S Tirupathi Rao vs M Lingamaiah on 22 July, 2024

Author: Dipankar Datta

Bench: Dipankar Datta

REPORTABLE

2024 INSC 544

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. _____ OF 2024

[ARISING OUT OF SLP (CIVIL) NOS. 19647-48 OF 2022]

S. TIRUPATHI RAO … APPELLANT

VERSUS

M. LINGAMAIAH & ORS …RESPONDENTS

WITH

CIVIL APPEAL NOS. _____ OF 2024
[ARISING OUT OF SLP (CIVIL) NOS. 19748-19749 OF 2022]

JUDGMENT

DIPANKAR DATTA, J.

CIVIL APPEAL NOS. _____ OF 2024 [ARISING OUT OF SLP (CIVIL) NOS. 19647-48 OF 2022] Leave granted.

2. These appeals assail the common judgment and order dated 27th April, 20221 of the High Court for the State of Telangana at Hyderabad 2 allowing impugned order, hereafter High Court, hereafter Review I.A. No. 1/2020 in LPA 1/2018 and Review I.A. No. 3/2020 in CA 33/20173 preferred by the first respondent. The impugned order of the High Court recalled the order under review and dismissed a contempt appeal as well as a letters patent appeal of the appellant.

3. The present dispute emerges from a complex and interwoven set of legal proceedings, involving myriad parties and decisions rendered by both judicial and quasi-judicial authorities. The factual

matrix, to the extent relevant for adjudication of these civil appeals, is noticed hereunder:

I. Ms. Sultana Jahan Begum, daughter of Nawab Moin-ud-Dowla Bahadur, instituted Original Suit 130/19534 (since renumbered as Civil Suit 07/1958 upon its transfer to the High Court) before the City Civil Court, Andhra Pradesh, seeking partition of her father's properties known as 'Asman Jahi Paigah'.

II. On 06th April, 1959, a preliminary decree was passed by the High Court on the basis of a compromise entered into by and between the parties to the civil suit. The schedule of properties included within it Raidurg village5.

III. Notably, it is recorded therein that the plaintiff chose to withdraw her claim against, inter alia, the defendant no. 48 in the suit, i.e., the Secretary, Finance Department of the Government of Andhra Pradesh.

Resultantly, the suit stood dismissed against the State unconditionally.

review petitions, hereafter civil suit, hereafter subject land, hereafter IV. During the pendency of the civil suit, Nawab Zaheer Yar Jung, son of Nawab Moin-ud-Dowla Bahadur, filed a claim petition before the Nazim-

e-Atiyat, claiming the subject land as jagir land. This claim was negatived by the Nazim-e-Atiyat vide an order dated 28th October, 1968 upon verification of sanad, which revealed that there did not exist any document granting paigah with respect to the subject land to the claimant's father.

V. The order passed by the Nazim-e-Atiyat, upon appeal, was confirmed by the Board of Revenue vide an order dated 29th December, 1976, which held that the subject land stood escheated to the Government.

VI. Meanwhile, on 01st October, 2003, the decree holders in the civil suit executed a deed of assignment in favour of the first respondent herein in respect of land measuring more or less Ac 143.00 guntas forming part of certain survey numbers of the subject land.

VII. On 26th December, 2003, the High Court passed the final decree and judgment in the civil suit in favour of the first respondent, with respect to land measuring more or less acres 84.30 guntas6 forming part of Survey No. 46 of the subject land.

VIII. Pursuant thereto, the first respondent had approached the Tahsildar with a prayer for mutation of his name in respect of the decretal property in the revenue records which proved abortive. Consequently, the first respondent invoked the writ jurisdiction of the High Court by preferring decretal property Writ Petition 1729/20097, seeking direction for effecting mutation in terms of the final decree in

the civil suit. The respondent's writ petition was heard with a connected matter being Writ Petition 581/2009.

IX. On 05th March, 2009, a Single Judge of the High Court vide a common order disposed of both the writ petitions at the admission stage itself, with the following order:

"A partial final decree was passed by this Court on 26.12.2003 in Application No.1409 of 2003 in C.S. No. 7 of 1958, directing several steps. One of the steps is that the names of the decree holders be mutated in respect of the property mentioned in the decree. It appears that the persons, who have purchased part of the property from the parties to the decree, have also approached the respondents for mutation of their names. Having regard to the fact that there was a specific direction in the decree, Acviving (sic, requiring) authorities first to implement the decree by effecting mutation in the only (sic) after the initial step is complied with.

Hence, the writ petitions are disposed of, directing that the Deputy Collector / Tahsildar, Serilingampally Mandal, Ranga Reddy District, shall effect necessary mutations in the revenue records strictly in accordance with the decree, dated 26.12.2003, in Application No.1409 of 2003 in C.S.No.7 of 1958 passed by this Court, after issuing notices to the affected parties. The subsequent purchasers, if any, shall be entitled to pursue their remedies after this step. There shall be no order as to costs." X. Thereafter, one Syed Azizulla Husaini challenged only the decision in Writ Petition 581/2009. In exercise of appellate jurisdiction, a Division Bench of the High Court, vide order dated 18th August 2009, modified the order dated 05th March, 2009 as follows:

"Heard the learned advocates. The learned advocates appearing for the respondents have no objection if the objections which have been filed by the appellant before the Deputy Collector / Tahsildar, Srilingampally Mandal, Ranga Reddy District are also considered along with the other objections which have been filed by the affected parties.

writ petition, hereafter In the circumstances, the order dated 05-03-2009 passed in Writ Petition No. 581 of 2009 is modified to the effect that while considering the objections of the affected parties, the Deputy Collector / Tahsildar, Srilingampally Mandal, Ranga Reddy District shall also consider the objections which have already been filed by the present appellant viz. Syed Azizullah Hussaini." XI. However, the appellant (the Tahsildar) did not carry the order of disposal of the writ petition of the first respondent in appeal and, thus, between the appellant and the first respondent, the order dated 05th March, 2009 became final and binding.

XII. In view of the Tahsildar's inaction in effecting mutation, as ordered, the first respondent instituted Contempt Case 217/20148 before the High Court on 10th

February, 2014.

XIII. The Single Judge, vide order dated 04th October, 2017, allowed the contempt petition. The State's contention that the petition was barred by limitation was rejected on the ground that the Tahsildar's failure to obey the order of the Court, till mutation was effected, would constitute a continuing wrong. Consequently, the Tahsildar was directed to mutate the name of the first respondent in terms of the final decree, and was also sentenced to simple imprisonment for a term of two months, together with a fine of Rs 1500/- (Rupees fifteen hundred only).

XIV. This decision of the Single Judge was challenged by the appellant in two separate appeals – (i) Contempt Appeal 33/20179, presented against the punishment imposed on the appellant and (ii) Letters Patent Appeal contempt petition, hereafter contempt appeal, hereafter 01/201810, presented against the direction for mutation of the name of the first respondent in the revenue records qua the decretal property.

XV. A Division Bench of the High Court11, vide a detailed judgment and order dated 16th August, 2018, allowed both the appeals and set aside the order under challenge for two primary reasons – (i) the contempt petition was barred by limitation, the failure of the Tahsildar to effect the mutation constituting a single act and not a continuing wrong; and

(ii) the preliminary decree recorded that the civil suit was withdrawn as against the State Government. Thus, there did not exist any decree which could have been executed against the Government by the civil court. Thus, as a legal and logical corollary, the State could not be bound to effect mutation in the revenue records in terms of a decree which was unenforceable against it. Consequently, the first respondent's attempt to seek a direction of mutation against the State, on the strength of such a decree, was held to be fraudulent in nature.

XVI. Challenge laid by the first respondent to the judgment and order dated 16th August, 2018 by presenting special leave petitions12 before this Court was not entertained resulting in its dismissal vide order dated 29th October, 2018. A petition seeking review13 of such order of dismissal was also dismissed by this Court vide order dated 08th January, 2019. XVII. This Court having spurned his aforesaid challenges, the first respondent knocked the doors of the High Court once again by filing review petitions letters patent appeal, hereafter Division Bench (original), hereafter SLP (C) 24646-24647/2018 R.P. (C) 3973/2018 against the common judgment and order dated 16th August, 2018 (allowing the letters patent appeal and the contempt appeal). XVIII. As noted at the beginning of this judgment, vide the impugned order, another Division Bench14 of the High Court allowed the review petitions. IMPUGNED ORDER

4. The Division Bench (review) noted at the outset that the merits of the matter need not be looked into, and then went on to undertake an exhaustive examination of precisely the same.

4.1 The High Court adversely observed that the State had not yet obtained any decree against the first respondent or his predecessors-in-interest to the effect that the subject land belonged to it. The State was noted to have filed OSA (Sr) No. 2116/2011, challenging the final decree proceedings dated 26th December, 2003 but the same stood dismissed vide order dated 24th August, 2011, with an observation that the State ought to initiate separate proceedings in accordance with law. However, no such proceedings were thereafter initiated by the State.

