Iridium India Telecom Ltd vs Motorola Inc on 5 January, 2005

Equivalent citations: AIR 2005 SUPREME COURT 514, 2005 AIR SCW 138, (2005) 27 ALLINDCAS 701 (SC), 2005 (1) SLT 385, 2005 (27) ALLINDCAS 701, (2005) 1 ALLMR 191 (SC), (2005) 1 CTC 304 (SC), (2005) 1 SCALE 42, (2005) 1 JT 50 (SC), 2005 (1) SRJ 444, 2005 (2) ALL CJ 911, 2005 (1) ALL MR 191, 2005 (1) CTC 304, 2005 (2) SCC 145, 2005 ALL CJ 2 911, 2005 (1) JT 50, 2005 SCFBRC 348, (2005) ILR (KANT) 749, (2005) 1 CURCC 67, (2004) 2 ANDHWR 540, (2005) 2 ANDHLD 34, (2005) 1 LANDLR 608, (2005) 2 MAD LJ 97, (2005) 2 MAD LW 57, (2005) 2 PUN LR 280, (2005) 1 SUPREME 138, (2005) 3 ICC 92, (2005) 2 ANDH LT 32, (2005) 2 ALL WC 1872, (2005) 1 KCCR 593, (2005) 118 DLT 216, (2005) 1 MAH LJ 678, (2005) 1 WLC(SC)CVL 166, (2005) 1 SCJ 422, (2005) 2 CIVLJ 837, (2005) 3 BOM CR 781, 2005 (1) BOM LR 967, 2005 BOM LR 1 967

Bench: Shivaraj V. Patil, B.N. Srikrishna

CASE NO.:
Appeal (civil) 40 of 2005

PETITIONER:
IRIDIUM INDIA TELECOM LTD.

RESPONDENT:
MOTOROLA INC.

DATE OF JUDGMENT: 05/01/2005

BENCH:
Shivaraj V. Patil & B.N. Srikrishna

JUDGMENT:

J U D G M E N T (arising out of S.L.P. (C) No. 6818 of 2004) SRIKRISHNA, J.

Leave granted.

This appeal impugns the judgment of the Division Bench of the High Court of Judicature at Bombay in a Letters Patent appeal holding that the amended provision of Order VIII Rule 1 of the Code of Civil Procedure 1908 (hereinafter referred to as the 'CPC') would not apply to the suits on the Original Side of the High Court and that such suits would continue to be governed by the High Court Original Side Rules.

Facts:

The appellant company filed Suit No. 3092 of 2002 on 16.9.2002 on the Original Side of the High Court of Judicature at Bombay claiming about Rs. 1000 crores on the ground that it had suffered loss and/or damages on account of an alleged fraud on the part of the respondent, a foreign corporation incorporated in the United States of America. The appellant also obtained an ex parte order against the respondent in the nature of an attachment before judgment of receivables in India. On 17.9.2002, the first respondent claims to have dispatched the plaint and all connected papers by courier along with a covering letter of the same date. According to the appellant, the Sheriff of Bombay was requested to transmit the writ of summons along with the plaint and the other proceedings by Regd. A.D. post or by air mail to the respondent, and the Sheriff had done it. On 1.10.2002 the respondent filed a detailed affidavit along with an application to vacate the ex parte ad interim order made on 16.9.2002, as a result of which the ex parte order was modified by the High Court on 3.10.2002. On 16.10.2002 a second Notice of Motion was filed by the appellant. The respondent filed an affidavit opposing the prayers made in the second Notice of Motion. After hearing the parties, the High Court by an order made on 24.10.2002 refused the ad interim reliefs sought in the second Notice of Motion. Though the appellant preferred an appeal from both the Orders dated 3.10.2002, modifying the earlier ex parte order, and the refusal of ad interim reliefs on 24.10.2002, that appeal was finally withdrawn. On

