A.C. Arulappan vs Smt. Ahalya Naik on 10 August, 2001

Equivalent citations: AIR 2001 SUPREME COURT 2783, 2001 (6) SCC 600, 2001 AIR SCW 3046, 2001 AIR - KANT. H. C. R. 2886, (2001) 6 JT 394 (SC), 2001 (6) JT 394, 2001 (2) UJ (SC) 1459, (2002) 1 CIVILCOURTC 342, 2001 ALL CJ 2 1637, 2001 (8) SRJ 145, 2001 (5) SCALE 154, (2002) 3 RECCIVR 360, (2001) 5 ANDHLD 783, (2001) 91 FACLR 1111, (2002) 1 RAJ LR 10, (2001) 3 WLC (RAJ) 661, (2002) 1 LABLJ 94, (2001) 2 UC 553, (2001) 5 SCALE 154, (2002) 1 LANDLR 47, (2002) 2 MAD LW 399, (2001) 2 RENTLR 300, (2002) 1 RAJ LW 1, (2001) 3 SCJ 570, (2001) 5 ANDHLD 90, (2001) 5 SUPREME 730, (2001) 4 RECCIVR 109, (2001) 4 ICC 105, (2001) WLC(SC)CVL 693, (2001) 44 ALL LR 853, (2001) 6 ANDH LT 26, (2001) 3 ALL WC 2456, (2002) 1 BLJ 360

Bench: A.P.Misra, Umesh C Banerjee

CASE NO.:
Appeal (civil) 5233 of 2001
Appeal (civil) 5234 of 2001
Special Leave Petition (civil) 19628 of 2000
Special Leave Petition (civil) 19629 of 2000

PETITIONER:
A.C. ARULAPPAN

Vs.

RESPONDENT:
SMT. AHALYA NAIK

DATE OF JUDGMENT: 13/08/2001

BENCH:
A.P.Misra, Umesh c Banerjee

JUDGMENT:

JUDGEMENT BANERJEE, J.

Availability of the plea of limitation in the matter of execution of decree has been the key issue in this appeal. The word 'execution' stands derived from the Latin "ex sequi,"

meaning, to follow out, follow to the end, or perform, and equivalent to the French "executor," so that, when used in their proper sense, all three convey the meaning of carrying out some act or course of conduct to its completion (vide vol.33 - Corpus Juris Secundum).

Lord Denning in Re Overseas Aviation Engineering (G.B) Ltd.: (L.R.1963: Ch. 24) has attributed a meaning to the word 'execution' as the process for enforcing or giving effect to the judgment of the court and stated:

"The word "execution" is not defined in the Act. It is, of course, a word familiar to lawyers. "Execution" means, quite simply, the process for enforcing or giving effect to the judgment of the court: and it is "completed" when the judgment creditor gets the money or other thing awarded to him by the judgment. That this is the meaning is seen by reference to that valuable old book Rastill Termes de la Ley, where it is stated: "Execution is, "where Judgment is given in any Action, that the plaintiff shall "recover the land, debt, or damages, as the case is; and when any "Writ is awarded to put him in Possession, or to do any other "thing whereby the plaintiff should the better be satisfied his debt "or damages, that is called a writ of execution; and when he hath "the possession of the land, or is paid the debt or damages, or "hath the body of the defendant awarded to prison, then he hath "execution." And the same meaning is to be found in Blackman v. Fysh: [(1892) 3 Ch. 209, 217, C.A.], when Kekewich, J. said that execution means the "process of law for the enforcement of a judgment creditor's right "and in order to give effect to that right." In cases when execution was had by means of a common law writ, such as fieri facias or elegit, it was legal execution: when it was had by means of an equitable remedy, such as the appointment of a receiver, then it was equitable execution. But in either case it was "execution"

because it was the process for enforcing or giving effect to the judgment of the court."

Before adverting to the factual aspect of the matter, a brief re-capitulation of the various periods of limitation as prescribed under the Limitation Act as engrafted in the Statute Book from time to time would be convenient. Law of Limitation in India, as a matter of fact, was introduced for the first time in 1859 being revised in 1871, 1877 and it is only thereafter, the Limitation Act of 1908 was enacted and was in force for more than half a century till replaced by the present Act of 1963 (see in this context B.B. Mitra: the Limitation Act 20th Ed.).