4.2 The High Court further observed that the State sought to set up title to the subject land based on the concept of escheat without invoking the provisions of the Andhra Pradesh Escheats and Bona Vacantia Act, 1974. This led to admonition of the State authorities for taking mutually inconsistent pleas of 'absolute title' and 'right by escheat'. Division Bench (review), hereafter 4.3 The State was further held to have suppressed material information and approached the Court with unclean hands inasmuch as the stand taken by them was not supported by any documentary evidence.

4.4 The State, on its part, had argued that the contempt action was itself barred by limitation, as per section 20 of the Contempt of Courts Act, 197115 read with rule 21 of the Andhra Pradesh High Court Writ Proceedings Rules, 197716. Such argument was rejected by the Division Bench (review) by relying on the decision in Pallav Seth v. Custodian17, wherein it was held that the period of limitation would only commence upon the date from the discovery of fraud played by the party on the Court/opposite party; the State having acted fraudulently by suppressing information, the contempt petition would not be barred by limitation.

4.5 With respect to the contempt alleged, the Division Bench (review) examined the conduct of the State in remaining silent on the matter of mutation and held that such silence could not be interpreted to be a refusal on the part of the State to act upon the representations. In view thereof, coupled with the State's periodic representations made before the Court that they would implement the direction for mutation, it was held that such acts constituted a continuing wrong so as to ensconce the contempt petition within the ambit of the period of limitation.

4.6 In such review proceedings, the first respondent had brought on record additional documents in the nature of sale deeds, orders by revenue the Act, hereafter the Writ Rules, hereafter (2001) 7 SCC 549 authorities and governmental memos, to which allegedly access was obtained only after the disposal of the contempt appeal, to argue that the subject land was the self-acquired private property of the first respondent's predecessor-in-interest. The Division Bench (review) undertook a detailed examination of the same to definitively conclude, with the aid of section 79 of the Indian Evidence Act, 1872, that the property belonged to the predecessor-in-interest of the first respondent. The State's objection to such documents was overruled as the same were held to come within the purview of "new and important matter or evidence" as provided in Order XLVII Rule 1 of the Code of Civil Procedure18.

4.7 In summation, the Division Bench (review) reviewed and reversed the judgment and order dated 16th August, 2018 and confirmed the order dated 04th October, 2017 of the Single Judge passed on the writ petition. The appellant's sentence of imprisonment was modified to four months, and a direction was issued to implement the order passed in the writ petition within a period of four

weeks.

SUBMISSIONS

5. Mr. C.S. Vaidyanathan, learned senior counsel for the appellant, while seeking our interference with the impugned order, submitted as under:

> a) The Division Bench (review) of the High Court erred in allowing the review petitions, without affording a hearing to the appellant on merits.

CPC, hereafter

b) The Division Bench (review) set aside the reasoned judgment of the Division Bench (original) in the contempt appeal and while substituting its own reasoning for that in the order under review, did not disclose the error that was apparent on the record; instead, it proceeded to decide the review as if it were sitting in appeal over the earlier decision.

c) The Division Bench (review) placed undue reliance on the additional documents produced by the first respondent, which were accepted on face value, without giving an opportunity to the appellant to rebut the same.

d) The Division Bench (review), in exercise of its review jurisdiction, went beyond the order of the Single Judge passed in the writ petition. It is settled law that a writ court cannot adjudicate on title, since the same falls within the exclusive jurisdiction of a civil court.

e) The Division Bench (original) had rightly set aside the order of the Single Judge, as the order had been obtained by playing fraud on the Court and the proceedings in the suit were itself fraudulent in nature.

f) The civil suit was dismissed as against the State Government and, thus, there could not have been an executable decree as against the State.

g) The Division Bench (original) had rightly allowed the appellant's appeal on the ground that the failure to mutate the names of the first respondent was not a continuing wrong and, therefore, the contempt petition was barred by limitation.

6. Mr. C. A. Sundaram, learned senior counsel appearing for an intervenor, who disputed the title of the first respondent, adopted the submissions of Mr. C.S. Vaidyanathan. In addition, he contended that there cannot be a more egregious mistake as the one committed by the Division Bench (review) in exercise of its review jurisdiction. He invited our attention to the grounds of review forming part of the review petition and contended that none of the grounds can be said to be within the parameters of section 114 read with Order XLVII Rule 1 of the CPC; hence, the Division Bench (review) assumed a jurisdiction which it could not have more particularly after the unsuccessful misadventures of the first respondent before this Court.

7. Mr. Ranjit Kumar, Mr. Neeraj Kishan Kaul, Mr. Vipin Sanghi and Mr. R. Anand Padmanabhan, learned senior counsel appearing for the various respondents, in support of upholding the impugned order, submitted as under:

> a) The appellant had not approached this Court with clean hands since the Government Pleader, during the pendency of the contempt proceedings, had avowed that the process of mutation had already commenced, while the counter affidavit filed in the same proceedings stated that the contempt petition itself was barred by limitation.
>
> b) The State had submitted in the contempt proceedings that there was serious dispute with respect to the question of title which could only be adjudicated in a civil suit; however, during the course of the review proceedings, the senior counsel appearing for the State categorically stated that no civil suit had been filed till date.
>
> c) During the period 1968 to 2022, the appellant had consistently taken the plea of absolute title having been escheated to the Government, but in course of consideration of the review petitions, undertook a mutually inconsistent plea of the subject land being Government land on the basis of revenue entries.
>
> d) The appellant did not raise objections with respect to fraud and fabrication when the additional documents were produced by the first respondent before the High Court; having acquiesced to the same, the appellant was now estopped from raising such pleas.
>
> e) The first respondent relied on a multitude of orders by both judicial and administrative authorities to prove that the subject land was privately purchased, and constituted self-acquired lands of the first respondent's predecessor in interest.

ANALYSIS

8. The present lis confronts us primarily with two inter-related legal issues.

The first one requires us to examine whether the parameters set out in Order XLVII Rule 1 of the CPC for exercising the power of review, as interpreted by this Court in its numerous judgments, were at all satisfied for the High Court to embark on an exercise of review. The second issue requiring our consideration is the terminus a quo for commencement of the point of limitation in matters of contempt, in the light of provisions of section 20 of the Act read with Article 215 of the Constitution and rule 21 of the Writ Rules. This would, in turn, require us to examine whether the contempt petition could have been held to be maintainable by the High Court on the ground of the appellant having continued to observe the order (directing mutation to be effected) in the breach; in other words, whether there was a continuing wilful breach of the order of the Single Judge dated 5th March, 2009, amounting to civil contempt. These being preliminary legal issues are proposed to be dealt with at the outset. Needless to observe, hardly any other issue would survive for decision

should any of these issues be answered in favour of the appellant and against the first respondent.

9. We are not too inclined to examine the contention raised on behalf of the appellant that he was not extended reasonable and adequate opportunity of hearing, once the Division Bench (review) allowed the review petitions and proceeded to reverse the decision of the Division Bench (original) on merits. There are other formidable grounds of challenge, which would necessarily fall for our examination and succeeding on one of such grounds would render the contention raised redundant.

10. The Division Bench (review) extensively discussed the grounds which need to exist so as to validate the invocation and exercise of the Court's power of review. In the impugned order, it held that the State suppressed certain title documents, which were for the first time produced before the Court by the first respondent as additional documents. The additional documents constituted, inter alia, an order of the Board of Revenue, Andhra Pradesh dated 19th November, 1959, which confirmed that the subject land is private land and not inam or Government land. The first respondent justified the production of these documents on the ground that access to such documents was obtained only after the Division Bench (original) had rendered the judgment and order dated 16th August, 2018. It was argued that if the Division Bench (original) had the benefit of examination of such additional documents, it would not have set aside the order dated 04th October, 2017 passed on the contempt petition. The Division Bench (review) held that since the first respondent had discovered new evidence which was unavailable at the earlier stage of proceedings, the threshold for maintainability of a review petition was satisfied.

11. While proceeding to determine the correctness of the impugned order vis-

à-vis the exercise of review jurisdiction, we ought to remind ourselves of certain cardinal principles. The exercise of review jurisdiction is not an inherent power given to the court; the power to review has to be specifically conferred by law. In civil proceedings, review jurisdiction is governed by section 114 read in conjunction with order XLVII of the CPC and the court has to be certain that the elements prescribed therein are satisfied before exercising such power. This Court in Kamlesh Verma v. Mayawati19 has succinctly observed that:

> "19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC." (emphasis ours)

12. That the provisions contained in section 114 and Order XLVII of the CPC relating to review of an order or decree are mandatory in nature and any (2013) 8 SCC 320 petition for review not satisfying the rigours therein cannot be entertained ex debito justitiae, by a court of law, is trite.