2.3.2003, the appellant applied for issue of duplicate summons. On 13.3.2003 the respondent filed a comprehensive affidavit in reply to the Notice of Motion. On 9.4.2003, duplicate summons were served upon the respondent. On 2.5.2003 the respondent applied for extension of time purportedly under Order VIII, Rule 1 of CPC, by a letter addressed to the Prothonotary and Senior Master, High Court of Bombay. The matter came before the learned Single Judge, who after hearing both the sides was of the view that "granting of 90 days time from 9.4.2003, the date on which the duplicate writ of summons had been admittedly served upon the respondent, would provide ample opportunity to the respondent to file written statement on or before 8.7.2003". Although, a prayer was made that the court may exercise its powers under Section 148 of the CPC and grant further extension of 30 days beyond 8.7.2003, that request was declined on the ground that the "request was premature and would be considered only on 8.7.2003, provided the defendant-respondent was able to show sufficient cause for such an indulgence." Further time to file written statement was granted on payment of costs quantified at Rs.10,000 to be paid to the plaintiff-appellant. According to the respondent, the written statement was ready by 6.7.2003, but had not yet been affirmed. The respondent moved the court for further extension of time. This request was also opposed by the appellant. By an order made on 7.7.2003, the High Court extended time up to 28.7.2003.

The appellant filed Appeal No. 608 of 2003 before the Division Bench of the High Court challenging the order extending time to file the written statement. On 28.7.2003, the written statement was actually filed by the respondent. The appeal was dismissed by the Division Bench on 17.10.2003, taking the view that the suits on the Original Side would be governed by the Original Side Rules and not by the amended provisions of Order VIII Rule 1 of the CPC.

Contentions:

> The learned counsel for the appellant contends thus: the view taken by the High Court that the proceedings on the Original Side of the High Court would be governed by the Original Side Rules and not by the amended provisions of Order VIII Rule 1 of the CPC, is contrary to the legislative intendment; the High Court (Original Side) Rules were framed under the delegated rule making power under Section 129 of the CPC and they could not override the provisions of the amended Order VIII Rule 1, which is a part and parcel of the substantive Statute itself; this is particularly so, when the intention of Parliament in making the amendment is clear, namely, to shorten the time period of endlessly long and protracted course of litigation and to discourage dishonest defendants from interminably seeking adjournments. Hence, Parliament has now made a tight schedule within which written statements have to be filed, failing which the legal consequences contemplated under the CPC, including the one as to making of an ex parte decree should follow ; rules framed by the High Court under the delegated rule making power conferred by Section 129 of the CPC could not be treated as "a stand alone body of rules outside the CPC", as erroneously done by the High Court in the impugned judgment ; that Section 129 of the CPC must be so interpreted as not to defeat the substantive vested rights created in favour of a litigant under the Amendment Act of 2002.

Since the written statement had not been filed within the time prescribed therein, by reason of the amended provisions of Order VIII Rule 1, the plaintiff-appellant had a vested right to have his suit decided ex parte. The learned counsel for the Respondent supported the impugned judgment and reiterated the arguments which have appealed to the High Court.

The Statutory Scheme:

> The Code of Civil Procedure, 1908 is an Act to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature. It would, therefore, govern all actions of civil nature, unless otherwise provided for in the CPC. Some of the provisions of the CPC, however, do make some exceptions, and it is necessary to notice them. Section 4(1) provides as follows:
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> "4. Savings.-(1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force."

Apart from this section, Part IX of the CPC contains the fasciculus of Sections 116 to Section 120 delineating the manner of application of the CPC to the High Courts. Section 116 declares that Part IX applies only to High Courts not being the Court of a Judicial Commissioner. Section 117 provides that save as provided in Parts IX or X or in the rules, the provisions of the Code would apply to such High Courts. Section 120 provides that Sections 16, 17, and 20, which deal with the pecuniary and

territorial jurisdictions, shall not apply to the High Court in the exercise of its original civil jurisdiction.

Then comes Part X, which deals with the rule making power. By Section 121 the rules prescribed in the First Schedule, being rules prescribed by the Legislature itself, have been declared to have the same effect as if enacted in the body of the Code until annulled or altered in accordance with the provisions of Part X. Section 122 confers power on a High Court, other than the Court of a Judicial Commissioner, to annul, alter or add to all or any of the rules in the First Schedule. This power is conferred with regard to rules regulating their own procedure and the procedure of the Civil Courts subject to their superintendence, but is subject to the condition of previous publication. Section 123 contemplates the constitution of Rule Committees in each of the High Courts as prescribed therein. Such a Committee makes its report to the High Court under Section 124 formulating and forwarding proposals with regard to annulment, alteration or addition in the First Schedule or for making new rules. Section 126 requires that the rules made by the High Court shall be subject to the previous approval of the State Government concerned. Section 127 requires previous publication of the rules so made in the Official Gazette. Section 128 enumerates a number of matters with regard to which rules may be framed by the High Courts. Then comes to Section 129, which is crucial for the present discussion.