Presently, Article 136 of the Limitation Act 1963, prescribes a period of twelve years for the execution of a decree other than a decree granting a mandatory injunction or order of any civil court. As regards the time from which the period of twelve years ought to commence, the statute has been rather specific in recording that the period would commence from the date of the decree or order when the same becomes enforceable. We need not go into the other situations as envisaged in the statute for the present purpose, save what is noticed above. To put it shortly, it, therefore, appears that a twelve year period certain has been the legislative choice in the matter of execution of

a decree. Be it noted that corresponding provisions in the Act of 1908 were in Articles 182 and 183 and as regards the statute of 1871 and 1877, the corresponding provisions were contained in Articles 167, 168, 169, and 179, 180 respectively. Significantly, Article 182 of the Limitation Act of 1908 provided a period of three years for the execution of decree. Be it clarified that since the reference to the 1908 Act would be merely academic, we refrain ourselves from recording the details pertaining to Article 182 save what is noted hereinbefore. It is in this context, however, the Report of the Law Commission on the Act of 1963 assumes some importance, as regards the question of limitation and true purport of Article 136. Before elaborating any further, it would be convenient to note the Report of the Law Commission which reads as below:

> "170. Article 182 has been a very fruitful source of litigation and is a weapon in the hands of both the dishonest decree-holder and the dishonest judgment debtor. It has given rise to innumerable decisions. The commentary in Rustomji's Limitation Act (5th Edn.) on this article itself covers nearly 200 pages. In our opinion the maximum period of limitation for the execution of a decree or order of any civil court should be 12 years from the date when the decree or order became enforceable (which is usually the date of the decree) or where the decree or subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree. There is, therefore, no need for a provision compelling the decree-holder to keep the decree alive by making an application every three years. There exists a provision already in section 48 of the Civil Procedure Code that a decree ceases to be enforceable after a period of 12 years. In England also, the time fixed for enforcing a judgment is 12 years. Either the decree-holder succeeds in realising his decree within this period or he fails and there should be no provision enabling the execution of a decree after that period. To this provision an exception will have to be made to the effect that the court may order the execution of a decree upon an application presented after the expiration of the period of 12 years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within the twelve years immediately preceding the date of the application. Section 48 of the Civil Procedure Code may be deleted and its provisions may be incorporated in this Act. Article 183 should be deleted....."

In pursuance of the aforesaid recommendation, the present article has enacted in place of articles 182 and 183 of the 1908 Act.

Section 48, Code of Civil Procedure 1908 has been repealed".

The material facts pertaining to the issue however may be delved into at this juncture.

The factual score records that a preliminary decree for partition was passed on 8.6.1969 and a final decree thereon was passed on 20.11.1970. The suit being a suit for partition, the parties were under an obligation to furnish the stamp paper for drafting of the final decree and it is on 28.2.1972, the District Court, Nagapattinam in the erstwhile State of Madras (presently Chennai) issued notice to

the parties to furnish stamp papers and granting time till 17.3.1972. The records depict that the decree- holder, in fact, did not furnish any stamp paper by reason wherefor, no decree was drafted or finalised. The factual score further records that the original decree-holder died on 17.1.1977 and it is on 26.7.1983 that an application was filed by the legal representatives of the decree-holder to implead themselves as additional plaintiffs and on 23.2.1984, the same was ordered and the legal representatives of the original plaintiff were impleaded on 8.3.1984 and after incorporation of the names of the legal heirs in the suit register, an execution application was presented before the District Court on 21.5.1984.

To have the factual score complete on this count, be it noted that in the meanwhile a Civil Revision Petition was filed before the High Court (C.R.P. No.2374 of 1984) against the order of impleadment but the same however, was dismissed on 8.10.1984. The records depict that on 11th December, 1984, the execution petition was dismissed with a finding that since the same was filed beyond twelve years, the execution petition was barred by limitation. Subsequently, a Revision Petition was filed against said order (C.R.P. No.2000 of 1985) and on 10.3.1989, the High Court however did set aside the order of the executing court and directed that the question of limitation should be considered afresh. The records further depict that on 13th July, 1989, the District Court held that the Execution Petition is not barred by limitation. As against the order of the District Court dated 13th July, 1989, a Revision Petition was filed before the High Court by the legal heirs of the first defendant challenging the said finding and the learned Single Judge of the High Court in a very detailed and elaborate judgment allowed the Civil Revision Petition and set aside the order of the district court. Consequently, the execution petition also stood dismissed and hence the Special Leave Petition before this Court and the subsequent grant of leave by this Court. As noticed earlier in this judgment, Article 136 of the Limitation Act 1963 being the governing statutory provision, prescribes a period of twelve years when the decree or order becomes enforceable. The word 'enforce' in common acceptation means and implies 'compel observance of' (vide Concise Oxford Dictionary) and in Black's Law Dictionary 'enforce' has been attributed a meaning 'to give force or effect to; to compel obedience to' and 'enforcement has been defined as 'the act or process of compelling compliance with a law, mandate or command'. In ordinary parlance 'enforce' means and implies 'compel observance of'. Corpus Juris Secundum attributes the following for the word 'enforce':

> "ENFORCE. In general, to cause to be executed or performed, to cause to take effect, or to compel obedience to, as to enforce laws or rules; to control; to execute with vigor; to put in execution; to put in force; also to exact, or to obtain authoritatively. The word is used in a multiplicity of ways and is given many shades of meaning and applicability, but it does not necessarily imply actual force or coercion. As applied to process, the term implies execution and embraces all the legal means of collecting a judgment, including proceedings supplemental to execution. The past tense or past participle "enforced"

has been said to have the same primary meaning as "compelled".

