphasis has been laid on the order of priority of the aforesaid tools of interpretation, to be made applicable in interpretation of statutory provisions order XX rule 19 of the Code vis-a-vis section 15 of the Court fees act. In ***Carew and Co. vs. Union of India (1975) 2 SCC 791, Krishna Iyer, J. opined : (@ SCC p.802, para 21)***

"21. The law is not `a brooding omnipotence in the sky' but a pragmatic instrument of social order. It is an operational art controlling economic life, and interetative effort must be imbued with the statutory purpose. No doubt, grammar is a good guide to meaning but a bad master to dictate. Notwithstanding the traditional view that grammatical construction is

the golden rule, Justice Frankfurter used words of practical wisdom when he observed Ed.: As observed in Massachusetts B and Insurance Co. v. US, 352 US 128 : (US p. 138) ig "There is no surer way to misread a document than to read it literally."

108. Again, in the case of ***Jagdish vs. Lt. Governor, Delhi & ors.*** , reported in ***AIR 1997 SC 2239***, the Supreme Court held that where there is conflict between two provisions, their harmony should be tried to establish between them. The relevant observation read thus :

"It is a cardinal principal of construction of a statute or the statutory rule that efforts should be made in construing the different provisions, so that, each provision will have its play and in the event of any conflict a harmonious construction should be given, Further a statute or a rule made thereunder should be read as a whole and one provision should be construed with reference to the other provision so as to make the rule consistent and any construction which would bring any inconsistency or repugnancy between one

provision and the other should be avoided. One rule cannot be used to defeat another rule in the same rules unless it is impossible to effect harmonization between them. The well-known principle of harmonious construction is that effect should be given to all the provisions, and therefore, this Court had held in several cases that a construction that reduces one of the provisions to a 'dead letter' is not a harmonious construction as one part is being destroyed and consequently court should avoid such a construction."

CONCLUSION :

109. Based on the aforesaid legal position, I am of the opinion that there is no conflict in the provisions or the statutes. In light of the aforesaid principles of interpretation of statute, I am of the view that on giving the plain literal meaning to the words and expressions of the order XX rule 19 of the code as well as section 15 of the Court Fees act, the same if read keeping in mind the purpose of the provision and the scheme of the Code/ Act, leaves no ambiguity. This Court has no hesitation in holding that in a suit where counter claim is filed, the suit and the counterclaim are required to be treated

as unified proceedings. This unification of the proceedings forms the basis of filing of appeal. Indisputably, the valuation of the plaint is governed by the valuation of the "subject matter" involved. As per the definition of the term "plaint" provided under section 2(c) of the Gujarat Court fees act, 2004, it includes counterclaim. Even otherwise, as per Order VIII rule 6A(4) of the Code, counterclaim has to be treated as plaint for all purposes. Thus, once the suit and the counterclaim are treated as unified proceedings, and if the same involves two or more distinct cause of action, the aggregate of the valuation of the plaint and the counterclaim shall be considered for the purpose of determination of pecuniary jurisdiction. The determination of valuation accordingly of the plaint where counterclaim is involved, is bound to govern the forum of appeal. In opinion of this court, applying aforesaid legal principles, in the present case, the aggregate of the plaint ie. Rs. 1000 and the counterclaim ie. Rs. 1.2 crore which comes to Rs. 1,20,01,000 is to be treated as valuation of the subject matter. Therefore, the "value of the subject matter" of the present suit (i.e. the aggregate of the plaint and the counterclaim) being more than Rs. 50 lac, the

High Court alone will have jurisdiction. The District Court will not have jurisdiction to hear the present appeals. Thus, the preliminary object of maintainability of appeals before this Court, raised by the respondents, stands rejected.

A. B. VAGHELA

(NISHA M. THAKORE,J)