Neena Aneja vs Jai Prakash Associates Ltd. on 16 March, 2021

Equivalent citations: AIR 2021 SUPREME COURT 1441, AIRONLINE 2021 SC 143

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Bench: D.Y. Chandrachud, M.R. Shah, Sanjiv Khanna

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos. 3766-3767 of 2020

Neena Aneja & Anr. .... Appellants

Versus

Jai Prakash Associates Ltd. .... Respondent

JUDGMENT Dr Dhananjaya Y Chandrachud, J Index A. Background B. Submissions B.1. Submissions of the appellants B.2. Submissions of the respondent C. Position of law on change of forum: An analysis of precedent C.1. Venugopala Reddiar (1943- Federal Court 3 judges) C.2. Kiran Singh v. Chaman Paswan (1954- Supreme Court 4 judges) C.3. Garikapati (1957- Supreme Court Constitution Bench) C.4. Mohd. Idris (1965- Supreme Court Constitution Bench) C.5. Manujendra Dutt (1966- Supreme Court 2 judges) C.6. New India Assurance (1975- Supreme Court 3 judges) C.7. Maria Cristina (1978- Supreme Court 2 judges) C.8. Hitendra Vishnu Thakur (1994- Supreme Court 2 judges) C.9. Sudhir G Angur (2005- Supreme Court 3 judges) C.10. Ramesh Kumar Soni (2013- Supreme Court 2 judges) C.11. Dhadi Sahu (1992- Supreme Court 2 judges) C.12. Ambalal Sarabhai (2001- Supreme Court 2 judges) C.13. HP State Electricity (2013- Supreme Court 2 judges) C.14. Videocon International (2015- Supreme Court 2 judges) C.15. SEBI v. Classic Credit (2018- Supreme Court 2 judges) C.16. Swapna Mohanty (2018- Supreme Court 2 judges) C.17. Om Prakash Agarwal (2018- Supreme Court 2 judges) C.18. Delhi High Court Bar Association (1993- Delhi HC-DB) C.19. Mahendra Jain (2008- Bombay HC-DB) C.20. Vallabhaneni (2004- Andhra Pradesh HC- 5 judges) C.21. Gobardhan Lal Soneja (1991-Patna HC-FB) C.22. Y.B. Ramesh (2010-Karnataka HC-SJ) C.23. Conclusion on the position of law D. Legislative Scheme of the jurisdictional provisions E. Legislative intendment underlying Section 107 of the Act of 2019 F. Summation PART A A

Background

1. On being enacted by Parliament, the Consumer Protection Act 20191 was published in the Gazette of India on 9 August 20192. By S.O. 2351(E) dated 15 July 2020, the material provisions of the Act of 2019 were notified to come into force on 20 July 2020. By S.O. 2421(E) dated 23 July 2020 several other provisions were brought into force, with effect from 24 July 2020. The appellants instituted a consumer case3 before the National Consumer Disputes Redressal Commission4 on 18 June 2020. The consumer case was instituted under the provisions of the erstwhile legislation, the Consumer Protection Act 19865. The NCDRC by its order dated 30 July 2020 dismissed the consumer case on the ground that after the enforcement of the Act of 2019, its pecuniary jurisdiction has been enhanced from rupees one crore to rupees ten crores. The appellants' review petition was also dismissed by the NCDRC on 5 October 2020. In the present case, the claim of Rs. 2.19 crores is below the enhanced pecuniary jurisdiction of the NCDRC.

2. The complainants in the consumer case are in appeal.

3. The issue which arises in the appeals is whether a complaint which was filed and registered under the Act of 1986, before the new Act of 2019 came into force, has to be entertained under the provisions of the erstwhile legislation. In anticipation of the enforcement of the Act of 2019, an administrative notice was "Act of 2019" The Act was published in the Gazette of India Extraordinary, Part II, Section 1, No. 54 dated 9 August 2019 Consumer Case no.566 of 2020 (NCDRC) "NCDRC" "Act of 1986" PART A issued by the NCDRC on 17 July 2020 to allow the functioning of its registry for fresh filings on 18 July 2020, since the new law was to come into force on 20 July 2020. The appellants are also aggrieved by the fact that contrary to the position taken in its case, other Benches of the NCDRC have admitted complaints instituted before 20 July 2020. This grievance apart, the issue which arises in the appeals would turn upon a construction of Section 107 of the Act of 2019, among other provisions of the new legislation, and its interplay with Section 6 of the General Clauses Act 18976. The analysis of the Court, despite the new legislation, will not proceed on a clean slate for there is precedent which holds the field. That both sides rely upon the line of precedent in the unfolding of their cases makes the interpretational task intricate. Our task will be to bring a solution that has a sense of cohesion, while harmonizing precedential learning with justice.

4. A brief narration of the facts would assist with context. Upon the payment of an advance of Rs.3.50 lacs on 25 November 2011 by the appellants, the respondent provisionally allotted a residential unit in a real-estate project described as KRESCENT Homes admeasuring a super built area of 114.27 square metres which was being developed by the respondent at Jaypee Greens, Noida. The total consideration was fixed at Rs.56.45 lacs and possession was intended to be conveyed within a period of 42 months from the execution of the agreement of the provisional allotment letter. The appellants have stated that between December 2011 till date, they have paid an amount of Rs. 53.84 lacs out of the total consideration of Rs.56.45 lacs.

"General Clauses Act" PART A

5. On 13 June 2017 and 27 April 2020, the appellant sought a refund of the consideration together with interest at 18 per cent. On 18 June 2020, the appellants instituted a consumer complaint before the NCDRC for refund with interest. The consumer complaint has been dismissed by an order dated 30 July 2020 for want of pecuniary jurisdiction. A single member Bench of the NCDRC held that following the enforcement of the Act of 2019 on 20 July 2020, the limits of its pecuniary jurisdiction stands enhanced from rupees one crore to rupees ten crores and the complaint instituted by the appellants is consequently not maintainable. The appellants instituted a petition seeking a review of the order. The review petition was dismissed on 5 October 2020 leading to the institution of the appeal before this Court.

6. Section 21 of the Act of 1986 provided for the jurisdiction of the NCDRC:

> "Jurisdiction of the National Commission. — Subject to the other provisions of this Act, the National Commission shall have jurisdiction—
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> (a) to entertain—
>
> (i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees one crore; and
>
> (ii) appeals against the orders of any State Commission;
>
> and
>
> (b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity." (emphasis supplied)
> PART A

7. Under the Act of 1986, the enhancement of the pecuniary limits of the jurisdiction of the NCDRC to rupees one crore came in substitution of rupees twenty lacs with effect from 15 March 2003 as a result of Act 62 of 2002. Earlier the limit of rupees twenty lacs was substituted by Act 50 of 1993 for rupees ten lacs with effect from 18 June 1993.

8. Under Section 11, the jurisdiction of the District Commission to entertain original complaints was rupees twenty lacs7. Under Section 17, the State Consumer Disputes Redressal Commission8 had jurisdiction to entertain complaints where the value of the goods and services or compensation if any claimed exceeds rupees twenty lacs but does not exceed rupees one crore9.

9. The Act of 2019 was enacted by Parliament taking into account the experience which was gained in the administration of the earlier legislation and to meet new developments in the market place for products and services. The Statement of Objects and Reasons accompanying the introduction of the

Bill in Parliament elucidates the rationale for the new law:

> "Statement of Objects and Reasons The Consumer Protection Act, 1986 (68 of 1986) was enacted to provide for better protection of the interests of consumers and for the purpose of making provision for establishment of consumer protection councils and other authorities for the settlement of consumer disputes, etc. Although, the working of the consumer dispute redressal agencies has served the purpose to a considerable extent under the said Act, the disposal of cases has been fast due to The pecuniary limits were enhanced from rupees one lac to rupees five lacs by Act 50 of 1983 with effect from 18 June 1993. The limits were enhanced from rupees five lacs to rupees twenty lacs by Act 62 of 2002 with effect from 15 March 2003.
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> "SCDRC" By Act 62 of 2002, these limits had been enhanced from the previous limits of rupees five lacs – rupees 20 lacs PART A various constraints. Several shortcomings have been noticed while administering the various provisions of the said Act.
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> 2. Consumer markets for goods and services have undergone drastic transformation since the enactment of the Consumer Protection Act in 1986. The modern market place contains a plethora of products and services. The emergence of global supply chains, rise in international trade and the rapid development of e-commerce have led to new delivery systems for goods and services and have provided new options and opportunities for consumers. Equally, this has rendered the consumer vulnerable to new forms of unfair trade and unethical business practices. Misleading advertisements, tele-marketing, multi-level marketing, direct selling and e-commerce pose new challenges to consumer protection and will require appropriate and swift executive interventions to prevent consumer detriment. Therefore, it has become inevitable to amend the Act to address the myriad and constantly emerging vulnerabilities of the consumers. In view of this, it is proposed to repeal and reenact the Act.
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> 3. Accordingly, a Bill, namely, the Consumer Protection Bill, 2018, was introduced in Lok Sabha on the 5th January, 2018 and was passed by that House on the 20th December, 2018. While the Bill was pending consideration in Rajya Sabha, the Sixteenth Lok Sabha was dissolved and the Bill got lapsed. Hence, the present Bill, namely, the Consumer Protection Bill, 2019.
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> 4. The proposed Bill provides for the establishment of an executive agency to be known as the Central Consumer Protection Authority (CCPA) to promote, protect and enforce the rights of consumers; make interventions when necessary to prevent consumer detriment arising from unfair trade practices and to initiate class action including enforcing recall, refund and return of products, etc. This fills an institutional void in the regulatory regime extant. Currently, the task of prevention of or acting against unfair trade practices is not vested in any authority. This has been provided in a manner that the role envisaged for the CCPA complements that of the

sector regulators and duplication, overlap or potential conflict is avoided.

5. The Bill envisages provisions for product liability action on account of harm caused to consumers due to a defective product or by deficiency in services. Further, provision of "Mediation" as an Alternate Dispute Resolution Mechanism has also been provided.

6. The Bill provides for several provision aimed at simplifying the consumer dispute adjudication process of the PART A Consumer Disputes Redressal Agencies, inter alia relating to enhancing the pecuniary jurisdiction of the Consumer Disputes Redressal Agencies; increasing minimum number of Members in the State Consumer Disputes Redressal Commissions and provisions for consumers to file complaints electronically, etc.

7. The Bill seeks to achieve the above objectives."

10. Section 28(1) provides for the establishment of a District Consumer Disputes Redressal Commission10 in every district, subject to its establishment by a notification of the State Government11. The jurisdiction of the District Commission in terms of Section 34 is to entertain complaints where the value of goods and services paid as consideration does not exceed one crore rupees. Section 42 provides for the establishment of a SCDRC in each State. The pecuniary limits of the original jurisdiction of the SCDRC under Section 47(1)(a) is to entertain original complaints where the value of goods and services paid as consideration exceeds rupees one crore but does not exceed rupees ten crores. Section 53 provides for the establishment of the NCDRC. Section 58(1)(a) contains the pecuniary limits of the jurisdiction of the NCDRC, which in the case of original complaints is where the value of goods and services paid as consideration exceeds rupees ten crores.

"District Commission"

28. (1) The State Government shall, by notification, establish a District Consumer Disputes Redressal Commission, to be known as the District Commission, in each district of the State:

Provided that the State Government may, if it deems fit, establish more than one District Commission in a district.

(2) Each District Commission shall consist of—

(a) a President; and

(b) not less than two and not more than such number of members as may be prescribed, in consultation with the Central Government.

PART A

11. Section 107 contains the repeal and savings provision, which is in the following terms:

> "107. Repeal and savings-
>
> (1) The Consumer Protection Act, 1986 is hereby repealed.
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> (2) Notwithstanding such repeal, anything done or any action taken or purported to have been done or taken under the Act hereby repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.
>
> (3) The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal." In terms of sub-section (1) of Section 107, the Act of 1986 stands repealed. Sub-

section (2) is prefaced with a non obstante provision. Under sub-section (2) anything done or any action taken or purported to have been done or taken under the repealed legislation is deemed to have been done or taken under the corresponding provision of the new legislation, insofar as it is not inconsistent with the latter provisions. Sub-section (3) of Section 107 stipulates that the specification of the matters contained in sub-section (2) does not prejudice or affect the general application of Section 6 of the General Clauses Act (with regard to the effect of repeal). Having repealed, the Act of 1986, the new legislation has also made transitional provisions in Section 3112, Section 4513 and

31. Transitional provision: Any person appointed as President or, as the case may be, a member of the District Commission immediately before the commencement of this Act shall hold office as such as President or, as the case may be, as member till the completion of his term for which he has been appointed.

45. Transitional provision: Any person appointed as President or, as the case may be, a member of the State Commission immediately before the commencement of this Act shall hold office as such, as President or member, as the case may be, till the completion of his term. PART A Section 5614 for the continuance of persons appointed as members of the District Commission, the SCDRC and the NCDRC under the erstwhile legislation.