Section 129 reads as under:

> "129. Power of High Courts to make rules as to their original civil procedure.- Notwithstanding anything in this Code, any High Court not being the Court of a Judicial Commissioner, may make such rules not inconsistent with the Letters Patent or order or other law establishing it to regulate its own procedure in the exercise of its original civil jurisdiction as it shall think fit, and nothing herein contained shall affect the validity of any such rules in force at the commencement of this Code."

Mr. Ram Jethmalani, learned counsel for the appellant, strenuously urged that the power of the High Court to frame rules governing the procedure on its Original Side is a delegated legislative power, and can in no event override or be independent of the parent legislation, namely, the CPC. According to him, Parliament has, by prescription of rules in the First Schedule to the CPC, declared that the said rules would have the same status as if enacted in the body of the Code itself. No doubt, power has been given to the High Courts to amend these rules, subject to the condition of the report of the Rule Committee, previous approval of the State Government and publication of the rules. He contends that Section 129 of the CPC does not invest any independent power in the High Courts to make rules, but must be read harmoniously with the High Courts power under Section 122 of the CPC, if not as subordinate and subject thereto. Section 129 begins with a non obstante clause and seems to suggest something to the contrary. At least as far as Chartered High Courts are concerned, Section 129 seems to invest them with the power to make rules with regard to the regulation of their own procedure, which may be inconsistent with the CPC itself, as long as such rules are consistent with the Letters Patent establishing the High Courts. The section also ends with the words: "nothing herein contained shall affect the validity of any such rules in force at the commencement of this Code" (emphasis ours).

The CPC has been amended from time to time in order to meet with the changing situations. The historical developments as to the application of the CPC to the proceedings in the Chartered High Courts are illuminating. In order to appreciate the merit of the contention so strongly urged by the learned counsel for the appellant, it would be necessary to take a chronological perspective of the law.

Chronological Perspective:

> Prior to the establishing of the Chartered High Courts by the British Government in 1862, the Civil Courts in the Presidency of Bombay were governed by the Code of Civil Procedure, 1859 (Act No. VIII of 1859, which received the assent of the Governor General on 22.3.1859). This Act, as its preamble suggests, was "an Act for simplifying the procedure of the Courts of Civil Judicature not established by Royal Charter" and was not intended to apply to High Courts established by Royal Charter.
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> The First Letters Patent or Charter establishing High Courts were accompanied by a Despatch from the Secretary of State on 14.5.1862, and were in force till revoked by a further Letters Patent on 28.12.1865. The learned counsel drew our attention to paragraph 36 of the Despatch, which explains the purpose of Clause 37 in the First Letters Patent. The said paragraph 36 of the Despatch reads as under:
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> "36. Clause 37 is a very important one, and there is little doubt, will prove a very salutary provision. It has, therefore, been inserted, although the change introduced is somewhat greater and more substantial than is generally aimed at in this Charter. It extends to the High Court the Code of Civil Procedure enacted by the Legislature of India for the Court, not established by Royal Charter, and thus accomplishes the object so long contemplated of substituting one simple Code of Procedure for the various systems (corresponding to its common law, equity and admiralty jurisdiction) which have been in operation in the Supreme Court since the date of its establishment."

It is therefore seen that clause 37 of the Letters Patent was intended to extend to the High Courts the Code of Civil Procedure enacted by the Legislature of India for the Courts other than the Courts established by the Royal Charter. The intention was to substitute one simple Code of Procedure for the various systems which had been in operation in the Supreme Court since the date of its establishment.

Clause 37 of the Letters Patent of 1865, which deals with "civil procedure and regulation of proceedings", reads as follows:

> "37. And we do further ordain that it shall be lawful for the said High Court of Judicature at Fort William in Bengal, from time to time, to make rules and orders for the purpose of regulating all proceedings in civil cases which may be brought before the said High Court, including proceedings in its Admiralty, Vice-Admiralty,

> Testamentary, Intestate and Matrimonial Jurisdictions, respectively: Provided that the said High Court shall be guided in making such rules and orders as far as possible, by the provisions of the Code of Civil Procedure, being an Act passed by the Governor-General in Council, and being Act No. VIII of 1859, and the provisions of any law which has been made amending or altering the same, by competent legislative authority for India."

(Letters Patent of the three High Courts, namely, Calcutta, Bombay and Madras are identically worded).