The language used by the legislature in Article 136 if read in its proper perspective to wit: 'when the decree or order becomes enforceable' must have been to clear up any confusion that might have

arisen by reason of the user of the expression 'the date of the decree or order which was used in the earlier Act. The intention of the legislature stands clearly exposed by the language used therein viz., to permit twelve year certain period from the date of the decree or order. It is in this context that a decision of the Calcutta High Court in the case of Biswapati Dey v. Kennsington Stores and others (AIR 1972 Calcutta 172) wherein the learned Single Judge in no uncertain terms expressed his opinion that there cannot be any ambiguity in the language used in the third column and the words used therein to wit: 'when the decree or order becomes enforceable' should be read in their literal sense. We do feel it expedient to lend our concurrence to such an observation of the learned Single Judge of the Calcutta High Court. The requirement of the Limitation Act in the matter of enforcement of a decree is the date on which the decree becomes enforceable or capable of being enforced - what is required is to assess the legislative intent and if the intent appears to be otherwise clear and unambiguous, question of attributing a different meaning other than the literal meaning of the words used would not arise. It is in this context, we also do feel it inclined to record our concurrence to the observations of the full Bench of the Bombay High Court in Subhash Ganpatrao Buty v. Maroti Krishnaji Dorlikar (AIR 1975 Bom.244). The Full Bench in the decision observed:

> ".....it is the duty of the Court to interpret the language actually employed and to determine the intention of the legislature from such language and since there is no ambiguity about the language actually employed, neither the recommendation of the Law Commission nor the aims and object as set out in the Statement of Objects and reasons can be brought in aid or can be allowed to influence the natural and grammatical meaning of the Explanation as enacted by the Parliament."

Adverting however, to the merits of the matter at this juncture and for consideration of the applicability of Article 136 in the way as stands interpreted above, a short recapitulation of certain relevant dates seems to be inevitable and as such the same is set out hereinbelow:

Date Event 8th June, 1969 The preliminary decree passed in the partition suit.

20th November, 1970 Final decree passed upon acceptance of the report of the Commission.

28th February, 1972 Notice to furnish stamp paper on or before 17.3.1972 (be it noted that no stamp paper, in fact, was furnished).

17th January, 1977 Original decree-holder died.

8th March, 1984 Legal representatives were impleaded.

21st May, 1984 Execution petition filed with the engrossed stamp paper furnished on 26.3.1984.

Probably one could avoid reference to a list of dates in the judgment, but the same has been incorporated by reason of the peculiar fact-situation of the appeal under consideration. Article 136 of the Act of 1963 prescribes as noticed above, a twelve years period certain and what is relevant for Article 136 is, as to when the decree became enforceable and not when the decree became

executable. The decision of the Calcutta High Court in Biswapati's case (supra) has dealt with the issue very succinctly and laid down that the word 'enforceable' should be read in its literal sense. In the contextual facts, the final decree upon acceptance of the report of the Commissioner was passed on 20.11.1970, while it is true that notice to furnish stamp paper was issued on 28.2.1972 and the time granted was up to 17.3.1972 but that by itself will not take it out of the purview of Article 136 as regards the enforceability of the decree. Furnishing of stamped paper was an act entirely within the domain and control of the appellant and any delay in the matter of furnishing of the same cannot possibly be said to be putting a stop to the period of limitation being run - no one can take advantage of his own wrong: As a matter of fact, in the contextual facts no stamp paper was filed until 26.3.1984 - Does that mean and imply that the period of limitation as prescribed under Article 136 stands extended for a period of twelve years from 26th March, 1984? The answer if it be stated to be in the affirmative, would lead to an utter absurdity and a mockery of the provisions of the statute. Suspension of the period of limitation by reason of one's own failure cannot but be said to be a fallacious argument: though however suspension can be had when the decree is a conditional one in the sense that some extraneous events have to happen on the fulfillment of which alone it could be enforced - furnishing of stamped paper was entirely in the domain and power of the decree-holder and there was nothing to prevent him from acting in terms therewith and thus it cannot but be said that the decree was capable of being enforced on and from 20th November, 1970 and the twelve years period ought to be counted therefrom. It is more or less in identical situation, this Court even five-decades ago in the case of Yeswant Deorao Deshmukh v. Walchand Ramchand Kothari (1950 SCR 852) has stated:

> "...The decree was not a conditional one in the sense that some extraneous event was to happen on the fulfillment of which alone it could be executed. The payment of court fees on the amount found due was entirely in the power of the decree-holder and there was nothing to prevent him from paying it then and there; it was a decree capable of execution from the very date it was passed.
>
> Needless to record that engrossment of stamped paper would undoubtedly render the decree executable but that does not mean and imply however, that the enforceability of the decree would remain suspended until furnishing of the stamped paper - this is opposed to the fundamental principle of which the statutes of limitation are founded. It cannot, but be the general policy of our law to use the legal diligence and this has been the consistent legal theory from the ancient times: Even the doctrine of prescription in Roman Law prescribes such a concept of legal diligence and since its incorporation therein, the doctrine has always been favoured rather than claiming dis-favour. Law courts never tolerate an indolent litigant since delay defeats equity. The Latin maxim 'vigilantibus non dormientibus jure subveniunt' (law assists those who are vigilant and not those who are indolent). As a matter of fact, lapse of time is a species for forfeiture of right. Wood, V.C. in Manby v. Bewicke (3 K. & J. 342 at 352) stated:
>
> "... the legislature has in this, as in every civilized country that has ever existed, thought fit to prescribe certain limitations of time, after which persons may suppose

> themselves to be in peaceful possession of their property and capable of transmitting the estates of which they are in possession, without any apprehension of the title being impugned by litigation in respect of transactions which occurred at a distant period, when evidence in support of their own title may be most difficult to obtain."

Recently this Court in W.B.Essential Commodities Supply Corporation v. Swadesh Agro Farming & Storage Pvt. Ltd. and Another (1999 (8) SCC 315) had the occasion to consider the question of limitation under Article 136 of the Limitation Act of 1963 and upon consideration of the decision in the case of Yeshwant Deorao (supra) held that under the scheme of the Limitation Act, execution applications like plaints have to be presented in court within the time prescribed by the Limitation Act. A decree-holder, this court went on to record, does not have the benefit of exclusion of the time taken for obtaining even the certified copy of the decree like the appellant who prefers an appeal, much less can he claim to deduct time taken by the court in drawing up and signing the decree. In fine, this Court observed that if the time is reckoned not from the date of the decree but from the date when it is prepared, it would amount to doing violence to the provisions of the Limitation Act as well as of Order 20 and Order 21 Rule 11 C.P.C. which is clearly impermissible. The observations thus in W.B. Essential Commodities Supply Corpn. (supra) lends concurrence to the view expressed above pertaining to the question of enforceability of the decree as laid down in Article 136 of the Limitation Act.

Incidentally, in paragraph 12 of the judgment in W.B.Essential Commodities Supply Corpn.(supra), this Court listed out three several situations in which a decree may not be enforceable on the date it is passed and in last of the situations, this Court observed:

> "Thirdly, in a suit for partition of immovable properties after passing of preliminary decree when, in final decree proceedings, an order is passed by the court declaring the rights of the parties in the suit properties, it is not executable till final decree is engrossed on non-judicial stamp paper supplied by the parties within the time specified by the court and the same is signed by the Judge and sealed. It is in this context that the observations of this Court in Shankar Balwant Lokhande v. Chandrakant Shankar Lokhande (1995 (3) SCC 413) have to be understood. These observations do not apply to a money decree and, therefore, the appellant can derive no benefit from them."

The third situation, as referred above, has been taken note of, by reason of the decision of this Court in the case of Shankar Balwant Lokhande (dead) by LRs. v. Chandrakant Shankar Lokhande and another (1995 (3) SCC 413) wherein Ramaswamy, J. speaking for the Bench came to a conclusion that:

> ".....After final decree is passed and a direction is issued to pay stamped papers for engrossing final decree thereon and the same is duly engrossed on stamped paper(s), it becomes executable or becomes an instrument duly stamped. Thus, condition precedent is to draw up a final decree and then to engross it on stamped paper(s) of required value. These two acts together constitute final decree crystallizing the rights

> of the parties in terms of the preliminary decree. Till then, there is no executable decree as envisaged in Order 20, rule 18 (2), attracting residuary Article 182 of the old Limitation Act."

Be it noticed that Lokhande's decision (supra) was decided against the judgment of the High Court recording a finding that limitation for executing a final decree in a suit for partition starts on the date on which the final decree is passed and not from any subsequent date on which the parties supply the non-judicial stamp for engrossing the final decree and when the court engrosses the final decree on the stamp paper and signs it - this view of the High Court was negatived and this Court came to a contra conclusion as noticed hereinbefore.