56. Transitional provision: The President and every other member appointed immediately before the commencement of section 177 of the Finance Act, 2017 shall continue to be governed by the provisions of the Consumer Protection Act, 1986 and the rules made thereunder as if this Act had not come into force.

PART B

B Submissions

B.1 Submissions of the appellants

12. Mr P Vinay Kumar, learned Counsel appearing on behalf of the appellants urged the following submissions in support of the appeal:

> (i) Section 107(3) of the Act of 2019 gives full effect to the provisions of Section 6 of the General Clauses Act, which means that nothing in the repeal of the earlier legislation will affect pending proceedings which may continue as if the new legislation has not been enacted. Under the Act of 2019, the jurisdiction has been conferred on the SCDRC to hear complaints under the new Act. In order to vest the SCDRC with jurisdiction to hear complaints which were instituted before the NCDRC under the old Act, a specific provision for transferring the proceedings was required-

which has not been provided. This is not the case where a statute has been amended by enhancement of pecuniary jurisdiction but involves the repeal of an old statute in which event a provision for transferring the cases to the new forum is essential;

(ii) The new Act of 2019 affects substantive and vested rights and must necessarily be prospective; and

(iii) The new legislation does not contain any provision for its retrospective operation.

A. Elaborating on the first limb of submissions, learned counsel urged that in several decisions of this Court, Section 6 of the General Clauses Act was PART B applied by the Court in order to save existing proceedings. In the present case, the law makers have specifically incorporated the applicability of Section 6 of the General Clauses Act, by making a provision in Section 107(3) of the Act of 2019. The question of examining the existence of vested rights arises only where there is a doubt over a savings provision or when Section 6 has not been made specifically applicable. In such cases, the Court has to scrutinize whether a vested right had arisen under the repealed statute, in which event the pending proceedings would be saved. However, where Section 6 is applicable, it covers a wider field so as to save not only vested rights but all rights covered by clauses (a) to (e) of Section 6.

B. The next limb of the submissions is that substantial changes have been made in the provisions for appeal contained in the Act of 2019. For instance, the second proviso to Section 19 of the Act of 1986 required an aggrieved person to either deposit 50 per cent of the amount awarded by the SCDRC or Rs 25,000, whichever is less. However, in the Act of 2019, the second proviso to Section 51(1) stipulates that an appeal shall not be entertained by the NCDRC unless the appellant has deposited 50 per cent of the amount required under the order of the SCDRC. This provision substantially

affects the vested right of a litigant and is not merely procedural in nature. In Garikapati Veeraya v. N Subbiah Choudhry15, the Constitution Bench of this Court has held that a right of appeal is not a mere matter of procedure but is a substantive right and that the institution "Garikapati"; 1957 SCR 488 PART B of a suit carries with it the implication that all rights of appeal then in force are preserved. Such a vested right can only be taken away either expressly or by necessary implication. Hence, the relevant date is the date of the institution of the suit and not when the case comes for hearing or for decision. In the present case, the earlier legislation was in force when the complaint was filed and hence the rights and obligations which accrued on that date would stand saved. As a result of the Act of 2019, a statutory appeal which was provided to the complainant to the Supreme Court against an order of the NCDRC has been taken away by stipulating that matters which will lie before the SCDRC will only be amenable to appeal before the NCDRC. From the thirty one Sections in the Act of 1986, the Act of 2019 has legislated for one hundred and seven Sections which in itself indicates that the change is not merely procedural, but substantial. C. The third limb of submissions is that there is no provision for transfer of pending cases in the new Act of 2019. Under Section 47 of the Act of 2019 of the new legislation, the jurisdiction of the SCDRC is to entertain complaints under the Act of 2019 above a certain value. The jurisdiction to entertain complaints under the erstwhile legislation could only have been conferred by an express statutory provision that transferred complaints filed under the old Act from the NCDRC to the SCDRC. Any direction for the transfer of existing cases would entail disturbing thousands of cases pending before the NCDRC and SCDRCs across the country. This would cause serious hardship and prejudice to consumers and a waste of judicial time invested till date. A similar question was dealt with by the NCDRC in PART B its Judgment 8 April 2011 in Southfield Paints and Chemicals Pvt. Ltd. v. New India Assurance Co. Ltd.16 which construed Amending Act 62 of 2002 by which the pecuniary limits of jurisdiction were enhanced with effect from 15 March 2003. Relying on the earlier decision in Premier Automobiles Ltd. v. Dr Manoj Ramachandran17, the NCDRC held that the amendments enhancing the pecuniary jurisdiction were prospective in nature. The legislature must be considered to be aware of this precedent. D. Finally, it was urged that the Act of 2019 came into force on July 2020 while the complaint in the present case was instituted before the NCDRC on 18 June 2020. The dismissal of the complaint for want of pecuniary jurisdiction is in contravention of the administrative notice dated 17 July 2020 of the NCDRC. The administrative directions were complied with by other Benches of the NCDRC which have admitted a number of complaints instituted under the Consumer Protection Act 1986.

E. In sum and substance, therefore, it has been urged that:

> (i) Section 107 of the Act of 2019 read with Section 6 of the General Clauses Act saves pending legal proceedings; hence the complaint which was filed before the enforcement of the new legislation should be allowed to proceed before the NCDRC under the Act of 1986;
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> (ii) The relevant date is the date of the institution of the complaint and not the date when the matter is heard or decided;

Consumer Case No. 286 of 2000 (NCDRC) Revision Petitions Nos 400 to 402 of 1993 (NCDRC) PART B

(iii) The new legislation affects substantive rights of appeal to the NCDRC by making a deposit of 50 per cent of the decretal amount mandatory;

(iv) In the absence of an express provision, the new legislation must operate prospectively; and

(v) In the absence of a provision for transfer of pending cases, complaints which were instituted prior to the enforcement of the Act of 2019 should not be disturbed.

B.2 Submissions of the respondent

13.

A. Mr Krishnan Venugopal, learned Senior Counsel appearing on behalf of the respondent, supported the reasoning of the NCDRC and urged the following submissions:

(i) The Statement of Objects and Reasons underlying the enactment of the Act of 2019 indicates that:

(a) The new legislation has been enacted to strengthen the remedies available to consumers;

(b) The legislature was conscious of the delays in the disposal of cases under the erstwhile legislation; and

(c) While enacting the new law, a conscious decision was taken to enhance the pecuniary limits of the jurisdiction of the District Commission, SCDRC and NCDRC to ensure that the PART B large proportion of cases can be resolved in the fora situated close to the complainants;

(ii) The purpose of the Act of 2019, as envisaged in the Statement of Objects and Reasons, is further emphasized under Section 2(9)(iv) of the Act of 2019 under which consumer rights have been defined to include "the right to be heard and be assured that consumer interests will receive due consideration at appropriate fora";

(iii) Sections 28, 42 and 53 provide for the establishment of the District Commission, SCDRC and NCDRC. Under Section 58(1)(a), the NCDRC is empowered to entertain complaints where the value of goods or services paid as consideration exceeds rupees ten crores.

The expression ‘entertain’ has been construed in a broad and comprehensive sense to mean ‘to adjudicate upon’ in the decision of this Court in Nusli Neville Wadia v. Ivory Properties18;

(iv) The basic principle of law is that when a statute is repealed, everything stands obliterated. Section 107(2) of the Act of 2019 covers concluded transactions while Section 107(3) preserves the application of Section 6 of the General Clauses Act. Section 6 is prefaced with the words "unless a different intention appears". Clause (c) of Section 6 is substantive in nature while clause (e) applies to pending proceedings. The precedents of this Court would indicate that Section 6(e) has been interpreted as extending to substantive proceedings, but a pure matter of procedure is excluded. “Nusli Neville”; (2020) 6 SCC 557: at paras 35 and 36 PART B A change of forum, like matters of evidence and civil procedure is a pure matter of procedure. Section 6(e) would hence not be applicable where a new legislation results in a change of forum;

(v) Where a law takes away a right of action or appeal, it is treated as a substantive alteration and does not apply to pending actions. A mere change in forum is to be distinguished from a substantive alteration. The Act of 2019 is a law which repeals the earlier legislation and created a new hierarchy of courts and it must, consequentially, be treated as retroactive;

(vi) The right of appeal is a substantive right which accrues at the date of the institution of a proceeding. An amendment taking away this right imposes a substantive alteration and is therefore construed to be prospective. This principle does not apply where there is only a change of forum;

(vii) The Act of 2019 does not abrogate existing rights. On the contrary, it preserves and provides for an additional right of appeal where, as a result of the legislation, a complaint which could earlier be filed before the NCDRC has to be filed before the SCDRC. A complaint before the SCDRC would have to be instituted before the District Commission. The right to appeal is therefore strengthened and not truncated;

(viii) Section 34 empowers the District Commission with jurisdiction "to entertain complaints" and a similar provision has been made in Section 47(1)(a) pertaining to the SCDRC and Section 58(1)(a) PART B pertaining to the NCDRC. This expression emphasizes that it applies at every point of time when a matter is entertained for adjudication or for consideration on merits;

(ix) The Act of 2019 abolished the old hierarchy of fora under the Act of 1986 and established adjudicatory fora afresh. The case pending before one of the fora governed by the Act of 1986 ceases to be pending because the Act of 2019 has, by its repeal, abolished the existing adjudicatory bodies. Sections 28, 42 and 53 established new adjudicatory bodies afresh under the Act of 2019. This is evident from the provisions of Section 31, 45 and 56 under which judicial personnel of the erstwhile fora were permitted to continue under the Act of 2019;

(x) The Act of 2019 indicates a contrary intent within the meaning of Section 6 of the General Clauses Act; and

(xi) The principle that a repeal of a statute obliterates the effects and consequence of the earlier legislation, is subject to three exceptions:

(a) Concluded transactions continue to be governed by the old law;

(b) Where a right of appeal or of action is abrogated or in a situation where clogs are imposed on the right, such rights continue to be preserved notwithstanding the repeal; and

(c) Where a substantive liability or a right is imposed or conferred, this would be treated as prospective. On the other PART B hand, the consistent view under Section 6 (e) is that it does not apply to a mere change of forum.

B. The sum and substance of the submissions which were urged by Mr Krishnan Venugopal, learned Senior Counsel is that where a law provides for a change in forum, this is treated as a matter of procedure and not of substance. The Act of 2019 is not a legislation merely enhancing the limits of the pecuniary jurisdiction by an amendment to the Act of 1986. On the contrary, the Act of 2019 is a completely new law, which abolished the hierarchy of tribunals under the erstwhile Act of 1986 and created a new adjudicatory hierarchy. As a matter of interpretation, the Act of 2019 clearly indicates an intention to the contrary as a result of which pending proceedings will not continue before the forums which existed under the Act of 1986. In other words, the limits of pecuniary jurisdiction which have been defined under the Act of 2019 will apply to all pending actions and a transfer of existing cases would be required in those cases where the jurisdiction to entertain the complaint lies within the pecuniary limits of the newly established forum. In support of his submissions, Mr Venugopal relied on a line of precedent which would be discussed while analyzing the rival contentions.

14. The rival submissions are now considered.

PART C C Position of law on change of forum: An analysis of precedent C.1 Venugopala Reddiar (1943- Federal Court 3 judges)

15. The discussion on the law begins with the decision of the Federal Court in Venugopala Reddiar v. Krishnaswami Reddiar, alias Raja Chidambara Reddiar19 which considered the validity of a pending proceeding when the court had lost territorial jurisdiction. Before 1937, when Burma was a part of British India, it was permissible under Section 17 of the Civil Procedure Code to include immovable property situated in Burma as a part of the subject matter of a suit. The principal respondent instituted a suit for the recovery of certain properties. A large portion of these properties was situated in Rangoon, Burma. The suit had been instituted before the Trichinopoly Court. After Burma ceased to be a part of India on 1 April 1937, the contesting defendants objected to the jurisdiction of the Court to deal with the Burma property. The Trial Judge upheld the objection that it no longer had jurisdiction over property situated in Burma. This was reversed by a Division Bench of the Madras High Court. The Division Bench held that Article 10 of the Government of India (Adaptation of Indian Laws) Order 1937 provided that the powers exercisable by any authority,

which in the view of the High Court would include a Court, before the separation came into force should continue to be exercised until a contrary provision was passed by the legislature. The High Court also held that a right to continue a duly instituted suit was in the nature of a vested right which cannot be taken away except by a clear legislative intent.