The Code of Civil Procedure, 1877 (Act No. X of 1877), which received the assent of the governor General on 30.3.1877, and was thereafter brought into force with effect from 1.10.1877, was "an Act to consolidate and amend the laws relating to the procedure of the Court of Civil Judicature". Part IX of this Act contained special rules relating to the Chartered High Courts. Chapter XLVIII of the Act applied only to the Chartered High Courts. Section 632 of the Civil Procedure Code of 1877, in express words, provided: "except as provided in this Chapter the provisions of this Code apply to such High Courts." Section 638 was the exception to the general rule and provided as under:

> "The following portions of this Code shall not apply to the High Court in the exercise of its ordinary or extra- ordinary original civil jurisdiction, namely Sections 16 and 17, Sections 54, clauses (a) and (b), 57, 119, 160, 182 to 185 (both inclusive), 187, 189, 190, 191, 192 (so far as relates to the manner of taking evidence), 198 to 206 (both inclusive), 261, and so much of Section 409 as relates to the making of a memorandum; and Section 579 shall not apply to the High Court in the exercise of its appellate jurisdiction.
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> Nothing in this Code shall extend or apply to any High Court in the exercise of its jurisdiction as an Insolvent Court."

The Legislature recognized the special role assigned to the Chartered High Courts and exempted them from the application of several provisions of the Code in the exercise of their ordinary or extra-ordinary civil jurisdiction for the simple reason that those jurisdictions were governed by the procedure prescribed by the rules made in exercise of the powers of the Chartered High Courts under clause 37 of the Letters Patent. Interestingly, Section 652 of this Act itself empowered the High Courts to make rules "consistent with this Code to regulate any matter connected with the procedure of the Courts of Civil Judicature subject to its superintendence", suggesting that consistency with the Code was a sine qua non only when making rules for the subordinate courts.

The Code of Civil Procedure, 1882 (Act No. XIV of 1882) received the assent of the Governor General on 17.3.1882. It also contained Part IX dealing with special rules relating to the Chartered High Courts. Section 638 of this Code also exempted the Chartered High Courts in the exercise of their ordinary or extraordinary original civil jurisdiction from the application of the Code. Section 652 invested with the High Courts with power to make rules "consistent with this Code to regulate any matter connected with its own procedure or the procedure of the Courts of Civil Judicature

subject to its superintendence." (emphasis ours).

By an amendment made by Act No. XIII of 1895, Sections 632 and 652 of the Code of Civil Procedure, 1882, were amended. Section 632, as amended by this Act, reads as under:

> "Except as provided in this chapter and in Section 652 the provisions of this Code apply to such High Courts"

The amendment made in Section 652 provides an apercu to the controversy. Section 652 was amended by adding the following:

> "Notwithstanding anything in this Code contained, any High Court established under the said Act for establishing High Courts of Judicature in India may make such Rules consistent with the Letters Patent establishing it to regulate its own procedure in the exercise of its original civil jurisdiction as it shall think fit."
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> "All such rules shall be published in the local official Gazette, and shall thereupon have the force of law."

The reason for making this amendment is clarified in the Statement of Objects and Reasons accompanying the relevant Bill No. 13 of 1895 in the following words:

> "Section 652 of the Code of Civil Procedure, as it now stands, purports to require that any rules to regulate its own procedure made by a High Court, even although it be established by Royal Charter, shall be consistent with that Code. The Letters Patent of the High Courts at Fort William, Madras and Bombay, appear, however, to recognize the practical expediency of leaving such High Courts some latitude in the direction of adapting the provisions of the ordinary law to meet their requirements. It has been found by experience that these provisions are not in all respects convenient in the case of original proceedings in those Courts, and the object of this Bill is, by an amendment of Section 652 and, an ancillary amendment of Section 632, to bring the Code into perfect harmony with the provisions of those Letters Patent and to enable the High Courts referred to to regulate the exercise of their original civil jurisdiction accordingly."

Then we come to the 1908 Act, which made a drastic departure from the hitherto pattern of the Code. The Code was now divided into a fascicle of substantive sections and a Schedule containing Rules, which by force of Section 121 were declared to have effect as if enacted in the body of the Code until annulled or altered in accordance with the provisions of Part X of the CPC.

Despite the sweeping change made by the 1908 Act, interestingly, the amendment introduced in the Code of Civil Procedure, 1882 by Act No. XIII of 1895, which we have quoted above, was retained in a slightly modified form in Section 129.