13. There is a plethora of decisions analysing the statutory provisions governing the exercise of review jurisdiction; however, we would be referring to a few of them for the purpose of the present exercise. Suffice it to note that despite legal proceedings having commenced with institution of the civil suit as far back as in 1953, the present controversy has, as its source, a writ petition between the first respondent and the Tahsildar preferred in 2009. Although the explanation to section 141 of the CPC makes it clear that provisions of the CPC would not apply to proceedings under Article 226 of

the Constitution, there is authority in abundance that the principles flowing from the CPC may safely be taken as a guide to decide writ proceedings but to the extent the same can be made applicable.

14. To put it plainly, Order XLVII Rule 1 of the CPC provides three grounds for review:

> 1) discovery of new and important matter or evidence which, after the exercise of due diligence was not within the applicant's knowledge or could not be produced by the applicant at the time when the decree was passed, or order made; or
>
> 2) mistake or error apparent on the face of the record; or
>
> 3) for any other sufficient reason, which must be analogous to either of the aforesaid grounds.

15. In Moran Mar Basselios Catholicos and another v. Most Rev. Mar Paulose Athanasius20, this Court approved the view that the third ground – "any other sufficient cause" must mean a reason sufficient on grounds, at least analogous to the first two grounds. The same view has been reiterated in a recent decision of this Court in State (NCT of Delhi) v. K.L. Rathi Steels Ltd.21. This Court affirmed that the scope of the third ground had to be narrowly construed so as to not traverse beyond the orbit of the first two grounds.

16. Since the Division Bench (review) invoked the first clause, we hasten to emphasize that an applicant seeking review on the basis of discovery of new evidence has to demonstrate: first, that there has been discovery of new evidence, of which he had no prior knowledge or that it could not be produced at the time the decree was passed or the order made despite due diligence; and secondly, that the new evidence is material to the order/decree being reviewed in the sense that if the evidence were produced in court when the decree was passed or the order made, the decision of the court would have been otherwise. Ultimately, it is for the court to decide whether a review sought for by an applicant, if granted, would prevent abuse of the process of law and/or miscarriage of justice.

17. When the ground for review sought is that of discovery of new evidence, this Court in State of West Bengal v. Kamal Sengupta22 has clarified that AIR 1954 SC 526 2024 SCC OnLine SC 1090 (2008) 8 SCC 612 the same must be evidence which should be materially important to the decision taken. The following passage is instructive:

> "21. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review ex debito justitiae. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier." (emphasis ours)

18. In the light of the legal position crystalised by the above discussion, we proceed to discern the rationale of the High Court in allowing the review petition.

19. The proceedings of these civil appeals, as noted, have the writ petition as its genesis and not the civil suit, which was decreed in 2003. It is of utmost importance to bear in mind that the Division Bench (review) was called upon to review the judgment and order dated 16th August, 2018 of the Division Bench (original), which allowed the contempt appeal and the letters patent appeal and not any other final decree or order. The Division Bench (review), in our opinion, has fundamentally confused both its remit and the subject matter of the review; whilst passing the impugned order, it has merged the two proceedings (the civil suit and the writ petition) into one to ostensibly create necessary grounds of review. The additional documents discovered by the first respondent could have constituted a ground to review any other decree/order but, most certainly, were of no consequence for the purpose of the review petitions, which were decided by the impugned order. This, we hold, for the reasons that follow.

20. This Court in Aribam Tuleshwar Sharma v. Aribam Pishak Sharma23 while clarifying the ambit of the review jurisdiction has categorically held that a decision cannot be reviewed merely because it is erroneous on merits, since that would fall squarely within the province of a court exercising appellate jurisdiction.

21. In Meera Bhanja v. Nirmala Kumari Choudhury24, this Court affirmed the ratio in Aribam Tuleshwar Sharma (supra) and further expounded that review proceedings were not by way of an appeal, and would have to be strictly confined to the scope and ambit of Order XLVII, Rule 1 of the CPC. It was further held that an error apparent on the face of the record must be such an error which must strike one on mere looking of the record, obviating the need for long-drawn reasonings on two possible opinions. This Court in Haridas Das v. Usha Rani Banik25, while reiterating the decisions in Meera Bhanja (supra) and Aribam Tuleshwar Sharma (supra), drew out the narrow contours within which review jurisdiction of this Court had to be exercised and held that Order XLVII, CPC does not allow for the rehearing of a dispute merely because a party had not highlighted all aspects of the case.

22. The Division Bench (original) had held that the decree was not enforceable against the State; this, because the State, though a party defendant (1979) 4 SCC 389 (1995) 1 SCC 170 (2006) 4 SCC 78 originally, did not suffer any decree owing to the dismissal of the civil suit against the State vide judgment and preliminary decree dated 06th April, 1959. The said Division Bench in its judgment and order dated 16th August, 2018 categorically noted that the first respondent committed fraud on the Court by obtaining a direction of mutation in the writ proceedings on the strength of a final decree rendered in a suit which had been given up against the State Government. The Division Bench (original) set aside the direction to mutate the name of the first respondent in the revenue records on three technical but fundamental grounds – first, that a non-party to a suit could not be bound by the decree; secondly, the decision on the title of the subject land not having been rendered upon hearing the version of the State, no direction of the nature made by the Single Judge could have validly been made; and thirdly, that the contempt petition was barred by limitation.

23. In the light of the present controversy, the additional documents purporting to validate the title of the subject land [even if obtained by the first respondent belatedly and not in course of the proceedings before the Division Bench (original) and howsoever clinching the same might appear to be for the lis to be decided in his favour] can neither be considered material nor relevant to the central issue, i.e., contempt, if any, of the direction contained in the order of disposal of the writ proceedings.

24. As noted earlier, the Division Bench (original) inter alia proceeded to dismiss the contempt petition as time-barred. We propose to consider the averments made in the contempt petition in greater depth a little later. However, what stands out is that a decision having been rendered by the Division Bench (original) upon consideration of the pleadings in the contempt petition vis-à-vis the law relating to limitation contained in the Act, such decision was not open to a review on the basis of alleged discovery of new evidence since the same did not have any relation with the finding that the contempt petition was time-barred. The first respondent failed to present any new evidence countering the reasoning of the Division Bench (original) that a time-barred contempt petition had been entertained by the Single Judge; furthermore, the title documents or orders of the Board of Revenue had no bearing on either the factum of the State not being a party to the civil suit, or on the question of limitation. Quite apart the ground of discovery of new evidence, the decision of the Division Bench (original) which was rendered upon an exhaustive analysis of the materials on record including the pleadings did not suffer from any error, much less any error apparent on the face of the record, warranting a review. Even if any error were present, such error could have been rectified only in exercise of the court's appellate jurisdiction and not the review jurisdiction.

25. The grounds of review that the first respondent had urged in the review petition have been meticulously looked into by us. They numbered in excess of 90 (ninety). The general impression is that more the number of grounds, less the likelihood of existence of a case for review. To succeed in a motion for review, viewed through the prism of 'error apparent on the face of the record', it does neither require long-drawn arguments nor an elaborate process of reasoning as these may be required, in a given case, when exercising the power of merit review. An error apparent on the face of the record has to be self-evident. Where, conceivably, two opinions can be formed in a given set of facts and circumstances and one opinion of the two has been formed, there is no error apparent on the face of the record. However, disabusing our mind of such an impression, we have looked into each of the grounds. Not a single ground deserved consideration to embark on an exercise to review the judgment and order dated 16th August, 2018 even on the basis of discovery of new and important matter or evidence. We are constrained to observe that there has been usurpation of the power of review by the Division Bench (review) to overturn a well-considered and well-crafted decision of the Division Bench (original).

26. No other legitimate cause for review having been made out in the review petition before the High Court as well as before us by the first respondent and bearing in mind the above, we unhesitatingly hold that there was no valid, legal and/or proper ground for the Division Bench (review) to reverse the judgment and order under review on the basis of the additional documents brought on record by the first respondent during the review proceedings.

27. The first legal issue is, thus, answered in favour of the appellant.

28. Having held that the review jurisdiction was not available to be exercised by the Division Bench (review), reversal of the impugned order is the solitary conceivable outcome. However, the importance of the second legal issue cannot be over-emphasized. The purpose of the law of contempt is to secure public respect and confidence in the judicial process. We have found the law on the question of applicability of the principle of "continuous wrong/breach/offence" for the purpose of section 20 of the Act not too certain; hence, we feel it expedient to give a brief overview of the law of contempt and how such law has evolved and developed as well as chart out the course of action to be followed by the high courts while exercising contempt jurisdiction not only generally but also on the face of an objection as to maintainability of a time-barred action initiated by a party for civil contempt.

29. The power of the Supreme Court and a high court to punish for breach of its orders is expressly recognised by Articles 129 and 215 of the Constitution, respectively. It is an inherent power, distinguishable from a power derived from a statute. In R.L. Kapur v. State of Tamil Nadu26, this Court pointed out that the inherent power or jurisdiction was neither derived from the statutory law relating to contempt nor did such statutory law affect such inherent power or confer a new power or jurisdiction. In view of the recognition of such power by the Constitution itself, they partake the character of constitutional power and consequentially no law made by legislature could take away the jurisdiction conferred on the Supreme Court and the high courts.