AIR 1943 FC 24 PART C Justice Srinivasa Varadachariar summed up the legal principle at page 48 by observing:

> "..The true position, as we have already stated, is not whether there is an express provision permitting the continuance of pending proceedings, but whether there is any clear indication against the continuance of pending proceedings to their normal termination." In an earlier part of the judgment, the Court noted that paragraph (e) of sub-
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> Section (2) of Section 38 of the Interpretation Act, 1889 provides that any legal proceedings in respect of any right acquired or accrued under the repealed enactment may "continue as if the repealing Act had not been passed". Noting that the interpretation of this paragraph is not free from difficulty, Justice Varadachariar observed that the view has sometimes been taken that what is saved is a substantive right acquired under the repealed enactment and that the paragraph cannot be invoked in cases where the substantive right is not taken away by the repealing Act but the mere forum for, or the method of enforcing it is changed. On the other hand, the Court noted, it has been maintained that a right to obtain a relief in a suit pending at the time when the repealing enactment comes into operation is itself in the nature of a substantive right. Of the three grounds which had weighed with the High Court in affirming the jurisdiction of the Trial Court, the Federal Court rested its decision on the principle contained in the ruling of the Privy Council in Colonial Sugar Refining Company Ltd. v. Irving20 which held that a right to appeal is a substantive right whose amendment would generally be prospective:
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> "As regards the general principles applicable to the case there was no controversy. On the one hand, it was not (1905) AC 369 PART C disputed that if the matter in question be a matter of procedure only, the petition is well founded. On the other hand, if it be more than a matter of procedure, if it touches a right in existence at the passing of the Act, it was conceded that, in accordance with a long line of authorities extending from the time of Lord Coke to the present day, the appellants would be entitled to succeed. The Judiciary Act is not retrospective by express enactment or by necessary intendment. And therefore the only question is: was the appeal to His Majesty in Council a right vested in the appellants at the date of the passing of the Act, or was it a mere matter of procedure? It seems to Their Lordships that the question does not admit of doubt. To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right is a very different thing from regulating procedure. In principle, Their Lordships see no difference between abolishing an appeal altogether and transferring the appeal to a new tribunal.

In either case there is an interference with existing rights contrary to the well-known general principle that statutes are not to be held to act retrospectively unless a clear intention to that effect is manifested." (emphasis supplied) The principle enunciated by the Privy Council in Colonial Sugar Refining was reiterated.

C.2 Kiran Singh v. Chaman Paswan (1954- Supreme Court 4 judges)

16. In Kiran Singh v. Chaman Paswan21, the appellant's suit for recovery of land on the basis of the eviction of the defendants was dismissed by the Subordinate Judge which was affirmed in appeal. When the matter was taken up in second appeal to the Punjab High Court, an objection to the valuation of the plaint was raised by the stamp reporter and the correct valuation was determined on which the plaintiffs paid additional court fees. On the revised valuation, the plaintiffs raised the plea that the appeal from the decree of the Subordinate AIR 1954 SC 340 PART C Judge would not lie to the District Court but to the High Court and that accordingly the second appeal should be heard as a first appeal against the judgment of the District Court. Following the Full Bench decision, the High Court held that the appeal to the District Court was competent and its decision should be reversed only if prejudice were shown on merits. In appeal, this Court noted that on a plaint valuation, the appeal would lie to the District Court whereas on the valuation as determined by the High Court, it was held that it was competent to entertain the appeal. On this basis, it was argued the decision of the District Court was a nullity. This Court rejected the contention that the decree was a nullity, holding that an objection to the pecuniary jurisdiction shall not be entertained by an Appellate Court unless there has been a consequent failure of justice. Dealing with the argument that a prejudice had been caused to the appellants in that by reason of the undervaluation, their appeal was heard by a Court of inferior jurisdiction while they were entitled to a first appeal before the High Court, this Court held:

> "11. It is next contended that even treating the matter as governed by Section 11 of the Suits Valuation Act, there was prejudice to the appellants, in that by reason of the undervaluation, their appeal was heard by a court of inferior jurisdiction, while they were entitled to a hearing by the High Court on the facts. It was argued that the right of appeal was a valuable one, and that deprivation of the right of the appellants to appeal to the High Court on facts must therefore be held, without more, to constitute prejudice. This argument proceeds on a misconception. The right of appeal is no doubt a substantive right, and its deprivation is a serious prejudice; but the appellants have not been deprived of the right of appeal against the judgment of the Subordinate Court. The law does provide an appeal against that judgment to the District Court, and the plaintiffs have exercised that right. Indeed, the undervaluation has enlarged the appellants' right of appeal, because while they would have had only a right of one appeal and that to the High Court if the suit had PART C been correctly valued, by reason of the undervaluation they obtained right to two appeals, one to the District Court and another to the High Court. The complaint of the appellants really is not that they had been deprived of a right of appeal against the judgment of the Subordinate Court, which they have not been, but that an appeal on the facts against that judgment was heard by the District Court and not by the High Court. This

> objection therefore amounts to this that a change in the forum of appeal is by itself a matter of prejudice for the purpose of Section 11 of the Suits Valuation Act.

.....

15. So far, the definition of "prejudice" has been negative in terms — that it cannot be mere change of forum or mere error in the decision on the merits. What then is positively prejudice for the purpose of Section 11? That is a question which has agitated courts in India ever since the enactment of the section. It has been suggested that if there was no proper hearing of the suit or appeal and that had resulted in injustice, that would be prejudice within Section 11 of the Suits Valuation Act. Another instance of prejudice is when a suit which ought to have been filed as an original suit is filed as a result of undervaluation on the small cause side. The procedure for trial of suits in the Small Cause Court is summary; there are no provisions for discovery or inspection; evidence is not recorded in extenso, and there is no right of appeal against its decision. The defendant thus loses the benefit of an elaborate procedure and a right of appeal which he would have had if the suit had been filed on the original side. It can be said in such a case that the disposal of the suit by the Court of Small Causes has prejudicially affected the merits of the case. No purpose, however, is served by attempting to enumerate exhaustively all possible cases of prejudice which might come under Section 11 of the Suits Valuation Act. The jurisdiction that is conferred on appellate courts under that section is an equitable one, to be exercised when there has been an erroneous assumption of jurisdiction by a subordinate court as a result of overvaluation or under valuation and a consequential failure of justice. It is neither possible nor even desirable to define such a jurisdiction closely, or confine it within stated bounds. It can only be predicated of it that it is in the nature of a revisional jurisdiction to be exercised with caution and for the ends of justice, whenever the facts and situations call for it. Whether there has been prejudice or not is, accordingly, a matter to be determined on the facts of each case." (emphasis supplied) PART C

17. Therefore, this court made a clear distinction between amendments impacting a substantive right of appeal and amendments which merely alter the forum where such an appeal could be urged. The latter could not be construed as having caused a prejudice as it was not substantive in nature. C.3 Garikapati (1957- Supreme Court Constitution Bench)

18. In Garikapati (supra), Chief Justice S R Das speaking for the Constitution Bench, formulated the legal principles which govern this area of interpretative jurisprudence. The decision in Garikapati (supra) is the locus classicus on subject of the substantive right of appeal vis-à-vis pending proceedings. The five principles which were enunciated in paragraph 23 of the decision are extracted below:

> "23....:
>
> (i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

(ii) The right of appeal is not a mere matter of procedure but is a substantive right.

(iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.

(iv) The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

(v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise." (emphasis supplied) PART C The Constitution Bench clarified that the right of appeal is a vested right which cannot be taken away, absent a statutory enactment to the effect. It was also clarified that the right to appeal would vest, once the suit is instituted.

C.4 Mohd. Idris (1965- Supreme Court Constitution Bench)

19. In Mohd. Idris v. Sat Narain22, a Constitution Bench of this Court considered whether a pending application filed on 27 May 1952 under the UP Agriculturist Relief Act for redemption of a mortgage was rendered incompetent upon the passing of the UP Zamindari Abolition and Land Reforms (Amendment) Act 1953 which was brought into force with retrospective effect on 1 July 1952. The question, as Justice M Hidayatullah (as the learned Chief Justice then was) formulated was, "whether the right of the plaintiff to continue the suit under the old law was in any way impaired". Dealing with the provisions of Section 6 of the UP General Clauses Act 1897 (which is pari materia to the corresponding provisions of the General Clauses Act), the Court held:

"7...The question is whether a different intention appears in either the Abolition Act or the Amending Act 16 of 1953, for otherwise the old proceeding could continue before the Munsif. There is nothing in the Abolition Act which takes away the right of suit in respect of a pending action. If there be any doubt, it is removed when we consider that the U.P. Agriculturist Relief Act was repealed retrospectively from July 1, 1952 only and it is not, therefore, possible to give the repeal further retrospectivity so as to affect a suit pending from before that date. The jurisdiction of the Assistant Collector was itself created from July 1, 1952 and there is no provision in the Abolition Act that pending cases were to stand transferred to the Assistant Collector for disposal. Such provisions are commonly found in a statute which takes away the jurisdiction of one court and confers it on another. From these two circumstances it is to be inferred that if there is at all any expression of "Mohd. Idris"; AIR 1966 SC 1499 PART C intention, it is to keep Section 6 of the General Clauses Act applicable to pending litigation. The doubt, if any be left, is further removed if we consider a later amending Act, namely, amending Act 18 of 1956. By that Act Schedule II, which

created the jurisdiction of the Assistant Collector in suits for ejectment of asamis was replaced by another Schedule. The entry relating to suits for ejectment of asamis, however, remained the same. But Section 23 of the amending Act of 1956 created a special saving which reads as follows:

"23. Saving.—(i) Any amendment made by this Act shall not effect the validity, invalidity, effect or consequence of anything already done or suffered, or any right, title obligation or liability already acquired, accrued or incurred or any jurisdiction already exercised, and any proceeding instituted or commenced before any court or authority prior to the commencement of this Act shall, notwithstanding any amendment herein made, continue to be heard and decided by such court or authority.

(ii) An appeal, review or revision from any suit or proceeding instituted or commenced before any court or authority prior to the commencement of this Act shall, notwithstanding any amendment herein made, lie to the Court or authority to which it would have laid if instituted or commenced before the said commencement." The addition of this section clearly shows that by the conferral of the jurisdiction upon the Assistant Collector it was not intended to upset litigation pending before appropriate authorities when the Abolition Act came into force. Section 23 in terms must apply to the present case, because if it had remained pending before the Munsif, till 1956, it is clear, the jurisdiction of the Munsif would not have been ousted. Although it was not pending before the Munsif it was pending before the appellate court when the 1956 Amendment Act was passed. It follows, therefore, that to such a suit the provisions of Schedule II read with Section 200 of the Abolition Act cannot be applied because the legislature has in 1956 said expressly what was implicit before, namely, that pending actions would be governed by the old law as if the new law had not been passed. In our judgment, therefore, the proceedings before the Munsif were with jurisdiction because they were not affected by the passing of the Abolition Act or the amending Act, 1953, regard being had to the provisions of Section 6 of the U.P. General Clauses Act in the first instance and more so in view of the provisions of Section 23 of the amending Act, 1956 which came before the proceedings between the parties had finally terminated. The PART C appeal must, therefore, fail. It will be dismissed with costs." (emphasis supplied)

20. The Constitution Bench relied on the absence of a provision for transfer of pending actions under the repealing legislation to save the proceedings at the old forum. The Constitution Bench observed that provisions of transfer of pending cases are commonly found in such legislations. It is pertinent to mention that the subsequent repealing legislation materially altered the position of the parties. The mortgagee appellants were resisting their ejectment from the suit land by the respondent mortgagor in a suit for redemption of mortgage on the ground that they have become asamis or sirdars under the repealing legislation and their ejectment can only take place in accordance with the provisions of the new Act. Hence, the effect of the repeal was not a mere change in forum. Further, a subsequent amendment to the repealing legislation made it clear that the

pending proceedings would be concluded at the earlier forum where they had been instituted and under the repealed legislation.