The Arguments:

Learned counsel for the appellant emphasized the fact that the High Court's power of making rules and orders for 'regulation of civil proceedings before it, conferred by clause 37 of the Letters Patent, is subject to the proviso that the High Court shall be guided in making such rules and orders as far as possible by the provisions of the Civil Procedure Code of 1859, and any provision of law amending or altering the same by a competent legislative authority in India. It is urged that the powers of the Chartered High Courts to make rules to govern civil proceedings of its Original Side is itself derived from clause 37 of the Letters Patent; Clause 37 of the Letters Patent requires the rules to be in conformity with the provisions of the CPC. Ergo, the rules are overridden by CPC to the extent of conflict, goes the argument.

The learned counsel for the respondent, however, justifiably contends that the purpose of retaining Section 129 in the present form is exactly the purpose for which it was inserted, in the first place, in the CPC of 1882 by amending Act No. XIII of 1895, namely, "to recognize the practical expediency of leaving such High Courts some latitude in the direction of adapting the provisions of the ordinary law to meet their requirements", and further, "it had been found by experience that these provisions were not in all respects convenient in the case of original proceedings in those Courts". The amendment, therefore, became necessary "to bring the Code into perfect harmony with the provisions of the Letters Patent and to enable the High Courts referred to to regulate the exercise of their original civil jurisdiction accordingly."

It appears to us that this was the real reason why a distinction was drawn between the proceedings in original jurisdiction before the Chartered High Courts and those in other Courts. For historical reasons this distinction was maintained right from the time the Letters Patent was issued, and has not been disturbed by the Code of Civil Procedure, 1908, despite the amendments made in the CPC from 1976 to 2002.

The learned counsel for the Appellant referred to the speech of the Law Member while introducing The Code of Civil Procedure Bill, 1907, which ultimately resulted in the Code of 1908. Our attention was drawn to the proceedings of the Council of the Governor General of India, (published in the Gazette of India dated 7.9.1907, pp. 134 to 143). The only relevant portion is the portion at page 141 where the Law Member, who introduced the Bill, referring to clauses 145 and 148 to 150 contained in Parts X and XI of the Bill, explained the need as under:

"I have already explained the nature of the rule- making power which is dealt with in Part X of the Bill and in regard to Part XI (Miscellaneous), I would only call attention to clauses 145 and 148 to 150, which widen the discretion of Courts. They confer powers to enlarge time and to amend written proceedings, and they recognize the inherent powers of the Court to make such orders as may be necessary for the ends of

> justice or to prevent abuse of the process of the Court. In these ways greater elasticity will, it is hoped, be of benefit."

Far from advancing the case of the appellant, the speech of the Law Member, while introducing the Bill, suggests that it was thought necessary that the inherent powers of the Court to make appropriate orders, as may be necessary for the ends of justice or to prevent abuse of the process of the Court, was retained for the purpose of greater elasticity.

It is next contended for the appellant that merely because Section 129 of the CPC begins with the non obstante clause , "notwithstanding anything in this Code", the section cannot be construed as a departure from the entire body of the CPC so as to render the rules made by the High Courts to regulate its own procedure in the exercise of its original civil jurisdiction into a 'stand alone body of rules'. Our attention was drawn by the learned counsel to pages 318-320 of Justice G.P. Singh's Principles of Statutory Interpretation (Ninth Edition), and it was contended that "the non obstante clause has to be read as clarifying the whole position and must be understood to have been incorporated in the enactment by the Legislature by way of abundant caution and not by way of limiting the ambit and scope of the operative part of the enactment." Reliance was placed on the observations of this Court in Aswini Kumar Ghosh v. Arabinda Bose where it was said: "the enacting part of the statute must, where it is clear, be taken to control the non obstante clause where both cannot be read harmoniously."

The observations of this Court in Sri Venkataramana Devaru and Ors. v. State of Mysore and Ors. , R.S. Raghunath v. State of Karnataka and Anr. , Krishan Kumar v. State of Rajasthan and Ors. , Sultana Begum v. Prem Chand Jain and Maharashtra State Board of Secondary and Higher Education and Anr. v. Paritosh Bhupesh Kurmarsheth , were also relied upon to contend that when there is an apparent conflict between different provisions of a statute, the Court must give effect to all of them by adopting the principle of harmonious construction.