30. In Aligarh Municipal Board v. Ekka Tonga Mazdoor Union27, this Court observed as follows:

> "5. *** Contempt proceeding against a person who has failed to comply with the Court's order serves a dual purpose: (1) vindication of the public interest by punishment of contemptuous conduct and (2) coercion to compel the contemner to do what the law requires of him. The sentence imposed should effectuate both these purposes.

***" (1972) 1 SCC 651 (1970) 3 SCC 98

31. This Court in Jhareswar Prasad Paul v. Tarak Nath Ganguly28, held that:

> 11.*** It is to be kept in mind that the court exercising the jurisdiction to punish for contempt does not function as an original or appellate court for determination of the disputes between the parties. The contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the court and if the conduct of the party who is alleged to have committed such disobedience is contumacious. The court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged by the applicant. The court has to consider the direction issued in the judgment or order and not to consider the question as to what the judgment or order should have contained. At the cost of repetition, be it stated here

> that the court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party, which is alleged to have committed deliberate default in complying with the directions in the judgment or order.

(emphasis ours)

32. In Re: Vinay Chandra Mishra29 is a decision where, referring to Article 129, this Court observed that the jurisdiction to take cognizance of the contempt as well as to award punishment for it being constitutional, it cannot be controlled by any statute.

33. Despite such a power being conferred by the Constitution, what would constitute contempt - civil and criminal - and also, what would be the procedure for initiating action and how to punish for contempt is provided by the Act. The source of power to enact the Act can be traced to Items 77 and 14 of Lists I and III, respectively, of the Seventh Schedule appended to the Constitution.

(2002) 5 SCC 352 (1995) 2 SCC 584

34. In L.P. Misra (Dr.) v. State of U.P.30, this Court set aside the order under challenge (punishing the appellant for criminal contempt committed on the face of the court but without extending to him any opportunity to show cause). In the process, a three-Judge Bench of this Court had the occasion to observe that it "is true that the High Court can invoke powers and jurisdiction vested in it under Article 215 of the Constitution of India but such a jurisdiction has to be exercised in accordance with the procedure prescribed by law".

35. In Pallav Sheth (supra) too, a three-Judge Bench of this Court noticed L.P. Misra (Dr.) (supra) and reiterated that "the power under Article 129 and/or Article 215 should be exercised in consonance with the provisions of a validly enacted law".

36. Yet again, this Court in Ashok Kumar Aggarwal v. Neeraj Kumar31 overturned the decision of the high court under challenge which passed an order in contempt proceedings solely on merits disregarding the procedural objections (including that of limitation). This Court reiterated that high courts were obliged to examine whether procedure prescribed by law had been complied with when a petition under Article 215 was presented before the court. Such examination would also include a scrutiny of whether limitation, as prescribed by section 20, was attracted to the facts of the case.

37. The 'procedure prescribed by law' or a 'validly enacted law' referred to in the aforementioned decisions is the one the Act envisages. Proceedings for (1998) 7 SCC 379 (2014) 3 SCC 602 contempt being quasi-criminal in nature, no punishment can be ordered by any court without strictly adhering to the stringent provisions therefor, however needless they may appear to be when a contempt is committed on the face of a high court and such court has no two opinions that following the course prescribed by the Act to punish for contempt would eventually turn out to be a useless formality.

38. Much water has flown under the bridge since the aforesaid decided cases.

Having regard to some extreme cases of exercise of contempt power increasing over a period of time, a three-Judge Bench of this Court in State of Uttar Pradesh v. Association of Retired Supreme Court & High Court Judges32 speaking through the Hon'ble the Chief Justice of India had to devise a Standard Operating Procedure33 for being followed by the high courts while summoning public officials, alleged to be in contempt, to be physically present in court. Deeply concerned with the lack of self-restraint shown in the exercise of contempt power in certain cases, the Bench directed framing of rules by all the high courts in terms of the SoP, as devised. This Court noted in such decision that mandating the physical presence of a contemnor, specifically in the case of public officials, comes at a cost to the public interest and efficiency of public administration, and thus ought not to be resorted to at the drop of a hat.

39. We wish to add to this by way of clarification that concomitantly, there lies a bounden duty on the contemnor to comply with the court's order without any delay, in a case where legal recourse has not been taken to set (2024) 3 SCC 1 SoP, hereafter aside/review/vacate the order which is alleged to have been breached. A public official against whom an allegation of contempt is levelled, upon being noticed either by issuance of a rule for contempt or by court notice, must work out his remedy in accordance with law if he wishes not to comply with the court's direction. He must not wait for compliance to be secured only upon all the phased steps to be taken by the high courts in terms of paragraph 44 of State of Uttar Pradesh (supra), forming part of the SoP, are complete. A public official who is arrayed as a contemnor is as much bound by an unchallenged order of a high court as a private party is, and cannot consider himself not bound by the law by virtue of the office he holds. Being under a duty to comply with a final and binding order of a high court, the contemnor ought not to drag his feet in doing the same until the coercive measure of summoning the contemnor to be physically present is resorted to by the high court. We are reminded at this stage of what this Court in Aligarh Municipal Board (supra) said:

> "5. *** It must also be clearly under stood in this connection that to employ a subterfuge to avoid compliance of a court's order about which there could be no reasonable doubt may in certain circumstances aggravate the contempt.***" (emphasis ours) Deliberate delay in effecting compliance with an order could be seen as aggravating the contempt resulting in a degree of punishment higher than what the court earlier thought of imposing. Be that as it may.

40. Axiomatically, not only any order imposing punishment for proved contempt must be in accordance with the procedure prescribed by the Act but initiation of the proceedings too has to be in accordance with the three modes that the Act envisages. One of these is by presentation of a petition for civil contempt before a high court complaining of wilful and deliberate refusal by a person obliged to comply with its final and binding order – a situation with which we are concerned.

41. In Pallav Sheth (supra), a three-Judge Bench of this Court had the occasion to consider whether the view taken by a two-Judge Bench in Om Prakash Jaiswal v. D.K. Mittal34 was correct. In Om Prakash Jaiswal (supra), the Bench had taken the view that filing of an application or petition for initiating proceedings for contempt does not amount to initiation of proceedings by the court and initiation under section 20 of the Act can only be said to have occurred when the court forms the

prima facie opinion that contempt has been committed and issues notice to the contemner to show cause why he should not be punished. Such view did not find favour with the Bench in Pallav Sheth (supra). It was observed that a provision like section 20 has to be interpreted having regard to the realities of the situation, and that, too narrow a view of section 20 had been taken in Om Prakash Jaiswal (supra) which did not seem to be warranted; the view taken would not only cause hardship but would perpetrate injustice. Relevant passages from the decision in Pallav Sheth (supra) read thus:

> "39. ... When the judicial procedure requires an application being filed either before the court or consent being sought by a person from the Advocate-General or a Law Officer, it must logically follow that proceedings for contempt are initiated when the applications are made.
>
> 40. In other words, the beginning of the action prescribed for taking cognizance of criminal contempt under Section 15 would be initiating the proceedings for contempt and the subsequent action taken thereon of refusal or issuance of a notice or punishment thereafter are only steps following or succeeding such initiation. Similarly, in the case of a civil contempt, filing of an application drawing the attention of the court (2000) 3 SCC 171 is necessary for further steps to be taken under the Contempt of Courts Act, 1971.
>
> 41. One of the principles underlying the law of limitation is that a litigant must act diligently and not sleep over its rights. In this background such an interpretation should be placed on Section 20 of the Act which does not lead to an anomalous result causing hardship to the party who may have acted with utmost diligence and because of the inaction on the part of the court, a contemner cannot be made to suffer. Interpreting the section in the manner canvassed by Mr Venugopal would mean that the court would be rendered powerless to punish even though it may be fully convinced of the blatant nature of the contempt having been committed and the same having been brought to the notice of the court soon after the committal of the contempt and within the period of one year of the same. Section 20, therefore, has to be construed in a manner which would avoid such an anomaly and hardship both as regards the litigants as also by placing a pointless fetter on the part of the court to punish for its contempt.

An interpretation of Section 20, like the one canvassed by the appellant, which would render the constitutional power of the courts nugatory in taking action for contempt even in cases of gross contempt, successfully hidden for a period of one year by practising fraud by the contemner would render Section 20 as liable to be regarded as being in conflict with Article 129 and/or Article 215. Such a rigid interpretation must therefore be avoided.

42. ... if the filing of an application before the subordinate court or the High Court, making of a reference by a subordinate court on its own motion or the filing of an application before an Advocate-General for permission to initiate contempt proceedings is regarded as initiation by the

court for the purposes of Section 20, then such an interpretation would not impinge on or stultify the power of the High Court to punish for contempt which power, dehors the Contempt of Courts Act, 1971 is enshrined in Article 215 of the Constitution. Such an interpretation of Section 20 would harmonise that section with the powers of the courts to punish for contempt which is recognised by the Constitution.