C.5 Manujendra Dutt (1966 Supreme Court- 2 judges)

21. In Manujendra Dutt v. Purnedu Prosad Roy Chowdhury23, a two judge Bench of this Court consisting of Chief Justice K Subba Rao and Justice J M Shelat dealt inter alia with the jurisdiction of the Controller under the Calcutta Thika Tenancy Act 1949, after the deletion of Section 29 by Amending Act 6 of 1953, in respect of proceedings pending before him on that date. The High Court had taken the view that in spite of the deletion of Section 29, the jurisdiction of "Manujendra Dutt" ; (1967) 1 SCR 475 PART C the Controller in respect of matters pending before him on the date of the coming into force of the Amending Act was saved. The submission which was urged before this Court was that since it was only by reason of Section 29 that the suit had been transferred to the Controller, the deletion of that Section from the legislation had the effect of depriving the Controller of its jurisdiction and hence the judgment and order, though confirmed by the Subordinate Judge and by the High Court, was without jurisdiction. Repealing this contention, Justice J M Shelat held:

> "4...Though Section 29 was deleted by the amendment Act of 1953 the deletion would not affect pending proceedings and would not deprive the Controller of his jurisdiction to try such proceedings pending before him at the date when the amendment Act came into force. Though the amendment Act did not contain any saving clause, under Section 8 of the Bengal General Clauses Act, 1899, the transfer of the suit having been lawfully made under Section 29 of the Act its deletion would not have the effect of altering the law applicable to the claim in the litigation. There is nothing in Section 8 of the amending Act of 1953 suggesting a different intention and therefore the deletion would not affect the previous operation of Section 5 of the Calcutta Thika Tenancy Act or the transfer of the suit to the Controller or anything duly done under Section 29. That being the correct position in law the High Court was right in holding that in spite of the deletion of Section 29 the Controller still had the jurisdiction to proceed with the said suit transferred to him." (emphasis supplied)

22. The above extract indicates that the Amending Act did not contain a savings clause under Section 8 of the Bengal General Clauses Act 1899. Despite the absence of a savings clause, the Court held that the deletion of Section 29 did not have the effect of altering the law applicable to the claim in the litigation and there was nothing in the amending Act to indicate a contrary intention. At this stage, it may be necessary to note that the second issue involved was the right of PART C the thika tenant as defined by the Act to the notice provided under the deed of lease. On this aspect, the decision in Manujendra Dutt(supra) has been overruled in the seven judge Bench decision in V Dhanapal Chettiar v. Yesodai Ammal24. It is pertinent to mention that the decision in Manujendra Dutt(supra), was concerned with the provisions of the repealing Act that impacted a substantive right of litigants which was affected by virtue of the repeal and a resulting change in forum. This Court's position, in interpreting Section 6 of the General Clauses Act, 1897 was clearly in favour of saving all substantive rights, including vested rights, that were acquired or accrued prior to the repeal. Under the unamended Act, the suit was transferred to the Controller under Section 29,

which was deleted by the Amending Act. In this context the Court held that on account of Section 8 of the Bengal General Clauses Act, the deletion would not affect the transfer of the suit or anything duly done under Section 29 (paragraph

5). This Court's decision hence may not be relevant in interpreting Section 6(e) of the General Clauses Act, rather it is useful for interpretating Section 6(b) of the General Clauses Act which protects "anything duly done or suffered" under the repealed enactment.

C.6 New India Assurance (1975- Supreme Court 3 judges)

23. The first decision of this Court that interpreted a mere change in forum, that did not impact any other substantive or vested right of the litigant, was a three judge bench decision of this Court in New India Assurance Company (1979) 4 SCC 214 PART C Limited v. Smt Shanti Mishra25. This case involved the jurisdiction of the Motor Vehicles Tribunal vis-à-vis the City Civil Court, in the case of a fatal accident. The accident had occurred on 11 September 1966 which gave rise to a cause of action for the legal heirs to claim compensation under the Fatal Accidents Act 1855. Under Article 82 of the Limitation Act 1963, a limitation of two years from the occurrence of the accident was stipulated. But in the meantime, a claims tribunal under Section 110 of the Motor Vehicles Act 1939 was constituted by the State government on 18 March 1967 following which an application was filed by the claimant under Section 110A on 8 July 1967. Both the tribunal and the High Court overruled the objection of the insurer to jurisdiction. In appeal, Justice NL Untwalia speaking for the three judge Bench held:

> "5.....It is a well-established proposition that such a change of law operates retrospectively and the person has to go to the new forum even if his cause of action or right of action accrued prior to the change of forum. He will have a vested right of action but not a vested right of forum. If by express words the new forum is made available only to causes of action arising after the creation of the forum, then the retrospective operation of the law is taken away. Otherwise the general rule is to make it retrospective. The expressions "arising out of an accident" occurring in sub-section (1) and "over the area in which the accident occurred", mentioned in sub-section (2) clearly show that the change of forum was meant to be operative retrospectively irrespective of the fact as to when the accident occurred. To that extent there was no difficulty in giving the answer in a simple way..." (emphasis supplied) Dealing with the bar of limitation under Section 110A(3), this Court held that it could be said that strictly speaking the bar would not operate in relation to an application for compensation arising out of an accident which had occurred prior to the "New India Assurance"; (1975) 2 SCC 840 PART C constitution of the Tribunal. However, in directing the institution of claims before the Tribunal, this Court held:
>
> "10. Apropos the bar of limitation provided in Section 110- A(3), one can say, on the basis of the authorities aforesaid that strictly speaking, the bar does not operate in relation to an application for compensation arising out of an accident which occurred prior to the constitution of the claims tribunal. But since in such a case there is a

change of forum, unlike the fact of the said cases, the reasonable view to take would be that such an application can be filed within a reasonable time of the constitution of the tribunal, which ordinarily and generally, would be the time of limitation mentioned in sub-section (3). If the application could not be made within that time from the date of the constitution of the tribunal, in a given case, the further time taken in the making of the application may be held to be the reasonable time on the facts of that case for the making of the application or the delay made after the expiry of the period of limitation provided in sub-section (3) from the date of the constitution of the tribunal can be condoned under the proviso to that sub-section. In any view of the matter, in our opinion, the jurisdiction of the civil court is ousted as soon as the claims tribunal is constituted and the filing of the application before the tribunal is the only remedy available to the claimant. On the facts of this case, we hold that the remedy available to the respondents was to go before the claims tribunal and since the law was not very clear on the point, the time of about four months taken in approaching the tribunal after its constitution can be held to be either a reasonable time or the delay of less than 2 months could well be condoned under the proviso to sub-section (3) of Section 110-A." (emphasis supplied) The above decision conclusively held that a change of forum generally operates retrospectively, irrespective of whether the cause or right of action had accrued earlier. It directed that once the change in forum had been effected, the litigant would have to be directed to the new forum.

PART C C.7 Maria Cristina (1978- Supreme Court- 2 judges)

24. A subsequent decision of a two judge Bench of this Court in Maria Cristina De Souza v. Amria Zurana Pereira Pinto26, enunciated the law relating to change of forum vis-à-vis the right of appeal. In that case, a suit was instituted in 1960 under the Portuguese Civil Procedure Code and decreed against the appellants in 1968. The appellants lodged an appeal before the Court of the Judicial Commissioner. Following the liberation of Goa in 1961, the Code of Civil Procedure 1908 was extended to the territories of Goa, Daman and Diu with effect from 15 June 1966 by Act 30 of 1965 and the corresponding provision and the corresponding Portuguese Code were repealed. The legislative assembly of Goa enacted the Goa, Daman and Diu Civil Courts Act 1965 under which the suit which was pending before the Court at Margao was transferred to and decreed by the Senior Civil Judge. Since the suit was of a value exceeding Rs 10 lacs an appeal lay directly to the High Court which under Section 2(f) meant the Judicial Commissioner's Court. Justice V D Tulzapurkar, speaking for the two judge Bench held:

"5. On the question as to where the appeal could be lodged we are clearly of the view that the forum was governed by the provisions of the Goa, Daman and Diu (Extension of Code of Civil Procedure, 1908 and Arbitration Act, 1940) Act, 1965 (Central Act 30 of 1965) read with the provisions of the Goa, Daman and Diu civil court Act, 1965 (Goa Act 16 of 1965) both of which came into force simultaneously on June 15, 1966 and the appeal was required to be filed in the Judicial Commissioner's Court. Under the Central Act 30 of 1965 with effect from June 15, 1966 the provisions

of the Indian Civil Procedure Code were extended to the Union Territories of Goa, Daman and Diu and the corresponding provisions of the Portuguese Code were repealed while under the Goa Act 16 of 1965 the instant suit which was pending before the "Maria Cristina"; (1979) 1 SCC 92 PART C Comarca Court at Margao was continued and decreed by corresponding Court of the Senior Civil Judge, who ultimately decreed it on March 8, 1968. Under the Indian Civil Procedure Code read with Section 22 of the Goa Act since the property involved in the suit was of the value exceeding Rs 10,000 the appeal clearly lay to the Judicial Commissioner's Court. The contention that since the right of appeal had been conferred by Portuguese Code, the forum where it could be lodged was also governed by the Portuguese Code cannot be accepted. It is no doubt well- settled that the right of appeal is a substantive right and it gets vested in a litigant no sooner the lis is commenced in the Court of the first instance, and such right or any remedy in respect thereof will not be affected by any repeal of the enactment conferring such right unless the repealing enactment either expressly or by necessary implication takes away such right or remedy in respect thereof. This position has been made clear by clauses (b) and (c) of the proviso to Section 4 of the Central Act 30 of 1965 which substantially correspond to clauses (c) and (e) of Section 6 of the General Clauses Act, 1897. This position, has also been settled by the decisions of the Privy Council and this Court (vide Colonial Sugar Refining Company Ltd. v. Irving [1905 AC 369] and Garikapatti Veeraya v. N. Subbiah Choudhury [1957 SCR 488] but the forum where such appeal can be lodged is indubitably a procedural matter and, therefore, the appeal, the right to which has arisen under a repealed Act, will have to be lodged in a forum provided for by the repealing Act. That the forum of appeal, and also the limitation for it, are matters pertaining to procedural law will be clear from the following passage appearing at p. 462 of Salmond's Jurisprudence (12th Edn.):

"Whether I have a right to recover certain property is a question of substantive law, for the determination and the protection of such rights are among the ends of the administration of justice; but in what courts and within what time I must institute proceedings are questions of procedural law, for they relate merely to the modes in which the courts fulfil their functions." It is true that under clause (c) of the proviso to Section 4 of Central Act 30 of 1965 (which corresponds to Section 6(e) of the General Clauses Act, 1897) it is provided that a remedy or legal proceeding in respect of a vested right like a right to an appeal may be instituted, continued or enforced as if this Act (meaning the repealing Act) had not been passed. But this provision merely saves the remedy or legal proceeding in respect of such vested right which it is open to the litigant to adopt notwithstanding the repeal but this provision has nothing to do with the forum where the PART C remedy or legal proceeding has to be pursued. If the repealing Act provides new forum where the remedy or the legal proceeding in respect of such vested right can be pursued after the repeal, the forum must be as provided in the repealing Act. We may point out that such a view of Section 6 (e) of the General Clauses Act, 1897 has been taken by the Rajasthan High Court in the case of Purshotam Singh v. Narain Singh and State of Rajasthan [AIR 1955 Raj 203] . It is

> thus clear that under the repealing enactment (Act 30 of 1965) read with Goa Enactment (Act 16 of 1965) the appeal lay to the Judicial Commissioner's Court and the same was accordingly filed in the proper Court." (emphasis supplied)

25. The decision in Maria Cristina (supra) makes a distinction between a right of appeal, which is a substantive right that is vested in a litigant on the commencement of the lis in the court of first instance and the forum where an appeal can be lodged which "is indubitably a procedural matter". Hence, in the view of the Court, the appeal would have to be lodged in a forum provided by the repealing Act though the right had arisen under the repealed Act. These observations of the Court must be read together with the subsequent observation that if the repealing act provides a new forum where the remedy or the legal proceeding in respect of such vested right can be pursued after the repeal, the forum must be as provided in the repealing Act. The decisions in New India Assurance(supra) and Maria Cristina (supra) further the interpretation that a change in forum is indubitably in the realm of procedural law that applies retrospectively, unless the statute provides otherwise. The necessary corollary of these decisions, is that the forum for determination of a lis, whether in the case of an appeal [Maria Cristina (supra)] or in situations where the right of action had accrued [New India Assurance (supra)] is in the realm of procedural law. PART C C.8 Hitendra Vishnu Thakur (1994- Supreme Court 2 judges)

26. In Hitendra Vishnu Thakur v. State of Maharashtra27, one among the questions analyzed in a two judge Bench decision of this Court was whether clause (bb) of Section 20(4) of the Terrorist and Disruptive Activities (Prevention) Act 198728 introduced by an amending legislation governing Section 167(2) of the Code of Criminal Procedure29 was in the realm of procedural law and if so, whether it would apply to pending cases. Dr Justice AS Anand (as he then was) held that amending Act 43 of 1993 was procedural and retrospective; and that clauses (b) and (bb) of Section 20(4) of the TADA would apply to cases which were pending investigation on the date when it came into force. In that context, the principles of law, that aligned with the position in New India Assurance(supra) and Maria Cristina(supra), were formulated in the following terms:

> "26. The Designated Court has held that the amendment would operate retrospectively and would apply to the pending cases in which investigation was not complete on the date on which the Amendment Act came into force and the challan had not till then been filed in the court. From the law settled by this Court in various cases the illustrative though not exhaustive principles which emerge with regard to the ambit and scope of an Amending Act and its retrospective operation may be culled out as follows:
>
> (i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

> (ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

"Hitendra Vishnu Thakur"; (1994) 4 SCC 602 "TADA" "CrPC" PART C

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication." (emphasis supplied) C.9 Sudhir G Angur (2005- Supreme Court 3 judges)