There cannot be any doubt about the principle of harmonious construction. However, what confronts us is not a mere question of two independent provisions of the CPC being in conflict. The provisions of the CPC, which we have extracted, and the historical development of the different sections to which we have referred, do not suggest a situation of mere conflict. They seem to suggest that, throughout, the Legislature had made a distinction between the proceedings in other civil courts and the proceedings on the Original Side of the Chartered High Courts. This distinction was made for good historical reasons and it had continued unabated, as we have noticed, through the consolidating Acts, and continued unaffected even through the last amendment of the CPC in the year 2002. In the face of this body of evidence, it is difficult to accede to the contention of the appellant that the force of the non obstante clause is merely declaratory and not intended to operate as a declared exception to the general body of the CPC.

After noticing the observations made in Aswini Kumar Ghose (supra) and Dominion of India v. Shrinbai A. Irani , this Court in Chandavarkar Sita Ratna Rao v. Ashalata S. Guram observed thus, in the context of construction of a non obstante clause:

> "67. A clause beginning with the expression "notwithstanding anything contained in the Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract" is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non obstante clause would not be an impediment for an operation of the enactment. See in this connection the observations of this Court in South India Corporation (P) Ltd. v. Secretary, Board of Revenue, Trivandrum .
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> 68. It is well settled that the expression 'notwithstanding' is in contradistinction to the phrase 'subject to', the latter conveying the idea of a provision yielding place to another provision or other provisions to which it is made subject. This will be clarified in the instant case by comparison of sub-section(1) of Section 15 with sub-section (1) of Section 15-A. We are therefore unable to accept, with respect, the view expressed by the Full Bench of the Bombay High Court as relied on by the learned Single Judge in the judgment under appeal."

Again in Parayankandiyal Eravath Kanapravan Kalliani Amma (Smt.) and Ors. v. K. Devi and Ors. this Court observed:

> "77. Non obstante clause is sometimes appended to a section in the beginning, with a view to give the enacting part of the section, in case of conflict, an overriding effect over the provision or Act mentioned in that clause. It is equivalent to saying that in spite of the provisions or Act mentioned in the non obstante clause, the enactment following it will have its full operation or that the provision indicated in the non obstante clause will not be an impediment for the operation of the enactment. (See: Union of India v. G.M. Kokil ;
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> Chandavarkar Sita Ratna Rao v. Ashalata S. Guram (supra); R.S. Raghunath v. State of Karnataka (supra);

G.P. Singh's Principles of Statutory Interpretation.)"

> Reference was made to A.G. Varadarajulu and Anr. v. State of Tamil Nadu and Ors. , at para 16. This judgment merely followed the observations made in Aswini Kumar (supra) and Madhav Rao Scindia v. Union of India . There is no doubt that where the non obstante clause is widely worded, "a search has, therefore, to be made with a view to determining which provision answers the description and which does not".

The historical development of the law suggests that the non obstante clause in Section 129 is intended to bypass the entire body of the Code so far as the rules made by the Chartered High Court

for regulating the procedure on its Original Side are concerned.

The observations of this Court in R.S. Raghunath (supra) in paragraphs 11 and 12 were pressed into service. These paragraphs merely reiterate and follow the observations made in Aswini Kumar Ghosh (supra), The Dominion of India (supra), Union of India v. G.M. Kokil as well as the observations made in Chandavarkar Sita Ratna Rao (supra). Finally, it is observed in Paragraph 12, in the words of Chinnapa Reddy, J.:

> "Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment with the glasses of the statute- maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

Application of this principle clearly supports the view taken by the High Court.

Taking into account the extrinsic evidence, i.e. the historical circumstances in which the precursor of Section 129 was introduced into the 1882 Code by a specific amendment made in 1895, we are of the view that the non obstante clause used in Section 129 is not merely declaratory, but indicative of Parliament's intention to prevent the application of the CPC in respect of civil proceedings on the Original Side of the High Courts. The High Court noticed that the interpretation put on Section 129 had been uniformly followed in the several judgments of High Courts, including the judgments of two Full Benches of Delhi and Calcutta High Courts. (See in this connection: AIR 1979 Delhi 217 (FB), (1913) ILR 37 Bom. 572, AIR 1925 Mad. 1132, AIR 1930 Cal. 685, AIR 1930 Cal. 324, AIR 1961 Cal. 483 (FB) and AIR 1961 All 595) In Mishri Lal v. Dhirendra Nath and Ors. , this Court referred to its earlier decision in Muktul v. Manbhari on the scope of the doctrine of stare decisis with reference to Halsbury's Laws of England and Corpus Juris Secundum and held that "a decision which has been followed for a long period of time, and has been acted upon by persons in the formation of contracts or in the disposition of their property, or in the general conduct of affairs, or in legal procedure or in other ways, will generally be followed by courts of higher authority other than the court establishing the rule, even though the court before whom the matter arises afterwards might be of a different view."