43. ***

44. Action for contempt is divisible into two categories, namely, that initiated suo motu by the court and that instituted otherwise than on the court's own motion. The mode of initiation in each case would necessarily be different. While in the case of suo motu proceedings, it is the court itself which must initiate by issuing a notice, in the other cases initiation can only be by a party filing an application. In our opinion, therefore, the proper construction to be placed on Section 20 must be that action must be initiated, either by filing of an application or by the court issuing notice suo motu, within a period of one year from the date on which the contempt is alleged to have been committed."

42. Interpretation of section 20 of the Act, which formed the crux of the discussion in Pallav Sheth (supra), has the marginal note 'limitation for actions for contempt'. Section 20 ordains that:

> "20. No court shall initiate any proceedings of contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed."

43. The vires of section 20 of the Act has been upheld by Division Benches of the High Court of Andhra Pradesh, High Court of Karnataka and the High Court at Calcutta in Advocate General v. A.V. Koteswara Rao35, High Court of Karnataka v. Y.K. Subanna36 and Arthur Branwell & Company Ltd. v. Indian Fibres Ltd.37, respectively.

44. In upholding the vires of section 20, the High Court of Karnataka in Y.K. Subbanna (supra) traced the legislative history of section 20 of the Act. It is considered profitable to read the relevant passages therefrom, which are as follows:

> "79. The Act for the first time, by enacting Section 20, introduced a period of limitation. The Sanyal Committee examined the question as to whether any period of limitation should be prescribed in respect of contempt proceedings and observed in Paragraph 8 of Chapter X of its Report, as under:
>
> '8. Limitation:— Contempt procedures are of a summary nature and promptness is the essence of such proceedings. Any delay should be fatal to such proceedings, though there may be exceptional cases when the delay may have to be over looked but such cases should be very rare indeed. From this point of view we considered whether it is either necessary or desirable to specify a period of limitation in respect of contempt proceedings. The period, if it is to be fixed by statute, will necessarily have

> to be very short and provision may also have to be made for condoning delay in suitable cases. We feel that on the whole instead of making any hard 1984 Cri. LJ. 1171 1989 SCC OnLine Kar 404 1993 (2) CLJ 182 and fast rule on the subject the matter may continue to be governed by the discretion of the Courts as hithertofore.'
>
> 80. The Joint Select Committee of Parliament on Contempt of Court (Bhargava Committee) after examining the Report of Sanyal Committee on the question of limitation, thought that the contempt procedures by their very nature should be initiated and dealt with as early as possible and considered it necessary and desirable that period of limitation should be specified in respect of actions for contempt and, therefore, laid down in the new clause (Clause 20) a period of one year at the expiration of which no proceedings for contempt should be initiated. The reasons given by the Joint Select Committee for introducing Clause 20 in the Bill, as reported by it are these:
>
> 'The Committee are of the opinion that contempt procedures by their very nature should be initiated and dealt with as early as possible. It was brought to the notice of the Committee that in some cases contempt proceedings have been initiated long after the alleged contempt had taken place. The Committee therefore consider it necessary and desirable that a period of limitation should be specified in respect of actions for contempt and have accordingly laid down in the new clause a period of one year at the expiration of which no proceedings for contempt should be initiated.'
>
> 81. This is the legislative history of Section 20."

45. We can safely affirm, drawing from our joint experience on the Bench, that in the vast majority of cases seeking invocation of the provisions of the Act for an alleged civil contempt, institution of proceedings is through a petition or an application containing information made available by a party alleging that the facts disclosed by him do constitute contempt of court and, thus, provide the court the premise for initiating proceedings to commit for contempt. The role of such a party, who brings a petition for contempt and activates the court's machinery, is merely that of an informer. Despite such a party figuring in the memo of parties as a petitioner, the matter relating to entertainment of his petition and the punishment to be imposed, in case of a proved contempt, relate to the exclusive jurisdiction and authority of the high courts to punish for contempt and is substantially a matter between the court and the alleged contemnor. Whether or not to take the assistance of the petitioning informer is a question which invariably must be left entirely to the discretion of the court seized of the proceedings.

46. In exercising its jurisdiction to punish for contempt, the courts in India do keep in mind the benefit that could accrue to the petitioning informer (if he is a party to the parent proceedings out of which the contempt arises) upon implementation of the order alleged to have been wilfully disobeyed; but more than anything else, the endeavour is to uphold the majesty, dignity and prestige of the courts. Indubitably, the jurisdiction to punish for contempt is exercised when the alleged contemnor, by his action(s), shows extreme lack of solicitude in complying with an order of court,

which has attained finality and is binding on him. So long a final order passed by a court is not set aside in appeal/revision or recalled in exercise of review jurisdiction or an interim order is vacated at a subsequent stage of the proceedings, it continues to bind the parties to the proceedings and it would amount to subversion of the rule of law if any party, in breach, were encouraged to continue such breach. An order of a court has to be complied with and it would not amount to a valid defence that in the contemnor's own understanding or because of legal opinion tendered to him, the order did not warrant compliance being erroneous. This Court in Commissioner, Karnataka Housing Board v. C. Muddaiah38 has held that once a direction has been issued by a competent court, it has to be obeyed and implemented without reservation; the order of the court cannot be rendered (2007) 7 SCC 689 ineffective on the specious plea that no such direction could have been given by the court. A party, though perceiving an order to be erroneous, allowing it to attain finality by reason of acceptance thereof cannot escape the rigours of compliance. He has to pursue his appellate or other remedy to escape the consequences that can visit him, should the high court hold him guilty of contempt. Such a compliance is insisted upon for securing the majesty, dignity and prestige of the court.

47. Insofar as an interim order is concerned, despite an element of contempt being involved, if a defence appearing to be valid in law and having substance is raised before the high court by a party in default which shakes the very foundation of the order alleged to have been violated and upon the high court reaching a satisfaction of such a defence being valid to the extent that the subject order ought not to have been passed, it would always be open to the said court, depending on the nature of order and the breach alleged, to first secure compliance of the order by allowing the contemnor to purge the contempt without prejudice to his rights and contentions and, after such compliance, to revisit the order as per law and the circumstances present before it and then pass appropriate orders. There could be exceptional situations where the consequences of complying with an interim order, apparently erroneous or without jurisdiction and which has attained finality, could bring about irretrievable consequences. In such a case, where the high court is satisfied that securing compliance of its order would cause more injustice than justice, notwithstanding the finality attached to such order, the high court's authority ought to be conceded to pass such order as the justice of the case before it demands.

48. Lord Denning in Hadkinson v. Hadkinson39 had observed:

> "The court would only refuse to hear a party to a cause when the contempt impeded the course of justice by making it more difficult for the court to ascertain the truth or to enforce its orders and there was no other effective means of securing his compliance. The court might then in its discretion refuse to hear him until the impediment was removed or good reason was shown why it should not be removed."

49. This decision was followed by the House of Lords in X Ltd. v. Morgan-

Grampian Ltd.40 which also observes that the court will proceed with the contempt where a contemnor not only fails willfully and contumaciously to comply with an order of the court, albeit makes it clear that he will continue to defy court's authority. The courts in such circumstances may

decline to entertain an appeal or hear a party unless they purge themselves.

50. It will be appropriate here to also quote from Halsbury's Laws of England41, which states:

> "Thus a party in contempt may apply to purge the contempt, he may apply with a view to setting aside the order in which his contempt is founded, and in some cases he may be entitled to defend himself when some application is subsequently made against him. Even the plaintiff in contempt has been allowed to prosecute his action, when the defendant had not applied to stay the proceedings. Probably the true rule is that the party in contempt will not be heard only on those occasions when his contempt impedes the course of justice and there is no other effective way of enforcing his obedience."

51. This Court In the Matter of Anil Panjwani42 has observed that it is no rule of law and certainly not a statutory rule that a contemnor cannot be heard unless the contempt is purged. It has only developed as a rule of practice for protecting the sanctity of the court proceedings and the dignity 1952 (2) All ER 567 1990 (2) All ER 1 Volume 8, Third Edition (2003) 7 SCC 375 of the court that a person who is prima facie guilty of having attacked the court may be deprived of the right of participation in the hearing lest he should misuse such an opportunity unless he has agreed to disarm himself. The court would not be unjust in denying hearing to one who has shown his lack of worth by attacking the court unless he has agreed to beat a retreat and the court is convinced of the genuineness of such retreating. It lies within the discretion of the court to tell the contemner charged with having committed contempt of court that he will not be heard and would not be allowed participation in the court proceedings unless the contempt is purged. This is a flexible rule of practice and not a rigid rule of law. The discretion shall be guided and governed by the facts and circumstances of a given case. Where the court may form an opinion that the contemner is persisting in his behaviour and initiation of proceedings in contempt has had no deterrent or reformatory effect on him and/or if the disobedience by the contemner is such that so long as it continues it impedes the course of justice and/or renders it impossible for the court to enforce its orders in respect of him, the court would be justified in withholding access to the court or participation in the proceedings from the contemner. On the other hand, the court may form an opinion that the contempt is not so gross as to invite an extreme step as above, or where the interests of justice would be better served by concluding the main proceedings instead of diverting to and giving priority to hearing in contempt proceeding the court may proceed to hear both the matters simultaneously or independently of each other or in such as it may deem proper.