27. In Sudhir G Angur v. M Sanjeev30, a three judge Bench of this Court considered the impact of a change in procedural law to pending proceedings before a particular forum. In this case, the Mysore Code was repealed in 2003 and the Code of Civil Procedure, 1908 was to apply. This Court held that the relevant court was under a duty to take notice of the change in law relating to forum and apply it to a pending proceeding. In doing so, Justice SN Variava approved the following exposition of law of the Bombay High Court in Shiv Bhagwan Moti Ram Saroji v. Onkarmal Ishar Das31:

> "11. In our view, Mr G.L. Sanghi is also right in submitting that it is the law on the date of trial of the suit which is to be applied. In support of this submission, Mr Sanghi relied upon the judgment in Shiv Bhagwan Moti Ram Saraoji v. Onkarmal Ishar Dass [AIR 1952 Bom 365 : 54 Bom LR 330] wherein it has been held that no party has a vested right to a particular proceeding or to a particular forum. It has been held that it is well settled that all procedural laws are retrospective unless the legislature expressly states to the contrary. It has been held that the procedural laws in force must be applied at the date when the suit or proceeding comes on for trial or disposal. It has been held that a court is bound to take notice of the change in the law and is bound to administer the law as it was when "Sudhir G Angur"; (2006) 1 SCC 141 (1952) 54 Bom LR 330 PART C the suit came up for hearing. It has been held that if a court has jurisdiction to try the suit, when it comes on for disposal, it then cannot refuse to assume jurisdiction by reason of the fact that it had no jurisdiction to entertain it at the date when it was instituted. We are in complete agreement with these observations. As stated above, the Mysore Act now stands repealed. It could not be denied that now the Court has jurisdiction to entertain this suit." (emphasis supplied) C.10 Ramesh Kumar Soni (2013- Supreme Court 2 judges)

28. It is trite law to state that all procedural law is retrospective, unless a contrary legislative intention can be observed. A two judge Bench in Ramesh Kumar Soni v. State of Maharashtra32 considered a case where an FIR was registered under the provisions of Sections 408, 420, 467, 468 and 471 of the Indian Penal Code. On the date of the registration of the case, the offences were

triable by the Magistrate of the First Class in terms of the First Schedule of the CrPC. As a result of Madhya Pradesh Act 2 of 2008, the First Schedule to the CrPC was amended. As a consequence, offences under Sections 467, 468 and 471 were triable by a Court of Sessions instead of a JMFC. Consequent to the amendment, the JMFC committed the case to the Sessions Court. A reference was made to the High Court on whether the amendment would apply retrospectively and whether cases pending before the JMFC and committed to the Sessions Court should be tried de novo by the Sessions Judge or should be remanded back to the Magistrate for further trial. A Full Bench of the Madhya Pradesh High Court held that cases pending before the JMFC on 22 February 2008 were unaffected by the amendment and were triable by the JMFC since the "Ramesh Kumar Soni"; (2013) 14 SCC 696 PART C amending Act did not contain a clear indication that such cases would be made over to the Court of Sessions. Justice TS Thakur (as the learned Chief Justice then was) speaking for the two judge Bench observed that the Madhya Pradesh Amendment had shifted the forum of trial from the Court of the Magistrate of the First Class to the Court of Sessions. The issue was whether the amendment to the forum was prospective or would govern cases that were pending on the date of the amendment. This Court noted that:

> "9. Having said so, we may now examine the issue from a slightly different angle. The question whether any law relating to forum of trial is procedural or substantive in nature has been the subject-matter of several pronouncements of this Court in the past. We may refer to some of these decisions, no matter briefly." After adverting to the decisions in New India Assurance(supra), Hitendra Vishnu Thakur(supra) and Sudhir G Angur(supra), the Court observed:
>
> "14. The amendment to the Criminal Procedure Code in the instant case has the effect of shifting the forum of trial of the accused from the Court of the Magistrate, First Class to the Court of Session. Apart from the fact that as on the date the amendment came into force no case had been instituted against the appellant nor had the Magistrate taken cognizance against the appellant, any amendment shifting the forum of the trial had to be on principle retrospective in nature in the absence of any indication in the Amendment Act to the contrary. The appellant could not claim a vested right of forum for his trial for no such right is recognized. The High Court was, in that view of the matter, justified in (sic not) interfering with the order passed by the trial court." This Court noted that the Full Bench of the High Court had however relied upon inter alia the decision in Manujendra Dutt(supra). This decision was distinguished on the ground that the suit had been instituted and concluded and no PART C vested right could be claimed for a particular forum for litigation. This Court consequently overruled the judgment of the Full Bench of the High Court, though prospectively, since many cases which had sent back from the Sessions Court to the JMFC may have in the meantime been concluded or would have reached an advanced stage. An exception to those cases was made as a change of forum at that stage would cause unnecessary and avoidable hardship to the accused, if they were committed to the Sessions Court for trial after the amendment and the view of this Court. However, the principle of change of forum being procedural, generally retrospective and applicable to pending proceedings was upheld.

C.11 Dhadi Sahu (1992 Supreme Court 2 judges)

29. Now, in this backdrop, it becomes necessary to consider the 1992 decision of a two judge Bench of this Court in Commissioner of Income Tax, Orissa v.

Dhadi Sahu33 and several decisions which adverted to it. This was a case where the assessee had preferred appeals to the Income Tax Appellate Tribunal. The Tribunal allowed the appeals and set aside the penalties holding that in view of the amendment made to Section 274(2) of the Income Tax Act 1961 with effect from 1 April 1971, the Inspecting Assistant Commissioner34 lost his jurisdiction. The power of the Income Tax Officer to impose a penalty under Section 271 was subject to Section 274. As a result of the amending Act which came into force on 1 April 1971, the amount of income allegedly concealed had to exceed twenty- five thousand rupees. The effect of this amendment was that the Assistant Commissioner did not have jurisdiction over the assessee as the concealed "Dhadi Sahu";1994 Suppl. (1) SCC 257 "IAC" PART C amount was lesser than the minimum amount prescribed by the subsequent amendment. Justice Yogeshwar Dayal speaking for the two judge Bench premised the judgment on "the general principle of law" that a change of forum does not affect pending actions unless a contrary intent is shown:

"18. It may be stated at the outset that the general principle is that a law which brings about a change in the forum does not affect pending actions unless intention to the contrary is clearly shown. One of the modes by which such an intention is shown is by making a provision for change-over of proceedings, from the court or the tribunal where they are pending to the court or the tribunal which under the new law gets jurisdiction to try them." This Court held that the amending Act did not make any provision that references validly pending before IAC shall be returned without passing any final order if the amount of income in respect of which particulars have been concealed did not exceed rupees twenty five thousand. This, in the view of the Court, supported the inference that the IAC continued to have jurisdiction to impose a penalty on pending references. The previous operation of Section 274(2) as it stood before 1 April 1971 and anything done under it, continued to have effect under Section 6(b) for the General Clauses Act enabling the IAC to pass orders imposing a penalty in a pending reference. If the reference was made before 1 April 1971, it would be governed by Section 274(2) as it stood before that date and the IAC would continue to have jurisdiction. However, in paragraph 21 of the decision, this Court observed:

"21. It is also true that no litigant has any vested right in the matter of procedural law but where the question is of change of forum it ceases to be a question of procedure only. The forum of appeal or proceedings is a vested right as opposed to pure procedure to be followed before a particular forum. The right becomes vested when the proceedings are initiated PART C in the tribunal or the court of first instance and unless the legislature has by express words or by necessary implication clearly so indicated, that vested right will continue in spite of the change of jurisdiction of the different tribunals or forums."

> 30. This Court then adverted to the decision in Manujendra Dutt(supra) and Mohd. Idris(supra) and observed that "amending an Act does not show that the pending proceedings before the court on reference abate". Therefore, the decision of the two judge Bench in Dhadi Sahu(supra) held that a litigant had a crystallized right to a forum when proceedings have been initiated and are pending. Such a right vested, in the view of the Court, is distinct from a pure procedure to be followed before the forum concerned. In taking this view, the two judge Bench in Dhadi Sahu(supra) did not consider a three judge bench decision in New India Assurance(supra) as well as a previous co-ordinate Bench decision in Maria Cristina(supra), which relied on common law jurisprudence and Section 6 of the General Clauses Act to hold that a change in forum is purely a procedural matter which operates retrospectively in the absence of a contrary legislative mandate. The latter principle has since been followed in the decisions in Hitendra Vishnu Thakur(supra); Sudhir G Angur(supra);

Ranbir Yadav v. State of Bihar35; Kamlesh Kumar v. State of Jharkhand36 and Ramesh Kumar Soni(supra).

(1995) 4 SCC 392 (2013) 15 SCC 460 PART C C.12 Ambalal Sarabhai (2001- Supreme Court 2 judges)

31. Ambalal Sarabhai Enterprises Ltd. v. Amrit Lal & Co.37 is a two judge Bench decision which considered the impact of an amendment to the Delhi Rent Control Act made with effect from 1 December 1988 which excluded the jurisdiction of the Rent Controller with respect to tenancies fetching a monthly rent exceeding 3500 rupees. The Rent Controller had been moved by the landlord who sought a decree of eviction on the ground of subletting, but prior to the amendment. The tenant contended that the Civil Court alone had jurisdiction after the amendment. In this backdrop, Justice AP Misra speaking for the two judge Bench adverted to the provisions of Section 6 of the General Clauses Act and observed:

> “26. As a general rule, in view of Section 6, the repeal of a statute, which is not retrospective in operation, does not prima facie affect the pending proceedings which may be continued as if the repealed enactment were still in force. In other words, such repeal does not affect the pending cases which would continue to be concluded as if the enactment has not been repealed. In fact when a lis commences, all rights and obligations of the parties get crystallized on that date. The mandate of Section 6 of the General Clauses Act is simply to leave the pending proceedings unaffected which commenced under the unrepealed provisions unless contrary intention is expressed. We find clause (c) of Section 6, refers the words “any right, privilege, obligation ... acquired or accrued” under the repealed statute would not be affected by the repealing statute. We may hasten to clarify here, mere existence of a right not being “acquired” or “accrued” on the date of the repeal would not get protection of Section 6 of the General Clauses Act.

> 27. At the most such a provision can be said to be granting a privilege to the landlord to seek intervention of the Controller for eviction of the tenant under the Statute. Such a privilege is not a benefit vested in general but is a benefit granted and may be enforced by approaching the Controller in the manner "Ambalal Sarabhai"; (2001) 8 SCC 397 PART C prescribed under the statute. On filing the petition of eviction of the tenant the privilege accrued with the landlord is not effected by repeal of the Act in view of section 6(c) and the pending proceeding is saved under Section 6(e) of the Act." (emphasis supplied)

32. This Court noted that a pending proceeding would be saved under Section 6(e) of the General Clauses Act only if it is in relation to a right, privilege or obligation that has been acquired or accrued under Section 6(c) of the Act. It is pertinent to mention that the landlord under the amended act would have lost his right to evict the tenant on the ground of sub-letting since the Rent Control Act ceased to be applicable to premises where the monthly rent exceeded Rs. 3500. Further, pursuant to the amendment, not only was his right of action before the Rent Controller terminated but also the landlord was relegated to common law remedies. The amendment substantially affected the right of action of the landlord and did not merely change the forum. It was in this context, that this Court held that a right had accrued to the landlord to continue the eviction proceeding under the unamended Rent Control Act.