The W.B. Essential Commodities Supply Corpn.'s decision (supra) has been rather cautious in recording certain situations in which a decree may not be enforceable on the date it is passed (emphasis supplied). It is thus not a pronouncement of law as such but an exception recorded in certain situations, the words 'may not be' as emphasised are rather significant. The word 'May' in common acceptation mean and imply - 'a possibility' depicting thereby availability of some fluidity and thus not conclusive. This aspect of the matter is required to be clarified by reason of the observations as laid down in the third situation (noticed above) - Needless to record that the third situation spoken of by this Court in the decision last noted obviously by reason of the judgment of this Court in Lokhande's case (supra). The factual situation of Shankar B. Lokhande's case (supra) however is completely different since there was no final decree at all but only a preliminary decree. Paragraph 10 of the report at page 419 makes the situation amply clear. Paragraph 10 reads as below:

> "10. As found earlier, no executable final decree has been drawn working out the rights of the parties dividing the properties in terms of the shares declared in the preliminary decree. The preliminary decree had only declared the shares of the parties and properties were liable to be partitioned in accordance with those shares by a Commissioner to be appointed in this behalf. Admittedly, no Commissioner was appointed and no final decree had been passed relating to all."

Another significant feature which would render the decision inapplicable in the contextual facts is the consideration of the matter in the perspective of the 1908 Act (the old Act) and not the Limitation Act of 1963. The language of Article 136 is clear, categorical and unambiguous and it is the difficulty experienced in the matter of interpretation of Article 182 "which has been a very fruitful source of litigation", prompted incorporation of Article 136 in the Statute Book. The recommendation of the Law Commission in the matter of incorporation of Article 136 thus assume a positive and a definite role: Twelve year period certain has been the express opinion of the Commission and by reason therefor Section 48 of the Code stands deleted from the main body of the sections, which incidentally provided for a twelve year period certain for execution proceedings.

In this context, a further reference can be had from Mulla's Civil Procedure Code. As regards Section 48 the following is said in Mulla's C.P. Code:

> "This Section has been repealed by Section 28 of the Limitation Act, 36 of 1963. In its place a new provision, Article 136, has been introduced which prescribes "for the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court" a period of twelve years "where the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurrent periods, when default in making the payment or delivery in respect of which execution takes place:
>
> Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation."

The period of twelve years prescribed by Section 48 is retained under Article 136 and is now the only period of limitation. It is therefore no longer necessary to keep the execution alive by successive applications within three years for complying with the original Article 182."

Significantly, the contextual facts itself in Lokhande's case (supra) has prompted this Court to pass the order as it has (noticed above) and as would appear from the recording in the order, to wit:

> "Therefore, executing court cannot receive the preliminary decree unless final decree is passed as envisaged under Order 20 Rule 18 (2)."

In that view of the matter, reliance on the decision of Lokhande's case (supra) by Mr. Mani, appearing for the appellants herein cannot thus but be said to be totally misplaced, more so by reason of the fact that the issue pertaining to furnishing of stamp paper and subsequent engrossment of the final decree thereon did not fall for consideration neither the observations contained in the judgment could be said to be germane to the issue involved therein. The factual score as noticed in paragraph 10 of the Report (1995 (3) SCC 413) makes the situation clear enough to indicate that the Court was not called upon to adjudicate the issue as raised presently. The observations thus cannot, with due deference to the learned Judge, but be termed to be an obiter dictum. It is in this context that we rather feel it inclined to record the observation of Russel L.J. in Rakhit v. Carty (L.R. (1990) 2 Q.B.

315) wherein at page 326/327 of the report it has been observed:

> "Miss Foggin has now submitted to this court that the decision in Kent's case was indeed per incuriam in that she submits that the judgment of Ormrod L.J. with which Dunn L.J and Sir Sebag Shaw agreed, made no reference to section 67 (3), that, if the Court of Appeal had been referred to that subsection and had had regard to its terms, the decision would plainly have been different and that consequently this court should not follow Kent's case. I have already expressed my own views as to the proper construction of section 44(1) and the impact of section 67 (3).

In Rickards v. Rickards [1990] Fam. 194, 203 Lord Donaldson of Lymington M.R. said:

"The importance of the rule of stare decisis in relation to the Court of Appeal's own decisions can hardly be overstated. We now sometimes sit in eight divisions and, in the absence of such a rule, the law would quickly become wholly uncertain. However the rule is not without exceptions, albeit very limited. These exceptions were considered in Young v. Bristol Aeroplane Co. Ltd. [1944] K.B. 718; Morelle Ltd. v. Wakeling [1955] 2 Q.B. 379 and, more recently, in Williams v. Fawcett [1986] Q.B. 604, relevant extracts from the two earlier decisions being set out at pp.615-616 of the report. These decisions show that this court is justified in refusing to follow one of its own previous decisions not only where that decision is given in ignorance or forgetfulness of some inconsistent statutory provision or some authority binding upon it, but also, in rare and exceptional cases, if it is satisfied that the decision involved a manifest slip or error. In previous cases the judges of this court have always refrained from defining this exceptional category and I have no intention of departing from that approach save to echo the words of Lord Greene M.R. in Young's case, p.729, and Sir Raymond Evershed M.R. in Morelle's case, p.406, and to say that they will be of the rarest occurrence.