52. Therefore, it would be correct to state that the court's power when dealing with the question of contempt, in a sense, is discretionary. It cannot be gainsaid that even in cases where disobedience of the order of the court is not disputed, the court may also accept a defence, if raised, of impossibility to comply with an order and come to the conclusion that since it is impossible to enforce its order, action to punish may not be initiated. That apart, refusal may be justified by grave concerns of public policy. Much would depend on the facts and circumstances of the case, the nature of the contempt under enquiry, etc., which would enable the court to exercise its discretion either way. However, to demonstrate his bona fide, the contemnor ought to bring any valid defence for his

disability to comply with the court's direction to its notice without wasting any time. Whatever be the position before it, nothing stands in the way of the high court from passing an order to ensure that nothing impedes the course of justice.

53. Reverting to the point of limitation, even in case of a petition disclosing facts constituting contempt, which is civil in nature, the petitioner cannot choose a time convenient to him to approach the Court. The statute refers to a specific time limit of one year from the date of alleged contempt for proceedings to be initiated; meaning thereby, as laid down in Pallav Sheth (supra), that the action should be brought within a year, and not beyond, irrespective of when the proceedings to punish for contempt are actually initiated by the high court.

54. An action for contempt - though instituted through a petition or an application – is essentially in the nature of original proceedings, as held by this Court in High Court of Judicature at Allahabad v. Raj Kishore Yadav43; a fortiori, a prayer for condonation of delay in presenting the petition/application alleging contempt would not be maintainable. The express negative phraseology used in section 20 of the Act, as a legislative injunction, places a fetter on the court's power to initiate proceedings for contempt unless the petition/application is presented within the time-frame stipulated therein. However, since section 20 also uses the expression "date on which the contempt is alleged to be committed" as the starting point of the period of one year to be counted for reckoning whether the petition/application has been presented within the stipulated period, the high courts ought to be wary of crafty and skilful drafting of petitions/applications to overcome the delay in presentation thereof.

55. The Act, which is a special law on the subject of contempt, does not expressly or by necessary implication exclude the applicability of sections 4 to 24 of the 1963 Act. This Court, in State of West Bengal v. Kartick Chandra Das44 has held that in terms of section 29(2) of the 1963 Act, provisions contained in section 5 of the 1963 Act can be called in aid by a party who seeks condonation of delay in presentation of an appeal under section 19(1) of the Act. Similarly, in exceptional cases, provisions like sections 12, 14, 17, 22, etc. of the 1963 Act could be invoked to seek exemption from the law of limitation, which is distinct from condonation of delay. In an appropriate case, it would be open to the party who has not petitioned the court within the period of one year, as stipulated in section 20 of the Act, to seek exemption from the law of limitation in line with the (1997) 3 SCC 11 (1996) 5 SCC 342 principle flowing from Order VII Rule 6, CPC45, by showing the ground upon which such exemption is claimed. We have no hesitation to hold that in a case where a civil contempt is alleged by a party by referring to a "continuing wrong/breach/offence" and such allegation prima facie satisfies the court, the action for contempt is not liable to be nipped in the bud merely on the ground of it being presented beyond the period of one year as in section 20 of the Act. Applicability of the principle underlying Order VII Rule 6, CPC for granting exemption would only be just and proper having regard to the object and purpose for which the jurisdiction to punish for contempt is exercised by the courts if, of course, the court is satisfied that benefit of such an exemption ought to be extended in a given case. At the same time, it must be remembered that the court cannot grant exemption from limitation on equitable consideration or on the ground of hardship. Inspiration in this regard may be drawn from the decision of the Privy Council in Maqbul Ahmad v. Onkar Pratap Narain Singh46. However, as observed earlier, contempt proceedings being

in the nature of original proceedings, akin to a suit, application of section 5 of the 1963 Act to seek condonation of delay is excluded.

56. A caveat needs to be added here. For a "continuing wrong/breach/offence" to be accepted as a ground for seeking exemption in an action for contempt, Grounds of exemption from limitation law. - Where the suit is instituted after the expiration of the period prescribed by the law limitation, the plaint shall show the ground upon which exemption from such law is claimed:

> Provided that the Court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint.
>
> AIR 1935 PC 85 the party petitioning the court not only has to comprehend what the phrase actually means but would also be required to show, from his pleadings, the ground resting whereon he seeks exemption from limitation. Should the party fail to satisfy the court, the petition is liable to outright rejection. Also, the court has to be vigilant. Stale claims of contempt, camouflaged as a "continuing wrong/breach/offence" ought not to be entertained, having regard to the legislative intent for introducing section 20 in the Act which has been noticed above. Contempt being a personal action directed against a particular person alleged to be in contempt, much of the efficacy of the proceedings would be lost by passage of time. Even if a contempt is committed and within the stipulated period of one year from such commission no action is brought before the court on the specious ground that the contempt has been continuing, no party should be encouraged to wait indefinitely to choose his own time to approach the court. If the bogey of "continuing wrong/breach/offence" is mechanically accepted whenever it is advanced as a ground for claiming exemption, an applicant may knock the doors of the Court any time suiting his convenience. If an action for contempt is brought belatedly, say any time after the initial period of limitation and years after the date of first breach, it is the prestige of the court that would seem to become a casualty during the period the breach continues. Once the dignity of the court is lowered in the eyes of the public by non-compliance of its order, it would be farcical to suddenly initiate proceedings after long lapse of time. Not only would the delay militate against the legislative intent of inserting section 20 in the Act (a provision not found in the predecessor statutes of the Act) rendering the section a dead letter, the damage caused to the majesty of the court could be rendered irreparable. It is, therefore, the essence of justice that in a case of proved civil contempt, the contemnor is suitably dealt with, including imposition of punishment, and direction as well is issued to bridge the breach.

57. Having thus held, we move on to examine the objection as to maintainability of the contempt action initiated by the first respondent upon the inaction of the appellant in effecting mutation of the decretal property in his favour in the revenue records and also as to whether a case of "continuing wrong/breach/ offence" was at all shown by the first respondent in the contempt

petition.

58. To recapitulate, the Single Judge had allowed the writ petition of the first respondent on 05th March, 2009 with a direction to the Tahsildar to effect the necessary mutation in the revenue records in accordance with the final decree dated 26th December, 2003. Pertinently, the direction issued to the appellant vide the order of disposal of the writ petition did not specifically mention a time-frame within which the order was to be implemented.

59. In view of the absence of a time-frame in the order, much would turn on rule 21 of the Writ Rules47. Having read the relevant rule, we presume that the learned Single Judge was aware of such a rule and, hence, refrained from stipulating a time-frame for compliance of the Court's order. Irrespective of any time-frame fixed in an order, the direction contained Unless the court otherwise directs, the direction or order made or the rule absolute issued by the High Court shall be implemented within two months of the receipt of the order. therein would require compliance within the period stipulated in rule 21 if the person responsible for such compliance has notice of it even aliunde.

60. The question of the contempt petition being barred by limitation has to be decided keeping section 20 of the Act and rule 21 of the Writ Rules in mind together with what constitutes a "continuing wrong/breach/offence". Undisputedly, the contempt petition was instituted on 04th October, 2014, more than 5 (five) years after the order (of which contempt had been alleged) was passed, i.e., on 05th March, 2009. Notably, the appellant had not carried the order dated 05th March, 2009 (disposing of the writ petition) in appeal. Therefore, question of operation of the said order remaining suspended did not arise and the principle embodied in section 15 of the 1963 Act was not attracted. The said order required the appellant to effect mutation in terms of the decree of the civil court. No time-frame for compliance of such order having been stipulated by the Single Judge, it would stand to reason that the same required compliance at least by the end of the time-frame stipulated by rule 21.

61. The appellant has asserted before us that the contempt action was time- barred in view of the fact that limitation for initiation of contempt action commenced on 04th May, 2009, i.e., when the two-month period stipulated by rule 21 expired and ended on 03rd May, 2010, i.e., in accordance with section 20 of the Act. However, the first respondent has contended that the contempt petition was not barred by limitation since the act of the appellant in not implementing the direction for effecting mutation was in the nature of a continuing wrong.