In our judgment, the principle of stare decisis squarely applies to the case on hand. In the first place, we are not satisfied that all the aforesaid judgments of the High Courts have been wrongly decided.

Secondly, even assuming that it is possible to take a different view, as long as the principle has been consistently followed by the majority of the High Courts in this country, as observed in Mishri Lal (supra), even if the High Courts consistently have taken an erroneous view, (though we do not see that the view is erroneous), it would be worthwhile to let the matter rest, since a large number of parties have modulated and continue to modulate their legal relationships based on the settled law. On this principle also the view taken by the Division Bench of the High Court of Judicature at Bombay commends itself to us.

Learned counsel for the appellant next contends that even clause 37 of the Letters Patent establishing the High Court of Bombay, which empowers the High Court to make rules and orders on its Original Side, is subject to the proviso "that the said High Court shall be guided in making such rules and orders as far as possible, by the provisions of the Code of Civil Procedure .." He contends that the words "as far as possible" are words of limitation and must be interpreted to mean that the rules made should be consistent with the provisions of the CPC as amended from time to time.

The Full Bench of the High Court of Calcutta in Manickchand v. Pratabmull had occasion to consider this very contention with regard to clause 37 of the Letters Patent and observed:

> " The restriction upon the power of the Court as contained in the proviso to cl. 37 of the Letters Patent is that the rules framed under that clause should, "as far as possible" be in conformity with the provisions of the Code of Civil Procedure. This restriction as the phrase "as far as possible" indicates is merely directory. The provisions of the Code of Civil Procedure are intended for the purpose of guidance of this Court in framing rules under cl. 37 of the Letters Patent. Consequently, if any rule framed by the High Court under cl. 37 be inconsistent with or confers any additional power besides what is granted by the Code of Civil Procedure, the rule framed under cl. 37 will prevail over the corresponding provisions of the Code of Civil Procedure."

This we think is the correct view to be taken in interpreting the words "as far as possible" in clause 37 of the Letters Patent. This interpretation would be consistent with the amplitude of the words used in Section 129 of the CPC by which the High Court is empowered to make rules "not inconsistent with the Letters Patent to regulate its own procedure in the exercise of its original jurisdiction as it shall think fit."

Mr. Ram Jethmalani then put forth what he submits is the legal effect of Section 16 of the Amending Act, 2002. In his submission, the legal effect of this provosion is to sweep away anything that is inconsistent therewith. He placed strong reliance on the judgments of this Court in Ganpat Giri v. Second Additional District Judge, Ballia and Kulwant Kaur v. Gurdial Singh Mann to canvass his argument.

In Ganpat Giri (supra) the question considered was with regard to the overriding provision contained in Section 97(1) of the Code of Civil Procedure (Amendment) Act of 1976 (Act 104 of

1976). The said provision reads thus:

> "Any amendment made, or any provision inserted in the principal Act by a State legislature or a High Court before the commencement of this Act shall, except insofar as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed."

It is obvious that what was done by Section 97(1) of the Amending Act was to sweep away amendments made or provisions inserted in the principal Act by the State Legislature, or the High Court in exercise of its delegated powers of legislation, and to declare that all such amendments inconsistent with the provisions of the Code would stand repealed. We are afraid that Section 129 is neither an amendment made by the State legislature, nor by the High Court, and as such, it does not get overridden by Section 97(1) of the Amending Act of 1976. Though, both the sections Sections 122 and 129 were noticed in this judgment, it does not hold that the impact of Section 129 was, in any way, watered down by Section 122. The following observations in para 5 of the judgment were relied upon:

> " The object of Section 97 of the Amending Act appears to be that on and after February 1, 1977 throughout India wherever the Code was in force there should be same procedural law in operation in all the civil courts subject of course to any future local amendment that may be made either by the State legislature or by the High Court, as the case may be, in accordance with law. Until such amendment is made the Code as amended by the Amending Act alone should govern the procedure in civil courts which are governed by the Code. We are emphasizing this in view of the decision of the Allahabad High Court which is now under appeal before us."