33. The Court observed that there are two sets of cases, one where Section 6 of the General Clauses Act is applicable and the other where it is not applicable. In cases where Section 6 is not applicable, the Court would have to scrutinize and determine whether a vested right had accrued to a person under a repealed statute in which event pending proceedings would have to be saved. However, where Section 6 is applicable, it is not merely a vested right but all those covered by clauses (a) to (e) of Section 6 which are saved and, in such cases, the PART C pending proceedings would be continued as if the statute had not been repealed. In the context of Section 6(c) of the General Clauses Act, the Court observed that the expression "any right accrued" is wide enough to include the landlord's rights to evict a tenant in a proceeding was pending when the repealing legislation came into force. Pending proceedings before the Rent Controller would, therefore, continue to be proceeded with as if the repealed act was still in force. It is pertinent to mention that the decision in Ambalal Sarabhai(supra) only saved pending proceedings that were coupled with a vested right (in the event of non- applicability of Section 6 of the General Clauses Act) or with any rights that had accrued under Section 6(c)-(e) of General Clauses Act. C.13 HP State Electricity (2013- Supreme Court 2 judges)

34. The principle of a crystallized right to a forum when proceedings are pending, as propounded in Dhadi Sahu(supra), was subsequently referred to in several decisions of this Court, including a two judge bench decision in Himachal Pradesh State Electricity Regulatory Commission v Himachal Pradesh State Electricity Board38. The Commission which was constituted under an Act of 1998 determined the tariff applicable for electricity in the State. Subsequently, while discharging its regulatory functions, the Commission opined that a part of the tariff had not been complied with. In pursuance of its notice, the Board was subjected to a penalty upon which an appeal was filed under Section 27 of the Act of 1998. During the pendency of the appeal the earlier Act was repealed and the

Electricity Act 2003 came into force. When the appeals were taken up by the Single Judge, the Commission raised preliminary objection on maintainability on “HP State Electricity”; (2014) 5 SCC 219 PART C the ground that after the constitution of an Appellate Tribunal under the 2003 legislation, it would be the Appellate Tribunal which would have jurisdiction and the High Court had no jurisdiction to hear the appeal. The High Court held that even after the enforcement of the new legislation in 2003, it continued to have jurisdiction. The judgment of the High Court was assailed on the ground that the appeal was not maintainable before it, upon a separate forum being constituted. Section 185 contained a repeal and savings provision. Justice Dipak Misra (as the learned chief Justice then was) speaking for a two judge Bench held that "a right of appeal as well as forum is a vested right" unless it is taken away by the legislature either by express provision or by necessary intention. The Court held:

> “25. At this stage, we may state with profit that it is a well- settled proposition of law that enactments dealing with substantive rights are primarily prospective unless they are expressly or by necessary intention or implication given retrospectivity. The aforesaid principle has full play when vested rights are affected. In the absence of any unequivocal expose, the piece of legislation must exposit adequate intendment of legislature to make the provision retrospective. As has been stated in various authorities referred to hereinabove, a right of appeal as well as forum is a vested right unless the said right is taken away by the legislature by an express provision in the statute by necessary intention.
>
> 26...No doubt right to appeal can be divested but this requires either a direct legislative mandate or sufficient proof or reason to show and hold that the said right to appeal stands withdrawn and the pending proceedings stand transferred to different or new appellate forum. Creation of a different or a new appellate forum by itself is not sufficient to accept the argument/contention of an implied transfer. Something more substantial or affirmative is required which is not perceptible from the scheme of the 2003 Act.” (emphasis supplied)

35. Hence, the conclusion of the High Court that it had jurisdiction to hear the appeal was held to be “absolutely flawless” by observing that “a right of appeal as PART C well as forum is a vested right unless the said right is taken away by the legislature by an express provision in the statute by necessary intention”. C.14 Videocon International (2015- Supreme Court 2 judges)

36. A two judge Bench of this Court in Videocon International Limited v. Securities and Exchange Board of India39 dealt with the Appellate provisions contained in the Security and Exchange Board of India Act 1992. Following the insertion of Chapter 6B with effect from 25 January 1995, the remedy of an appeal was provided to the Securities Appellate Tribunal under Section 15 T to a person aggrieved by an order of the Board or by an Adjudicating Officer. Section 15 Z provided an appeal to the High Court against an order of the SAT on any question of fact or law. Section 15 Z was amended with retrospective effect from 29 October 2002 to provide an appeal against the orders of the SAT to the Supreme Court on any question of law. The forum of the second appellate remedy was changed from the High Court to the Supreme Court. Appeals against the order of the SAT which

had been passed before 29 October 2002 (the date of amendment) were filed before the High Court which held that such appeals which have been instituted before the enforcement of amended Section 15 Z would not be affected by the amendment and that it would continue to have jurisdiction to hear and dispose of the appeals. The Amending Act had a repeal and savings provision in Section 32 which was in the following terms:

> "32. Repeal and saving.—(1) The Securities and Exchange Board of India (Amendment) Ordinance, 2002 (Ord. 6 of 2002), is hereby repealed.

"Videocon International"; (2015) 4 SCC 33 PART C (2) Notwithstanding the repeal of the Securities and Exchange Board of India (Amendment) Ordinance, 2002 (Ord. 6 of 2002), anything done or any action taken under the principal Act as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act."

37. The judgment of the High Court was assailed, citing the decisions in Hitendra Vishnu Thakur(supra) and Maria Cristina(supra) amongst others, and it was urged that the amendment by which the appellate forum was changed from the High Court to the Supreme Court must be treated as merely procedural. On the other hand, the Respondent relied on the decision in Dhadi Sahu(supra) and Ambalal Sarabhai(supra). Justice JS Khehar (as the learned Chief Justice then was) examined whether the amendment "envisaged a mere change of forum"40.

38. In this context, this Court noted that while under the un-amended Section 15 Z, an appeal lay before the High Court "on any question of fact or law arising out of such order" the amendment had curtailed and restricted the right of appeal since the appeal to this Court would now lie "on any question of law arising out of such order". Consequently, this Court noted:

> "38. First and foremost, we shall determine the veracity of the contention advanced at the hands of the learned counsel for the appellant, that the remedy of second appeal provided for in the unamended Section 15-Z of the SEBI Act remained unaffected by the amendment of the said provision; and on the basis of the above assumption, the learned counsel's submission, that the present controversy relates to an amendment which envisaged a mere change of forum. Insofar as the instant aspect of the matter is concerned, it would be pertinent to mention, that a right of appeal can be availed of only when it is expressly conferred. When such a right is conferred, its parameters are also laid down. A right of appeal may be absolute i.e. without any limitations. Or, it may be a limited right. The above position is understandable, from a perusal of the unamended and amended Section 15-Z of the SEBI Act. Under the unamended Section 15-Z, the appellate remedy to the High Court, against an order passed by the Securities Appellate Tribunal, was circumscribed by the words "... on any question of fact or law arising out of such order". The amended Section 15-Z, while altering the appellate forum from the High Court to the Supreme Court, curtailed and restricted the scope of the appeal, against an order passed by the Securities Appellate Tribunal, by expressing that the remedy could be availed of "... on any question of law arising out of such order". It is,

therefore apparent, that the right to appeal, is available in different packages, and that, the amendment to Section 15-Z, varied the scope of the second appeal provided under the SEBI Act." PART C "41.... Accordingly, by the amendment, the earlier appellate package stands reduced, because under the amended Section 15-Z, it is not open to an appellant, to agitate an appeal on facts. That being the position, it is not possible for us to accept the contention advanced at the hands of the learned counsel for the appellant, that the amendment to Section 15-Z of the SEBI Act, envisages only an amendment of the forum, where the second appeal would lie. In our considered view, the amendment to Section 15-Z of the SEBI Act, having reduced the appellate package, adversely affected the vested appellate right of the litigant concerned...." While noting that this position would be subject to an amendment providing to the contrary, this Court held that Section 32 which provided the repeal and savings clause did not indicate a contrary intent. Hence, the appellate remedy which was available prior to the amendment of Section 15 Z would, in the view of this Court continue to be available despite the amendment. Moreover, this Court held that neither the date of filing the appeal nor its hearing was of any relevance since the right to an appellate remedy becomes vested when the lis is initiated. The contention of the appellant that in the absence of a savings clause the pending proceedings could not be deemed to have been saved was rejected by placing reliance on the decision in Ambalal Sarabhai(supra):

"44.... In the judgment rendered by this Court in Ambalal Sarabhai Enterprises Ltd. case [Ambalal Sarabhai Enterprises Ltd. v. Amrit Lal and Co., (2001) 8 SCC 397] , it was held, that the general principle was, that a law which brought about a change in the forum, would not affect pending actions, unless the intention to the contrary was clearly shown. Since the amending provision herein does not so envisage, it has to be concluded, that the pending appeals (before the amendment of Section 15-Z) would not be affected in any manner... Furthermore, the instant contention is wholly unacceptable in view of the mandate contained in Sections 6(c) and (e) of the General Clauses Act, 1897. While interpreting the aforesaid provisions this Court has held, that the amendment of a statute, which is not retrospective in operation, does not affect PART C pending proceedings, except where the amending provision expressly or by necessary intendment provides otherwise. Pending proceedings are to continue as if the unamended provision is still in force. This Court has clearly concluded, that when a lis commences, all rights and obligations of the parties get crystallised on that date, and the mandate of Section 6 of the General Clauses Act, simply ensures, that pending proceedings under the unamended provision remain unaffected...." As regards the decisions inter alia in Hitendra Vishnu Thakur(supra) and Maria Cristina(supra), this Court held that the principle that the forum is a procedural matter and that an amendment which alters the forum would apply retrospectively cannot be doubted but "the same is not an absolute rule". On this aspect, the Bench relied upon the decision in Dhadi Sahu(supra) in support of the principle that an amendment of a forum would not necessarily be an issue of procedure.

> "45. Having concluded in the manner expressed in the foregoing paragraphs, it is not necessary for us to examine the main contention, advanced at the hands of the learned counsel for the appellant, namely, that the amendment to Section 15-Z of the SEBI Act, contemplates a mere change of forum of the second appellate remedy. Despite the aforesaid, we consider it just and appropriate, in the facts and circumstances of the present case, to delve on the above subject as well. In dealing with the submission advanced at the hands of the learned counsel for the appellant, on the subject of forum, we will fictionally presume, that the amendment to Section 15-Z by the Securities and Exchange Board of India (Amendment) Act, 2002 had no effect on the second appellate remedy made available to the parties, and further that, the above amendment merely alters the forum of the second appeal, from the High Court (under the unamended provision), to the Supreme Court (consequent upon the amendment). On the above assumption, the learned counsel for the appellant had placed reliance on the decisions rendered by this Court in Maria Cristina De Souza Sodder [Maria Cristina De Souza Sodder v. Amria Zurana Pereira Pinto, (1979) 1 SCC 92] , Hitendra Vishnu Thakur [Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602 : 1994 SCC (Cri) 1087] and Thirumalai Chemicals Ltd. [Thirumalai Chemicals Ltd. v. Union of India, (2011) 6 SCC 739 : (2011) 3 SCC (Civ) 458] cases to PART C contend, that the law relating to forum being procedural in nature, an amendment which altered the forum, would apply retrospectively. Whilst the correctness of the aforesaid contention cannot be doubted, it is essential to clarify, that the same is not an absolute rule. In this behalf, reference may be made to the judgments relied upon by the learned counsel for the respondent, and more importantly to the judgment rendered in Dhadi Sahu case [CIT v. Dhadi Sahu, 1994 Supp (1) SCC 257] , wherein it has been explained, that an amendment of forum would not necessarily be an issue of procedure. It was concluded in the above judgment, that where the question is of change of forum, it ceased to be a question of procedure, and becomes substantive and vested, if proceedings stand initiated before the earlier prescribed forum (prior to the amendment having taken effect). This Court clearly declared in the above judgment, that if the appellate remedy had been availed of (before the forum expressed in the unamended provision) before the amendment, the same would constitute a vested right.

However, if the same has not been availed of, and the forum of the appellate remedy is altered by an amendment, the change in the forum, would constitute a procedural amendment, as contended by the learned counsel for the appellant. Consequently even in the facts and circumstances of the present case, all such appeals as had been filed by the Board, prior to 29-10-2002, would have to be accepted as vested, and must be adjudicated accordingly." (emphasis supplied) The conclusion of this Court was held to be in accordance with the mandate of Section 6 of the General Clauses Act. The appeals which had been filed by SEBI before the High Court were therefore held to be maintainable. C.15 SEBI v. Classic Credit (2018- Supreme Court 2 judges)

39. We have already noticed the earlier decision of Justice J S Khehar in Videocon International (supra). Subsequent to the aforesaid decision, in Securities and Exchange of Board of India v.

Classic Credit Limited41, a two (2018) 13 SCC 1 PART C judge bench of this Court, speaking through Justice Khehar, considered a claim for transfer of pending proceedings under the SEBI Act 1992. At the time when the complaints were filed under Section 26(2), the accused was required to be tried by a Metropolitan Magistrate (or a JMFC). Section 24(1) as it existed prior to the amendment read as follows:

> "24. Offences.—(1) Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.
>
> (2) If any person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of his directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years or with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees or with both."

40. After the amendment Section 24(1) envisaged a punishment for a term of imprisonment which may extend to ten years or with fine which may extend to rupees 25 crores. As a result of the amendment of Section 26(2) it came to be stipulated that no court inferior to that of a Court of Sessions shall try any offence punishable under the Act. After the 2002 amendment all pending cases before the Metropolitan Magistrate or JMFC were committed to the Court of Sessions on the assumption that the amending Act retrospectively altered the forum for trial. When the issue of jurisdiction was being considered by the Bombay High Court, SEBI sought to rely upon a judgment of the Delhi High Court which had concluded that the amendment to Section 26 brought about only a change in forum and was only procedural. The Bombay High Court took a view contrary to PART C the judgment of the Delhi High Court. During the pendency of the appeals before this Court, the SEBI Act was amended again by the omission of 26(2) and the insertion of Section 26 A to E from 18 July 2013. SEBI argued that since the impact of 2002 amendment had again been altered, all the pending cases would be required to be tried by a Special Court in terms of the 2014 Amendment. Section 26-B provided as follows:

> "26-B. Offences triable by Special Courts.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Act committed prior to the date of commencement of the Securities Laws (Amendment) Act, 2014 or on or after the date of such commencement, shall be taken cognizance of and tried by the Special Court established for the area in which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned."