62. The date on which service of the order dated 05th March, 2009 disposing of the writ petition was effected on the appellant is not stated anywhere in the contempt petition by the first respondent. No such date is also reflected in the representations that the first respondent claims to have made on 11th May, 2009, 12th September, 2009, 22 nd October, 2010, 16 th August, 2012 and 05 th February, 2014. It is also not seen from the appellant's counter affidavit that he pleaded non-service of such order. We are, thus, inclined to the view that the appellant had notice aliunde of the order dated 05th March, 2009. Proceeding on the premise that the order must have been served immediately after the same was passed by the Single Judge and in the light of rule 21 of the Writ

Rules, the appellant had 2 (two) months' time from receipt of the order dated 05th March, 2009, i.e., say till the end of May, 2009 to implement the direction. The appellant failed to effect mutation, as directed, within the aforesaid time-frame and was, thus, in breach of the said order dated 05th March, 2009, say from June, 2009. There does not appear to be any explanation proffered in the contempt petition worthy of consideration as to why the contempt petition was delayed and not presented within the period of a year of commission of the breach when it first occurred, i.e., at least by the end of May, 2010.

63. The learned Single Judge deciding the contempt petition, vide order dated 04th October, 2017, was impressed by the arguments advanced by the first respondent and while holding that there has been a continuing wrong and also that the appellant is in contempt, allowed the contempt petition.

64. The Division Bench (review) held in favour of the first respondent observing that the inaction of the Government officials was a continuing wrong since they did not outrightly refuse to implement the order, rather, till as late as 2017, assured that they would implement it but failed to do so. Furthermore, what weighed with the High Court was the alleged misrepresentation with respect to the title of the subject land; such misrepresentation being in the nature of fraud, would entitle the High Court to recall the primary order on merits. The State authorities were held to have misrepresented the title of the suit land inasmuch as they took mutually contradictory stands, i.e., on the one hand it was argued that the subject land was escheated land, and on the other, it was argued, on the strength of revenue entries, that the subject land always belonged to the State. The High Court then went on to examine and interpret documents produced by the respondents for the first time and accorded title in favour of the respondents.

65. For reasons more than one, the impugned order allowing the contempt petition is indefensible.

66. First, having read the impugned order, we are quite convinced that submissions that were advanced before the Division Bench (review) of the order dated 05th March, 2009 being in the process of implementation had the undesirable effect of shifting the focus of the High Court from adjudging the maintainability of the contempt petition as on date the same was presented, i.e., 04th October, 2014, to the unacceptable fact of actual non- compliance of the order of 05th March, 2009 despite indication of compliance. No doubt, compliance of an order of the court has to be insisted upon but within the four corners of the contempt petition. Non-compliance coupled with an assurance in court to comply, after the court has issued notice on the contempt petition, is not sufficient to attract the principle of "continuing wrong/breach/offence". A contemnor on pain of suffering consequences for contempt may well give up available defences before the court and proceed to obey the order/direction, of which he is alleged to be in contempt; but if the jurisdiction to punish is otherwise barred, there is no law that prohibits the court from first proceeding to ascertain whether the jurisdiction is at all available to be exercised; and, when an objection of maintainability based on limitation is raised, it becomes all the more essential for the court to decide the objection leaving aside other considerations. The Division Bench (review), unfortunately, missed the woods for the tree.

67. Proceeding ahead, we find that as complex as the issues surrounding the title of the subject land are, the impugned order of the Division Bench (review) is unsustainable in law, for, it has exceeded its contempt jurisdiction, which indubitably is limited and finite in the sense that every court exercising power to punish for contempt ought to keep itself within the boundaries specified by the Act and the judicial pronouncements in this behalf. The laborious exercise undertaken to unravel the web of deeds and documents so as to determine the question of title was akin to an exercise undertaken by a court of first instance or first appeal and, thus, wholly unwarranted. It is of the utmost importance to remember that none of the documents produced by the first respondent answered the question as to whether the contempt petition was barred by limitation, which is the question the Division Bench (review) ought to have confined itself to, since it was only tasked with exercising review, and not appellate, jurisdiction.

68. In our considered view, it further becomes imperative to undertake an examination of the contempt petition itself. This exercise reveals that the primary grounds taken for the contempt petition being filed belatedly, inter alia, were the pendency of collateral proceedings and the continuous filing of representations before the Tahsildar by the applicants. Law is well-settled that the issue of limitation has to be considered with reference to the original cause of action. The period of limitation does not stand extended to the last of repeated representations made by a party, if filing of representation is not statutorily provided. The contempt petition is, however, entirely bereft of any pleading to the effect that the breach committed by the Tahsildar is in the nature of a continuing wrong or breach or offence, so as to overcome the bar of limitation set by section 20 of the Act read with rule 21 of the Writ Rules.

69. Despite the absence of any pleading as to “continuing wrong/breach/ offence”, the Single Judge by placing reliance on the decision in Firm Ganpat Ram Rajkumar v. Kalu Ram48 proceeded to hold that the Tahsildar’s inaction constituted a continuing wrong, thereby saving the petition from being barred by limitation. The Division Bench (review) approached the matter in a similar manner, and concluded that the contumacious conduct alleged was in the nature of a continuing wrong.

70. While we are not in disagreement with the view expressed in Firm Ganpat Ram Rajkumar (supra) because of the special facts and circumstances 1989 Supp (2) SCC 418 obtaining therein, the decision of the Division Bench (review) affirming that of the Single Judge is wholly unsustainable in law for a few other reasons.

71. First, it is trite that the court cannot traverse beyond the pleadings and make out a case which was never pleaded, such principle having originated from the fundamental legal maxim secundum allegata et probate, i.e., the court will arrive at its decision on the basis of the claims and proof led by the parties. The assertion of the contumacious conduct being in the nature of a “continuing wrong/breach/offence” is factual and has to be borne from the pleadings on record. Law is, again, well-settled that when a point is not traceable in the pleas set out either in a plaint or a written statement, findings rendered on such point by the court would be unsustainable as that would amount to an altogether new case being made out for the party. Absent such pleading of there being a “continuing wrong/breach/offence”, the finding returned by the Single Judge, since affirmed by the Division Bench (review), cannot be sustained in law.

72. Even if a point of "continuing wrong/breach/offence" is traceable in the pleadings, the court ought not to accept it mechanically; particularly, in entertaining an action for contempt, which is quasi-criminal in nature, the court should be slow and circumspect and be fully satisfied that there has indeed been a "continuing wrong/breach/offence".

73. This takes us to the other infirmity in the decision of the High Court inasmuch as it held that the disobedience of the mutation order by the appellant was in the nature of a continuing wrong. A reference to section 22 of the 1963 Act would be prudent at this stage. It reads:

> "22. Continuing breaches and torts - In the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues."

> 74. While proceeding to examine the nature of the contumacious conduct in question, it is considered apposite to commence the discussion with a reference to Halsbury's Laws of India (Damages; Deeds and Other Instruments)49 reading thus:

> "[115.032] When cause of action is single and continuing - A cause of action may be either single or continuing. When an act is final and complete and becomes a cause of action for injury to the plaintiff, it is single, arises once and for all and the plaintiff is entitled to sue for compensation at one time, for all past, present and future consequences of the wrongful act. But if there is repetition of a wrongful act or omission, it will comprise a continuing cause of action, and if an action is brought by the plaintiff, it will be restricted to recovery of damages which have accrued up to the date of suit. In such cases the cause of action is said to arise 'de die in diem' (from day to day). It is inaccurate strictly to speak of a 'continuing cause of action', but the phrase refers to a cause of action which arises from the repetition of acts or omissions of the same kind as that for which the action was brought."

> 75. The English Court of Appeals in National Coal Board v.

Galley50 distinguished between the two scenarios by observing that neither do repeated breaches of continuing obligations constitute a continuing wrong nor intermittent breaches of a continuing obligation; rather there has to be present an element of continuance in both, the breach and the obligation.

76. This Court too, as far back as in 1958, with reference to the Limitation Act of 1908, discussed in Balkrishna Savalram Pujari v. Shree Volume 9, First Edition [1958] 1 All ER 9 Dnyaneshwar Maharaj Sansthan51 what would constitute a continuing wrong. The relevant passage reads thus:

> "20. *** s. 23 refers not to a continuing right but to a continuing wrong. It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of

> the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury. It is only in regard to acts which can be properly characterised as continuing wrongs that s. 23 can be invoked.*** As soon as the decree was passed and the appellants were dispossessed in execution proceedings, their rights had been completely injured, and though their dispossession continued, it cannot be said that the trustees were committing wrongful acts or acts of tort from moment to moment so as to give the appellants a cause of action de die in diem. We think there can be no doubt that where the wrongful act complained of amounts to ouster, the resulting injury to the right is complete at the date of the ouster and so there would be no scope for the application of s. 23 in such a case.***" (emphasis ours)

77. The decision of this Court in Balkrishna Savalram Pujari (supra) was endorsed by this Court in M. Siddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das52 wherein, while concluding that the ouster of shebaitship was a single incident and did not constitute a continuing wrong, this Court further observed as follows:

> "343. The submission of *** is based on the principle of continuing wrong as a defence to the plea of limitation. In assessing the submission, a distinction must be made between the source of a legal injury and the effect of the injury. The source of a legal injury is AIR 1959 SC 798 (2020) 1 SCC 1 founded in a breach of an obligation. A continuing wrong arises where there is an obligation imposed by law, agreement or otherwise to continue to act or to desist from acting in a particular manner. The breach of such an obligation extends beyond a single completed act or omission. The breach is of a continuing nature, giving rise to a legal injury which assumes the nature of a continuing wrong. For a continuing wrong to arise, there must in the first place be a wrong which is actionable because in the absence of a wrong, there can be no continuing wrong. It is when there is a wrong that a further line of enquiry of whether there is a continuing wrong would arise. Without a wrong there cannot be a continuing wrong. A wrong postulates a breach of an obligation imposed on an individual, where positive or negative, to act or desist from acting in a particular manner. The obligation on one individual finds a corresponding reflection of a right which inheres in another. A continuing wrong postulates a breach of a continuing duty or a breach of an obligation which is of a continuing nature. ... ... Hence, in evaluating whether there is a continuing wrong within the meaning of Section 23, the mere fact that the effect of the injury caused has continued, is not sufficient to constitute it as a continuing wrong. For instance, when the wrong is complete as a result of the act or omission which is complained of, no continuing wrong arises even though the effect or damage that is sustained may enure in the future.