In our view, Section 97 of the Amending Act does not, in any way, affect the special hierarchial status given to the proceedings before the Chartered High Courts on its Original Side. It was merely intended to standardize and make uniform the law as to civil procedure in other Civil Courts.

Kulwant Kaur (supra) was concerned with a situation where Punjab Courts Act, 1918 had a special right of appeal and the question was whether the amended provisions in Section 100 of the CPC, as amended by Act 104 of 1976, would exclude appeals under Section 41of the Punjab Courts Act, 1918. The view taken was that there was inconsistency between the provisions of the Punjab Courts Act and the provisions of Section 97(1) of the CPC. By reason of Article 254, the Section 97(1) of the CPC, being the Central Act, was held to prevail. It was pointed out in the judgment that though Section 4 of the Civil Procedure Code, 1908 saved special or local laws in the absence of any specific provision to the contrary, Section 97(1) was such a provision to the contrary, and, therefore, the saving under Section 4 would no longer be available to the local Act. Consequently, it was held "language of Section 97(1) of the Amendment Act clearly spells out that any local law which can be termed to be inconsistent perishes, but if it is not so, the local law would continue to occupy its field." We do not think that this decision carries forward the argument.

Finally, it was argued by Mr. Jethmalani that the Letters Patent, and the rules made thereunder by the High Court for regulating its procedure on the Original Side, were subordinate legislation and, therefore, must give way to the superior legislation, namely, the substantive provisions of the Code of Civil Procedure. There are two difficulties in accepting this argument. In the first place, Section 2(18) of the CPC defines "rules" to mean "rules and forms contained in the First Schedule or made under section 122 or section 125". The conspicuous absence of reference to the rules regulating the procedure to be followed on the Original Side of a Chartered High Court makes it clear that those rules are not "rules" as defined in the Code of Civil Procedure, 1908. Secondly, it is not possible to accept the contention that the Letters Patent and rules made thereunder, which are recognized and specifically protected by section 129, are relegated to a subordinate status, as contended by the learned counsel. We might usefully refer to the observations of the Constitutional Bench of this Court in P.S. Santhappan (Dead) by LRs. v. Andhra Bank Ltd. & Ors. . With reference to Letters Patent, this is what the Constitution Bench said:

> "148. It was next submitted that Clause 44 of the Letters Patent showed that Letters Patent were subject to amendment and alteration. It was submitted that this showed that a Letters Patent was a subordinate or subservient piece of law. Undoubtedly, Clause 44 permits amendment or alteration of Letters Patent but then which legislation is not subject to amendment or alteration. CPC is also subject to amendments and alterations. In fact it has been amended on a number of occasions. The only unalterable provisions are the basic structure of our Constitution. Merely because there is a provision for amendment does not mean that, in the absence of an amendment or a contrary provision, the Letters Patent is to be ignored. To submit that a Letters Patent is a subordinate piece of legislation is to not understand the true nature of a Letters patent. As has been held in Vinita Khanolkar's case and Sharda Devi's case a Letters Patent is the charter of the High Court. As held in Shah Babulal Khimji's case a Letters Patent is the specific law under which a High Court derives its powers. It is not any subordinate piece of legislation. As set out in aforementioned two cases a Letters Patent cannot be excluded by implication. Further it is settled law that between a special law and a general law the special law will always prevail. A Letters Patent is a special law for the concerned High Court. Civil Procedure Code is a general law applicable to all courts. It is well settled law, that in the event of a conflict between a special law and a general law, the special law must always prevail. We see no conflict between Letters Patent and Section 104 but if there was any conflict between a Letters Patent and the Civil Procedure Code then the provisions of Letters Patent would always prevail unless there was a specific exclusion. This is also clear from Section 4 Civil Procedure Code which provides that nothing in the Code shall limit or affect any special law. As set out in Section 4 C.P.C. only a specific provision to the contrary can exclude the special law. The specific provision would be a provision like Section 100A."

Far from doing away with the Letters Patent, the amending Act of 2002 has left unscathed the provisions of section 129 and what follows therefrom. The contention must, therefore, fail.

In the result, we are of the view that no fault can be found with the impugned judgment of the High Court under appeal. There is no merit in the appeal and it is hereby dismissed. However, there shall be no order as to costs.