41. SEBI argued before this Court that a change of the forum for trial was a matter of mere procedure and would therefore be retrospective, there being no express or implied intent either in the 2002 and 2014 Amendments that the amendments were intended to be of prospective effect.

Justice JS Khehar speaking for the two judge Bench of this Court adverted to the decisions inter alia in New India Assurance(supra), Ramesh Kumar Soni(supra) and Hitendra Vishnu Thakur(supra), and observed in that context:

> "49...In our considered view, the legal position expounded by this Court in a large number of judgments including New India Insurance Co. Ltd. v. Shanti Misra [New India Insurance Co. Ltd. v. Shanti Misra, (1975) 2 SCC 840] ; SEBI v. Ajay Agarwal [SEBI v. Ajay Agarwal, (2010) 3 SCC 765 : (2010) 2 SCC (Cri) 491] and Ramesh Kumar Soni v. State of M.P. [Ramesh Kumar Soni v. State of M.P., (2013) 14 SCC 696 : (2014) 4 SCC (Cri) 340] , is clear and unambiguous, namely, that procedural amendments are presumed to be retrospective in nature, unless the amending statute expressly or impliedly provides otherwise. And also, that PART C generally change of "forum" of trial is procedural, and normally following the above proposition, it is presumed to be retrospective in nature unless the amending statute provides otherwise. This determination emerges from the decision of this Court in Hitendra Vishnu Thakur v. State of Maharashtra [Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602 : 1994 SCC (Cri) 1087] ; Ranbir Yadav v. State of Bihar [Ranbir Yadav v. State of Bihar, (1995) 4 SCC 392 : 1995 SCC (Cri) 728] and Kamlesh Kumar v. State of Jharkhand [Kamlesh Kumar v. State of Jharkhand, (2013) 15 SCC 460 : (2014) 6 SCC (Cri) 489] , as well as, a number of further judgments noted above."

42. The above observations indicate the clear view of this Court that:

> (i) In the absence of a contrary intent express or implied, procedural amendments are presumed to be retrospective;
>
> (ii) A change in the forum of a trial is a procedural matter; and
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> (iii) Since a change of forum is procedural, a statute which brings about the change is presumed to be retrospective in the absence of a contrary intent.

43. Hence, the Court went on to observe that it had "also no doubt ...that change of "forum" being procedural the amendment of the "forum" would operate retrospectively, irrespective of whether the offence allegedly committed by the accused was committed prior to the amendment"42.

44. However, the Bench was conscious of the contrary view in Dhadi Sahu(supra) and the conflicting interpretations in the decisions in Manujendra Dutt(supra), Mohd. Idris(supra), Ambalal Sarabhai(supra), Ramesh Kumar Soni(supra) and Videocon International(supra) (which the Bench adverted to in At para 50, page 68 PART C paragraphs 51 to 53 of its decision). Dealing with this line of authority, Chief Justice J S Khehar observed:

> "54. From a perusal of the conclusions drawn in the above judgments, we are inclined to accept the contention that change of "forum" could be substantive or procedural. It

may well be procedural when the remedy was yet to be availed of but where the remedy had already been availed of (under an existing statutory provision), the right may be treated as having crystallized into a vested substantive right." The view which was formulated by the Court was that where a remedy has been availed of prior to the amendment then unless the amending provision mandates either expressly or by necessary implication, the transfer of proceedings to the forum introduced by the amendment, the forum as it exceeded prior to the amendment would continue to have jurisdiction:

"55. In the latter situation referred to (and debated) in the preceding paragraph, where the remedy had been availed of prior to the amendment, even according to the learned counsel for the private parties, unless the amending provision by express words, or by necessary implication, mandates the transfer of proceedings to the "forum" introduced by the amendment the "forum" postulated by the unamended provision, would continue to have the jurisdiction to adjudicate upon pending matters (matters filed before amendment). In view of the above, we are of the considered view, that no vested right can be claimed with reference to "forum", where the court concerned, had not taken cognizance and commenced trial proceedings, in consonance with the unamended provision." Where, however, proceedings had already commenced before the amendment, a change in the forum of the trial would not affect pending actions unless a contrary intent is shown. This Court then scrutinized whether the amendments which were made in 2002 and 2014 expressed a contrary intent. The Court held that Section 26, as amended in 2002, left no room for doubt that the erstwhile forum ceases to PART C have adjudicating authority and the newly created forum - the Court of Sessions would deal with all pending matters as well. As a result, the 2002 Amendment "diverted jurisdiction" from the Metropolitan Magistrates and JMFCs to try offences under the SEBI Act after the amendment became operational. Similarly, the 2014 Amendment grouped all offences together by providing that they would be tried by a Special Court whether committed prior to or after the amendment;

no segregation being permissible. By the 2014 amendment, the function of taking cognizance had been vested with the Special Courts. This Court held that all pending matters where cognizance had been taken and proceedings had commenced before the Court of Sessions would not be affected. In conclusion, this Court observed:

"79. In view of the consideration recorded hereinabove, we are of the view, that the "forum" for trial earlier vested in the Court of Metropolitan Magistrate (or Judicial Magistrate of the First Class) was retrospectively amended, inasmuch as, the "forum" of trial after the 2002 Amendment Act was retrospectively changed to the Court of Session. In this view of the matter, the trials even in respect of offences allegedly committed before 29-10-2002 (the date with effect from which the 2002 Amendment Act became operational), whether in respect whereof trial had or had not been initiated, would stand jurisdictionally vested in a Court of Session. And likewise,

> trials of offences under the SEBI Act, consequent upon the 2014 Amendment Act (which became operational, with effect from 18-7-2013) would stand jurisdictionally transferred for trial to a Special Court, irrespective of whether the offence under the SEBI Act was committed before 29-10-2002 and/or before 18-

7-2013 (the date with effect from which the 2014 Amendment Act became operational), and irrespective of the fact whether trial had or had not been initiated." Accordingly, the view of the Delhi High Court in transferring pending proceedings was affirmed while that taken by the Bombay High Court was set aside. PART C C.16 Swapna Mohanty (2018- Supreme Court 2 judges)

45. A two judge Bench of this Court in Swapna Mohanty v. State of Odisha43 dealt with the provisions of Section 24 B of the Orissa Education Act 1969. The State Education Tribunal obtained jurisdiction to decide appeals in respect of colleges only from the date on which they were admitted to grant-in-aid. The appeal was filed in August 2002 before the College was admitted to grant-in-aid in February 2004 and the issue examined was whether the Director of Higher Education had competence to hear the appeal after the college was admitted to grant-in-aid. Justice L Nageswara Rao speaking for the two judge Bench held that the Director continued to have jurisdiction to decide the appeal which was filed before him prior to the admission of the college to grant-in-aid "as there is no provision in the Orissa Education Act providing for a change-over of all proceedings to the Tribunal".44 In arriving at this conclusion, the two judge Bench relied on the judgment in Dhadi Sahu(supra).

C.17 Om Prakash Agarwal (2018- Supreme Court 2 judges)

46. In Om Prakash Agarwal v. Vishan Dayal Rajpoot45, a two judge Bench of this Court considered the provisions of the UP Civil Laws (Amendment) Act 2015 under which, with effect from 7 December 2015, Sections 9 and 21 of the Bengal, Agra and Assam Civil Courts Act 1887 and Section 15 of the Provincial Small Cause Courts Act 1887 were amended. By the amendment, the limit of the (2018) 17 SCC 621 Para 9 (2019) 14 SCC 526 PART C pecuniary jurisdiction of the Small Cause Courts was increased from rupees twenty-five thousand to rupees one lakh. Although, the pecuniary jurisdiction was enhanced to rupees one lakh, the suit which was pending before the Additional District Judge continued to proceed without objection by the parties. A decree for eviction and for arrears of rent was passed. In the revision before the High Court, one of the grounds raised was that in view of the UP Civil Laws (Amendment) Act 2015, the Court of the Additional District Judge ceased to have jurisdiction to try a suit between a lessor and lessee of a value of upto one lakh from 1 December 2015 and the assumption of jurisdiction was invalid. Accepting the submission, the High Court allowed the revision and remanded the suit for a fresh decision before the Small Cause Courts. The suit which was instituted under Section 15(2) by the lessor for eviction of the lessee was filed initially before the Small Cause Court, Firozabad since the valuation was Rs. 21,175. Subsequently, following the amendment, the valuation was enhanced to Rs 27,775 and the suit was transferred to the Court of the District Judge. On these facts, the main issue was whether after 7 December 2015, the Court of the Additional District Judge where the suit was pending could still have pecuniary jurisdiction to decide the suit or whether it should be transferred back to the Small Causes Court. By UP Act 37 of 1972, an amendment had been made in Section 25 of the Bengal, Agra and Assam Civil

Courts Act 1887 so as to empower the State government to confer upon any District Judge or Additional District Judge the power of a Judge of the Small Causes Court for the trial of suits irrespective of value by a lessor for the eviction of a lessee.

PART C

47. Justice Ashok Bhushan speaking for the two judge Bench observed that the expression "irrespective of their value" used in Section 25 as amended was with the clear intent that irrespective of value, cases filed by the lessee for the eviction of the lessee should be treated as small causes cases. By a subsequent amendment, the Small Causes Court presided over by the Civil Judge, became empowered to decide cases up to a value of twenty-five thousand rupees while those above would be taken cognizance of by the Additional District Judge. The Court held:

> "54...When a small cause suit not exceeding value of Rs 1 lakh is cognizable by the Court of Small Causes, obviously, no other court can take cognizance. The Additional District Judge to whom small causes suit in question was transferred since its valuation was more than of Rs 25,000 was not competent to take cognizance of the suit after the U.P. Civil Laws (Amendment) Act, 2015 w.e.f. 7-12-2015, when the suit in question became cognizable by the Small Cause Court i.e. the Court of Civil Judge, Senior Division." C.18 Delhi High Court Bar Association (1993- Delhi HC- DB)

48. We will now advert to a few High Court decisions which have come to varying conclusions due to the ambiguity introduced in the position of law by Dhadi Sahu(supra) vis-à-vis Maria Cristina(supra) and New India Assurance(supra) by creating an exception to the rule that a change of forum is purely a procedural matter. In Delhi High Court Bar Association v. Court of Delhi46, the original jurisdiction of the High Court was increased from Rs. 1 lakh to Rs. 5 lakhs. The appellants in that case sought to question the transfer of proceedings from the High Court to the lower court. The High Court noted that the Amending Act's object was to reduce the burden on the High Court and ILR (1994) 1 Del 271 PART C speedy disposal of cases. The High Court held that change of forum is a procedural matter and not a vested right. A Division Bench of the High Court speaking through Justice DP Wadhwa noted the ambiguity created by Dhadi Sahu(supra) and applied the principle in New India Assurance(supra) and Maria Cristina(supra) to direct transfer of pending proceedings as a change of forum owing to amendments to the pecuniary jurisdiction is a change in procedural law that is usually retrospective:

> "29. In New India Insurance Co. Ltd. v. Smt. Shanti Misra ((1975) 2 SCC 840 : AIR 1976 S.C. 237)(9) the Supreme Court did express the opinion that change of forum is a change of procedural law and not a substantive law. In Maria Cristina De Souza Sodder v. Amria Zurana Percira Pinto, (1979) 1 SCC 92 (10), the court held that right of appeal though was a substantive right and got vested in the litigant no sooner the lis was commenced in the court of the first instance and such right would not be affected by any repeal of an enactment conferring such right unless the repealing Act either expressly or by necessary implication took away such right. The court also said that the forum where such appeal could be lodged was a procedural matter and

> therefore the appeal the right to which had arisen under the repealing Act would have to be lodged in a forum provided for by the repealing Act. In Mithilesh Kumari v. Prem Behari Khare, (1989) 2 SCC 95 : AIR 1989 S.C. 1247 (11), the Supreme Court said that even vested right could be taken away and said that where remedy is barred the right became unenforceable. The decision of the Supreme Court in Commissioner of Income Tax, Orissa v. Shri Dhadi Sahu, JT 1992 (6) S.C. 714, would appear to be somewhat in conflict with its earlier decision but this judgment though holds that forum of appeal is a vested right to be followed before a particular forum and that right becomes vested when the proceedings are initiated but that vested right would not continue if the legislature by express words or by necessary implications so indicates.