What makes a wrong, a wrong of a continuing nature is the breach of a duty which has not ceased but which continues to subsist. The breach of such a duty creates a continuing wrong and hence a defence to a plea of limitation." (emphasis ours)

78. The order on the writ petition directed the appellant to effect mutation in the revenue records in favour of the first respondent, in accordance with the final decree. The direction for mutation having been issued on 05th March, 2009, the appellant had a period of 2 (two) months therefrom to effect such mutation, as stipulated by the Writ Rules, which we shall assume the appellant failed or neglected to comply without just reason. From 04th May, 2009, i.e., the starting point for the limitation period for initiation of contempt action to commence, till 10th February, 2014, i.e., the date of the filing of the contempt petition, the appellant failed to effect mutation, as ordered by the Single Judge. Could it be said that every day thereafter that the appellant did not effect mutation gave rise to a fresh cause of action so as to constitute a "continuing wrong/breach/offence"? To our minds, the answer is a clear and unequivocal 'NO'. Upon application of the test laid down by this Court in Balkrishna Savalram Pujari (supra) and M. Siddiq (supra), it is evident that when, by 04th May, 2009, the appellant failed to implement the direction of the High Court, the act of disobedience was complete as on that date itself. Every day thenceforth, the name of the first respondent continued to be absent from the revenue records but such absence could not be characterised as the injury or wrongful act itself; it was merely the damage which flowed from the standalone act of breach committed by the appellant – that of not effecting the mutation. The injury was not repetitive or in other words, did not arise de die in diem, but rather, it was the effect of the injury which continued till the date the first respondent presented the contempt petition on 10th February, 2014.

79. Having held that the nature of breach or offence committed by the appellant was not in the nature of a "continuing wrong/breach/offence", the bar of limitation was rightly pressed by the Division Bench (original) to halt the claim of the first respondent at the threshold itself, since the period of limitation to initiate the contempt action ended at least by May end of 2010. The decision of the Division Bench (original) in dismissing the first respondent's contempt petition as time-barred was unexceptionable and the Division Bench (review) acted illegally in reversing the same assuming the jurisdiction to review which, on facts and in the circumstances, was not available to be exercised.

80. The contempt petition was, thus, barred by limitation and no case for claiming exemption having been set up, the same deserved outright dismissal.

EPILOGUE

81. Having answered the two legal issues and before recording our conclusion, we cannot resist reflecting on the point of fraud having vitiated the proceedings. This point, in turn, emerges because the Division Bench (review) erroneously held the State to have practised fraud; and this discussion is necessitated since, to the contrary, there seems to be sufficient reason to hold the first respondent responsible therefor. The writ petition, in the form the same had been presented by the first respondent, does evince clear suppression of a material fact bordering on fraud on court and having

the potential to render it not maintainable. But to this too, there is a caveat. This question, though quite fundamental in nature, does not appear to have been argued by the appellant before the High Court and also before us. Thus, argument on the issue of maintainability of the writ petition not having been advanced before us by the parties, whatever we observe and record hereafter is merely an indication of the direction our decision would have taken, if such point were raised or argued. We may not be misunderstood of having decided a point without calling upon the parties to address on it.

82. The effect of suppression of a material fact on maintainability of a writ petition is too well known. But what is important is, whether suppression of a material fact in a writ petition amounts to fraud on court and whether an issue of maintainability based on suppression can be examined if the judgment and/or order of disposal of the writ petition has attained finality by reason of no appeal being carried therefrom.

83. This Court in Meghmala v. G. Narasimha Reddy53 observed that suppression of any material fact/document amounts to a fraud on the court and every court has an inherent power to recall its own order obtained by fraud as the order so obtained is non est.

84. Quite recently, in K. Jayaram v. BDA54, this Court held:

> "10. It is well-settled that the jurisdiction exercised by the High Court under Article 226 of the Constitution of India is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the writ court must come with clean hands and put forward all facts before the court without concealing or suppressing anything. A litigant is bound to state all facts which are relevant to the litigation. If he withholds some vital or relevant material in order to gain advantage over the other side then he would be guilty of playing fraud with the court as well as with the opposite parties which cannot be countenanced." (emphasis ours)

85. It is also settled law that fraud is an extrinsic collateral act, which vitiates the most solemn of proceedings including judicial acts and that a plea of fraud can be set up even in a collateral proceeding. We are reminded of what this Court said in S.P. Chengalvaraya Naidu v. Jagannath55:

> "The principle of 'finality of litigation' cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants."
> (2010) 8 SCC 383 (2022) 12 SCC 815 (1994) 1 SCC 1

86. The Division Bench (original) noted that the civil suit having been withdrawn against the State, the first respondent could not have validly attempted to obtain a direction, through the medium of the writ petition, on the strength of a decree passed in such a suit where the State was no longer a party, yet, the Division Bench (review) held the State to have practised fraud.

87. A perusal of the averments in the writ petition do not reveal any mention of the civil suit having been withdrawn against the State Government. Suppression of a material fact on the part of the first

respondent is indeed discernible which, if pleaded, could have altered the outcome of the writ petition. A very innocuous prayer was, however, made for effecting mutation in terms of the final decree, without disclosing that mutation was being asked for in respect of a piece of land over which the State itself had been claiming title and that the civil suit was withdrawn faced with such a claim of the State. A writ court being a court of equity, it is needless to observe that the parties are bound to approach the court with clean hands. Inasmuch as the aforesaid fact of withdrawal was not brought to the writ court's notice, an egregious breach of such principle is noticed. Suppression of such a material fact, as in the present case, could legitimately be argued to amount to a fraud on court. There can hardly be two opinions that such breach would strike at the very root of the matter and since a point of fraud can be raised even collaterally, if the point of fraud had been raised, the writ petition itself could have been held non-maintainable.

88. However, since our decision is premised on the reasons assigned while answering the issues formulated in paragraph 8 (supra), we wish to say no more.

CONCLUSION

89. For the foregoing reasons, we conclude that the High Court exceeded both its review and contempt jurisdiction. The impugned order is, thus, set aside, and the judgment and order of the Division Bench (original) in the contempt appeal and the letters patent appeal is restored.

90. The appeals succeed and are allowed. All pending applications stand disposed of. Parties shall, however, bear their own costs.

91. Determination of the title to the subject land, adjudication on the validity of the decrees in favour of the respondents, or decision on any other contentious issue are left open for a forum of competent jurisdiction to embark upon, if approached by any of the parties. None of the observations of this Court, or of the High Court in the impugned order should be treated as an expression of opinion in any particular matter or on any factual aspect whatsoever.

CIVIL APPEAL NOS. _____ OF 2024 [ARISING OUT OF SLP (CIVIL) NOS. 19748-19749 OF 2022]

92. Leave granted.

93. These appeals assail the common judgment and order dated 26 th September, 2022 of the High Court dismissing petitions56 preferred by the appellant, seeking recall of the judgment and order dated 27th April, 2022 of the Division Bench (review). The High Court held that the recall petitions were review petitions in disguise; thus, the impugned judgment and order was upheld in view of the specific statutory bar of Order XLVII Rule 9, CPC.

94. The judgment and order 27th April, 2022 having been set aside for the reasons assigned above while allowing the civil appeals arising out of SLP (Civil) Nos. 19748-19749 of 2022, the order of the High Court dated 26th September, 2022 assailed in these appeals upholding the same can no longer

stand. Resultantly, the impugned order is set aside. The present appeals succeed and are allowed on the same terms as the appeals decided hereinabove.

.....J. (SANJIV KHANNA) .....J. (DIPANKAR DATTA)
New Delhi;

22nd July, 2024.

I.A. No. 3/2022 in Review I.A. No. 1/2020 in LPA 1/2018 and I.A. No. 10/2022 in Review I.A.