In my judgment, the effect of allowing this appeal will produce no injustice to the plaintiff, for the Rent Act 1977 provided him and his advisers with ample opportunity to protect his interests by the simple process of inspecting the public register of rents before letting the flat to the defendant. A fresh application for registration or a fair rent could then have been made enabling that fair rent to be recoverable from the commencement of the defendant's tenancy.

For my part, I am satisfied that this court erred in Kent v. Millmead Properties Ltd., 44 P & C.R.353 and that, following the observations of Lord Donaldson of Lymington M.R. in Rickards' case, this court is justified in declining to follow Kent's case.

As a matter of fact, a three Judge Bench of this Court in the case of Municipal Committee, Amritsar v. Hazara Singh (1975 (1) SCC 794) has been pleased to record that on facts, no two cases could be similar and the decision of the court which were essentially on question of facts could not be relied upon as precedent, for decision of the other cases. Presently the fact situation in the decision of Lokhande (supra) and the matter under consideration are completely different, as such the decision in Lokhande cannot by any stretch be termed to be a binding precedent. In M/s. Amarnath Om Parkash and Ors. v. State of Punjab & Ors. (1985 (1) SCC 345), a three Judges Bench of this Court in no uncertain terms stated:

"We consider it proper to say, as we have already said in other cases, that judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy

discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton : (1951 AC 737, 761), Lord MacDermott observed:

The matter cannot, of course, be settled merely by treating the ipsissima verba of Wills, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge,.....

In Home Office v. Dorset Yacht Co. Ltd. [(1970) 2 All ER 294] Lord Reid said:

Lord Atkin's speech (Donoghue v. Stevension, 1932 All ER Rep 1, 11) ....is not to be treated as if it was a statutory definition. It will require qualification in new circumstances.

Megarry, J. in (1971) 1WLR 1062 observed: One must not, of course, construe even a reserved judgment of even Russell, L.J. as if it were an Act of Parliament.

And, in Herrington v. British Railways Board [(1972) 2 WLR 537], Lord Morris said:

There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case."

Further in Municipal Corporation of Delhi v. Gurnam Kaur (1989 (1) SCC 101), this Court in paragraph 11 of the report observed;

"11. Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in Jamna Das case (Writ Petition Nos.981-82 of 1984) and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P.J. Fitzgerald, editor of the Salmond on Jurisprudence, 12th Edn. Explains the concept of sub silentio at p. 153 in

these words:

> A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour : but point B was not argued or considered by the court. In such circumstances, although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio."

In one of its latest judgment however this Court in Dr. Vijay Laxmi Sadho v. Jagdish : [(2001) 2 SCC 247], though apparently sounded a contra note but the safeguards introduced therein, does not however create any problem for a decision in the matter under consideration. Anand, C.J. while depricating the characterisation of earlier judgment as 'per incuriam' on ground of dissent observed:

> "that a Bench of coordinate jurisdiction ought not to record its disagreement with another Bench on a question of law and it would be rather appropriate to refer the matter to a larger Bench for resolution of the issue".

Anand, C.J. however, has been extremely careful and cautious enough to record "it is appropriate that the matter be referred to a larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate creating confusion" (emphasis supplied).

In the contextual facts, the question of there being a conflicting judgment as indicated hereinbefore or creation of any confusion does not and cannot arise by reason of the fact that the observations in Lokhande (supra) was on the peculiar set of facts under the Limitation Act of 1908 - no Commissioner's report was available, neither any final decree passed , as such the issue before the court was completely different having regard to the factual state of the matter.

The decision has thus no manner of application in the contextual facts neither the decision of this Court in W.B.Essential Commodities supply Corpn.(supra) be of any assistance since there was no exposition of law but a mere expression of a possibility only, as such at best be termed to be an expression of opinion incidentally. The latter decision thus also does not render any assistance to the submission of Mr. Mani rather lends credence to the observations of this Court as noticed hereinbefore.

Incidentally, the Calcutta High Court in one of its very old decision in the case of Kishori Mohan Pal v. Provash Chandra Mondal and others (AIR 1924 Calcutta 351) while interpreting Article 182 under the Limitation Act of 1908 has been rather categorical in recording that the date of the decree under the Article is the day on which the judgment is pronounced and limitation begins to run from that day although no formal decree can be drawn up in a partition suit until paper bearing a proper stamp under Article 45 of the Stamp Act is supplied to the Court. Richardson, J. with his usual

felicity of expression stated as below:

> "In this Court the learned Vakil for the respondents has said all that could be said for his clients. He has in particular called our attention to the fact that, although the decree is dated the 25th March 1914, it is expressed to be "passed in terms of the Commissioner's report, dated the 27th June 1914 which and the map filed along with it do form parts of the decree." The 25th March 1914 is, nevertheless, the correct date of the decree because that is the day on which the judgment was pronounced (Order 20, rule 7, Civ. Pro.Code). The report of the Commissioner appointed to make the partition had already been received, the report was adopted by the judgment subject to certain variations and, in connection with those variations, certain directions of a ministerial character were given to the Commissioner which the Commissioner had merely to obey. The order sheet shows that the Commissioner submitted a report on the 27th June 1914. That report has not been placed before us. But I have no doubt that it did no more than state that the Commissioner had done what he was directed to do by the judgment of the 25th March 1914. That judgment was the final judgment in the suit and it was so regarded by the Subordinate Judge who delivered it. The decree is in accordance therewith. The directions in the judgment were sufficient to indicate how the decree should be framed, and there was no need of any further judgment.
>
> The delay in signing the decree was due not to any fault of the Court or to any cause beyond the control of the parties but solely to the delay of the parties in supplying the requisite stamped paper. Any party desiring to have the decree executed might have furnished the stamped paper at any time leaving the expense of providing it to be adjusted by the Court in connection with the costs of the execution.
>
> The circumstances disclose no ground for saying that limitation did not run from the date of the decree as provided by article 182 of the Limitation Act, and if authority be needed, reference may be made to Golam Gaffar Mandal v. Golijan Bibi (1898 (25) Cal.109) and Bhajan Behari Shaha v. Girish Chandra Shaha [(1913) 17 C.W.N. 959].
>
> I may add that much time and labour would be saved if the court would resist such attempts as the present to go behind the plain words of a positive enactment."

Though several other old and very old decisions were cited but in view of the pronouncement lately by this Court and as discussed herein before, we are not inclined to deal with the same in extenso, save however recording that contra view recorded earlier by different High Courts cannot be termed to be good law any longer.

The decision in Lokhande's case (supra) cannot but be said to be on the special facts situation and is thus in any event clearly distinguishable.

Be it noted that the legislature cannot be sub-servant to any personal whim or caprice. In any event, furnishing of engrossed stamp paper for the drawing up of the decree cannot but be ascribed to be a ministerial act, which cannot possibly put under suspension a legislative mandate. Since no conditions are attached to the decree and the same has been passed declaring the shares of the parties finally, the Court is not required to deal with the matter any further - what has to be done - has been done. The test thus should be - Has the court left out something for being adjudicated at a later point of time or is the decree contingent upon the happening of an event - i.e. to say the Court by its own order postpones the enforceability of the order - In the event of there being no postponement by a specific order of Court, there being a suspension of the decree being unenforceable would not arise. As a matter of fact, the very definition of decree in Section 2(2) of the C.P. Code lends credence to the observations as above since the term is meant to be 'conclusive determination of the rights of the parties'.

On the next count Mr. Mani in support of the appeal very strongly contended that question as to when a decree for partition becomes enforceable cannot be decided in any event without reference to relevant provisions of Stamp Act, since a decree for partition is also an instrument of partition in terms of Section 2 (15) of the Indian Stamp Act 1899. For convenience sake, Section 2 (15) reads as below:

> "2. Definitions - In this Act, unless there is something repugnant in the subject or context, -
>
> 15. "Instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any revenue-authority or any Civil Court and an award by an arbitrator directing a partition."

At the first blush, the submissions seem to be very attractive having substantial force but on a closer scrutiny of the Act read with the Limitation Act, the same however pales into insignificance. Before detailing out the submissions of Mr. Mani on the second count pertaining to the Stamp Act we ought to note Section 35 of the Stamp Act at this juncture. Section 35 records that "no instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped". Mr. Mani in continuation of his submission, however contended that a plain reading of the Section 35 would depict that the same creates a three-fold bar in respect of unstamped or insufficiently stamped document viz., I. That it shall not be received in evidence;

II. That it shall not be acted upon;

III. That it shall not be registered or authenticated And it is on this score, it has been contended that the partition decree thus even though already passed cannot be acted upon, neither becomes enforceable unless drawn up and engrossed on stamp papers. The period of limitation, it has been contended in respect of the partition decree cannot begin to run till it is engrossed on requisite

stamp paper. There is thus, it has been contended a legislative bar under Section 35 of the Indian Stamp Act for enforceability of partition decree. Mr. Mani contended that enforcement includes the whole process of getting an award as well as execution since execution otherwise means due performance of all formalities necessary to give validity to a document. We are however unable to record our concurrence therewith. Prescription of a twelve year certain period cannot possibly be obliterated by an enactment wholly unconnected therewith. Legislative mandate as sanctioned under Article 136 cannot be kept in abeyance unless the self same legislation makes a provision therefor. It may also be noticed that by the passing of a final decree, the rights stand crystalised and it is only thereafter its enforceability can be had though not otherwise. As noticed above, the submissions of Mr. Mani apparently seemed to be very attractive specially in view of the decision in Lokhande's case (supra). In Lokhande's case as noted above, this Court was not called upon to decide the true perspective of Article 136 of the Act of 1963 rather decided the issue in the peculiar fact situation of the matter on the basis of the Limitation Act of 1908 and in particular, Article 182. This Court was rather specific on that score and it is on that score only that the Andhra Pradesh High Court's judgment in Smt. Kotipalli Mahalakshmamma v. Kotipalli Ganeswara Rao & Ors. (AIR 1960 A.P. 54) was said to be the correct exposition of law. Article 136 however has a special significance and a very wide ramification as noted above and as such we need not dilate therefor any further.

Turning attention on to Section 2 (15) read with Section 35 of the Indian Stamp Act, be it noted that the Indian Stamp Act, 1899 (Act 2 of 1899) has been engrafted in the Statute Book to consolidate and amend the law relating to stamps. Its applicability thus stands restricted to the scheme of the Act. It is a true fiscal statute in nature, as such strict construction is required to be effected and no liberal interpretation. Undoubtedly, Section 2 (15) includes a decree of partition and Section 35 of the Act of 1899 lays down a bar in the matter of unstamped or insufficient stamp being admitted in evidence or being acted upon - but does that mean that the prescribed period shall remain suspended until the stamp paper is furnished and the partition decree is drawn thereon and subsequently signed by the Judge? The result would however be an utter absurdity: As a matter of fact if somebody does not wish to furnish the stamp paper within the time specified therein and as required by the Civil Court to draw up the partition decree or if someone does not at all furnish the stamp paper, does that mean and imply, no period of limitation can said to be attracted for execution or a limitless period of limitation is available. The intent of the legislature in engrafting the Limitation Act shall have to be given its proper weightage. Absurdity cannot be the outcome of interpretation by a court order and wherever there is even a possibility of such absurdity, it would be a plain exercise of judicial power to repel the same rather than encouraging it. The whole purport of the Indian Stamp Act is to make available certain dues and to collect revenue but it does not mean and imply, overriding the effect over another statute operating on a completely different sphere.

Let us examine the matter from another perspective. Limitation Act has been engrafted in the Statute Book in the year 1963 and the Indian Stamp Act has been brought into existence by the British Parliament in 1899 though, however, the Government of India Adoptation of Indian Laws Order 1937, the Indian Independence Adoptation of Central Acts and Ordinance Order 1948 and the Adoptation of Laws Order 1950 allowed this fiscal statute to remain on the statute book. The legislature while engrafting 1963 Act, it is presumed and there being a golden canon of

interpretation of statutes, that it had in its mind the existing Indian Stamp Act before engrafting the provisions under Article

136. A latter statute obviously will have the effect of nullifying an earlier statute in the event of there being any conflict provided however and in the event there is otherwise legislative competency in regard thereto. As regards the legislative competency, there cannot be any doubt which can stand focussed neither there is any difficulty in correlating the two statutes being operative in two different and specified spheres. Enforceability of the decree cannot be the subject matter of Section 35 neither the limitation can be said to be under suspension. The heading of the Section viz., "Instrument not duly stamped inadmissible in evidence etc." (emphasis supplied) itself denotes its sphere of applicability: it has no relation with the commencement of period of limitation. As noticed above 'executability' and 'enforceability' are two different concepts having two specific connotation in legal parlance. They cannot be termed as synonymous, as contended by Mr. Mani nor they can be attributed one and the same meaning. Significantly, the final partition decree, whenever it is drawn bears the date of the decree when the same was pronounced by Court and not when it stands engrossed on a stamp paper and signed by the judge and this simple illustration takes out the main thrust of Mr. Mani's submission as regards the applicability of the Stamp Act vis-à-vis, the enforceability of the decree. The decree may not be received in evidence nor it can be acted upon but the period of limitation cannot be said to remain under suspension at the volition and mercy of the litigant. Limitation starts by reason of the statutory provisions as prescribed in the statute. Time does not stop running at the instance of any individual unless, of course, the same has a statutory sanction being conditional, as more fully noticed hereinbefore: the Special Bench decision of the Calcutta High Court in the case of Bholanath Karmakarand others v. Madanmohan Karmakar (AIR 1988 Calcutta 1), in our view has completely misread and misapplied the law for the reasons noted above and thus cannot but be said to be not correctly decided and thus stands overruled. Undoubtedly, the judgment of the Calcutta High Court has been a very learned judgment but appreciation of the legislative intent has not been effected in a manner apposite to the intent rather had a quick shift therefrom by reason wherefor, the Special Bench came to a manifest error in recording that the period of limitation for execution of a partition decree shall not begin to run until the decree is engrossed on requisite stamp paper. On the wake of the aforesaid we are unable to record an affirmative support to Mr. Mani's submission that Section 35 read with Section 2 (15) of the Indian Stamp Act 1899 would over-run the Limitation Act of 1963 and thus give a complete go-bye to the legislative intent in the matter of incorporation of Article 136.

The appeal, therefore, fails and is dismissed. No order as to costs.