The Full Bench of the Punjab High Court in Gordhan Das Baldev Das v. The Governor General in Council, AIR 1952 Punjab 103 (FB) (12), had also said that such a vested right of appeal to a particular forum could be taken away by a later statute if the intention of the legislature was clearly manifested in the later Act." (emphasis supplied) PART C C.19 Mahendra Jain (2008- Bombay HC-DB)

49. In Mahendra Panmal Duggad Jain v. Bhararilal Panmal Duggad Jain47, a controversy arose before the Bombay High Court where an amendment was made to Section 26 of the Bombay Civil Court Act, 1869, which increased the pecuniary jurisdiction of the District Court from Rs. 50,000 to Rs. 2 lakhs. Consequently, the Registrar of the Bombay High Court transferred an appeal which was pending when the amendment came into force to the District Court. The applicants applied to the District Court for re-transferring the appeal to the High Court contending that the appeals filed and entertained by the High Court prior to the amendment coming into force on 13 January 1999 were not liable to be transferred to the District Court. Their application was rejected and the applicants filed an application of re-transfer of the appeal before the High Court. The High Court placed reliance on Section 7(b) of the Bombay General Clauses Act to hold that the amendment would not affect the proceedings initiated before the High Court. The High Court held that unless a clear legislative intent can be discerned, the absence of a savings clause would not warrant transfer of cases to a new forum. Although, the High Court noted that the right to forum is in the realm of procedural law and would not entitle a litigant who has instituted suit in a trial court before the amending act came into force to insist that their appeal may also be heard and decided by the forum prescribed under the unamended provisions. Justice R.C. Chavan observed:

> "19…In view of the provisions of section 7(b) of the Bombay General Clauses Act the repeal of part of section 26 of Bombay Civil Courts Act, relating to the reference to the sum (2008) 4 Mah LJ 803 PART C of Rs. Fifty Thousand, would not affect the proceedings which had already commenced or had been initiated in the High Court. We may, however, add that right to forum being in the realm of adjectives or procedural law would not entitle the suitor who had filed suit in the trial Court before Amending Act came into force to insist that even his appeal may be heard and decided by the forum prescribed under the unamended provisions. This question has already been concluded by the Full Bench in Vilas Vasant Mahajan v. Central Bank of

India.

However, unless clear legislature intent can be discerned to indicate that even pending matters were required to be transferred to the new forum, mere absence of a saving clause like one in the form of section 19 of the Amending Act of 1977, would not warrant transfer of cases to the new forum." C.20 Vallabhaneni (2004- Andhra Pradesh HC- 5 judges)

50. In Vallabhaneni Lakshmana Swamy v. Valluru Basavaiah48 was a case where the A.P. Civil Court (Amendment) Act 1989 raised the pecuniary jurisdiction to entertain the appeal at the District Court from Rs. 30,000 to Rs. 1 lakh. By a further amendment the pecuniary jurisdiction was raised to Rs. 3 lakhs. The High Court held that the amendment would be applicable prospectively. The High Court further held that in case of suits which were filed earlier to the amendment and were pending as on the date the amendment came in force, the appeal in relation to those suits would be filed before a forum created under the amended Act depending on the pecuniary limits. If the appeal has been presented before the date of the amended Act coming into force and the appeals were pending as on the said date, the amendment would not have any effect on such pending appeals. The judgement of the High Court was premised on the principle that when the right to appeal and forum are inextricable, they both (2004) 5 ALD 807 PART C become substantive rights and travel together. The Special Bench of the High Court observed:

> "96. .... if the forum is changed and the right of the appeal in the forum are so inextricable that they cannot be separated by clear cut measure. It has to be that the right of appeal as well as the forum are both substantive rights and therefore, they only apply to the cases in future and not applied to the pending cases." C.21 Gobardhan Lal Soneja (1991- Patna HC- FB)

51. In Gobardhan Lal Soneja v. Binod Kumar Sinha49, the Patna High Court relied on the decision in New India Assurance to hold that the transfer of pending proceedings from the Sub-Judge to the Munsif after pecuniary jurisdiction is altered by an amendment, is a valid exercise of power and there is no vested right to a forum. The Full Bench of the High Court observed:

> "11...The Supreme Court in the New India Assurance Co. Ltd. (supra) considered the effect of section 110A of the Motor Vehicles Act, 1939 by which Claims Tribunals were constituted for filing claims arising out of motor vehicle accidents: The question was whether with regard to the claims for compensation arising out of an accident which took place after introduction of section 110A, a suit will lie or a claim therefor shall have to be filed before the Claims Tribunal. It was held by the Supreme Court that by section 110A there was no change in law, but merely change of forum i.e. the change of adjectival or procedural law and not substantive law. It was observed. "It is well established proposition that such change of law operates retrospectively and the person has to go to new forum even if his cause of action or right of action accrued prior to the change of forum. He will have a vested right of action, but not a vested right of forum". It may be noticed that the language of section 19 is not such as to interpret it that the Munsif and Additional Munsif were given jurisdiction to hear

suits of higher value which were filed after the amendment of that section. For this reason also, it must be held that the application of section 19 will be retrospective in the sense that it will apply to the (1991) 2 PLJR 783 PART C pending suits. This proposition of law has been laid down in the New India Assurance Co. Ltd., (supra)." C.22 Y.B. Ramesh (2010- Karnataka HC- SJ)

52. The Karnataka High Court in Y.B. Ramesh v. Varalakshmi50, held that a subsequent amendment to pecuniary jurisdiction is said to have divested the concerned forum of its authority to hear the matter. The Single Judge of the High Court relied on the decision in Sudhir G Angur(supra) and observed:

> "9. The main argument addressed by the learned Counsel for the petitioner is that as on the date of filing of the suit, the Court has no jurisdiction and hence, the plaint has to be rejected under Order 7, Rule 11(d) of CPC. The issue regarding law to be applied in determining the jurisdiction of the Court, i.e., the law as existing on the date of institution of the suit or on the date on which, the suit came up for hearing has to be applied. The Hon'ble Supreme Court in a judgment cited supra (Sudhir G Angur), held as under:
>
> "In our view Mr. G.L. Sanghi is also right in submitting that it is the law on the date of trial of the suit which is to be applied. In support of this submission, Mr. Sanghi relied upon the judgment in Shiv Bhagwan Mod Ram Saraoji v. Onkarmal Ishar Dass, AIR 1952 Bom. 365, wherein it has been held that no party has a vested right to a particular proceeding or to a particular forum. It has been held that it is well-settled that all procedural laws are retrospective unless the Legislature expressly states to the contrary. It has been held that the procedural laws in force must be applied at the date when the suit or proceeding comes on for trial or disposal. It has been held that a Court is bound to take notice of the change in the law and is bound to administer the law as it was when the suit came up for hearing. It has been held that if a Court has jurisdiction to try the suit, when it comes on for disposal, it then cannot refuse to assume jurisdiction by reason of the fact that it had no jurisdiction to entertain it at the date when it was instituted. We are in complete agreement with these observations. As stated above, the Mysore Act now stands repelled. It could not be denied that now the Court has jurisdiction to entertain this suit".
>
> 10. In view of the pronouncement of law by the Hon'ble Supreme Court, the petitioner is not entitled for any relief.

(2010) 6 Kant LJ 43 PART C Further, even if it is held that the Civil Judge (Junior Division) has no pecuniary jurisdiction to entertain the suit, at the most, the Court can return the plaint to the plaintiff to present before the appropriate Court. In view of the amendment to the Civil Courts Act, the Civil Judge (Junior Division), Magadi is the Competent Court to try the suit and hence, I.A. No. 1 filed by the petitioner cannot be entertained." C.23 Conclusion on the position of law

53. In considering the myriad precedents that have interpreted the impact of a change in forum on pending proceedings and retrospectivity- a clear position of law has emerged: a change in forum lies in the realm of procedure. Accordingly, in compliance with the tenets of statutory interpretation applicable to procedural law, amendments on matters of procedure are retrospective, unless a contrary intention emerges from the statute. This position emerges from the decisions in New India Assurance(supra), Maria Cristina(supra), Hitendra Kumar Thakur(supra), Ramesh Kumar Soni(supra) and Sudhir G Angur(supra). More recently, this position has been noted in a three judge Bench decision of this Court in Manish Kumar v. Union of India51. However, there was a deviation by a two judge bench decision of this Court in Dhadi Sahu(supra), which overlooked the decision of a larger three judge bench in New India Assurance(supra) and of a co-ordinate two judge bench in Maria Cristina(supra). The decision in Dhadi Sahu(supra) propounded a position that "no litigant has any vested right in the matter of procedural law but where the question is of change of forum it ceases to be a question of procedure only. The forum of appeal or proceedings is a vested right as opposed to pure procedure to be followed before a particular forum. The Writ Petition (C) No. 26 of 2020, decided on 19 January 2021 (Supreme Court of India) PART C right becomes vested when the proceedings are initiated in the tribunal." In taking this view, the two judge bench did not consider binding decisions. Dhadi Sahu(supra) failed to consider that the saving of pending proceedings in Mohd. Idris(supra) and Manujendra Dutt(supra) was a saving of vested rights of the litigants that were being impacted by the repealing acts therein, and not because a right to forum is accrued once proceedings have been initiated. Thereafter, a line of decisions followed Dhadi Sahu(supra), to hold that a litigant has a crystallized right to a forum once proceedings have been initiated. A litigant's vested right (including the right to an appeal) prior to the amendment or repeal are undoubtedly saved, in addition to substantive rights envisaged under Section 6 of the General Clauses Act. This protection does not extend to pure matters of procedure. Repeals or amendments that effect changes in forum would ordinarily affect pending proceedings, unless a contrary intention appears from the repealing or amending statute.

54. It is relevant to note in this context that the decision in Ambalal Sarabhai(supra) saved proceedings in relation to a benefit which although not vested, accrued to the landlord to evict the tenant by virtue of a proviso to a Section which accorded protection to the tenant from ejectment. This Court reasoned that since the right of the landlord flows from a Section which protects the tenant, it cannot be enlarged into a vested right. However, Ambalal Sarabhai(supra) did not enunciate an absolute proposition that the right to institute proceedings at a particular forum is an accrued right, let alone a vested right. The dictum that a change of forum is a procedural matter is not altered by the decision of this Court in Ambalal Sarabhai(supra) which sought to PART C differentiate between vested rights and accrued rights, the latter being protected under Section 6(c) of the General Clauses Act, the proceedings in relation to which are protected under Section 6(e).

55. Now, it is in this backdrop, that we have to analyze the impact of the Act of 2019 upon pending cases which were filed before the fora constituted under the Act of 1986.

PART D D Legislative Scheme of the jurisdictional provisions

56. Some of the salient aspects of the Act of 2019 insofar as they pertain to the jurisdictional provisions need to be visited. The pecuniary limits of the original jurisdiction of the District Commission under Section 34(1) is to entertain complaints where the value of the goods or services paid as consideration does not exceed a crore of rupees.

57. An appeal lies to the SCDRC from an order of the District Commission under Section 41. The second proviso to Section 41 stipulates that an appeal shall not be entertained of a person who is required to pay any amount under the order of the District Commission, unless the appellant has deposited 50 per cent of the decretal amount.

58. The SCDRC has, under Section 47(1)(a)(i), original jurisdiction to entertain complaints subject to a pecuniary limit of not less than one crore rupees and not exceeding rupees ten crores. The SCDRC has an appellate jurisdiction under Section 47(1)(a)(iii), revisional jurisdiction under Section 47(1)(b) and review jurisdiction under Section 50.

59. Section 51 provides an appeal to the NCDRC from an order passed by the SCDRC in the exercise of its original jurisdiction to hear a complaint [referable to sub-clauses (i) and (ii) of clause (a) of Section 47 (1)]. As in the manner of an appeal before the SCDRC against an order of the District Commission, the second proviso to Section 51 provides that an appeal shall not be entertained at the behest of a person who is required to pay any amount unless 50 per cent of PART D the amount has been deposited. Under sub-Section (2) of Section 51, an appeal before the NCDRC against an order of the SCDRC lies on a substantial question of law.

60. The original jurisdiction of the NCDRC under Section 58(a)(1) is to entertain complaints where the value of the goods or services paid as consideration exceeds rupees ten crores and complaints against unfair contracts of a similar value. The NCDRC is vested with an appellate jurisdiction under Section 51, a revisional jurisdiction under Section 58(1)(b) and a review jurisdiction under Section 60. An appeal against an order of the NCDRC passed in the exercise of its original jurisdiction lies to this Court under Section 67. The second proviso of Section 67 requires a pre-deposit of 50 per cent of the amount ordered by the NCDRC.

61. Under the earlier Act of 1986, the pecuniary limit of the jurisdiction of (i) the District Commission was up to rupees 20 lacs under Section 11(1); (ii) the SCDRC between rupees twenty lacs and rupees one crores under Section 17(1); and (iii) the NCDRC above rupees one crore under Section 21. The requirement of pre-deposit for filing an appeal before the SCDRC against an order of the District Commission was 50 per cent of the amount or twenty-five thousand rupees, whichever is less (Section 15). A similar pre deposit was required for appeals to the NCDRC against orders of the SCDRC (second proviso to Section

19). An appeal before the NCDRC against an order of the SCDRC (Section 19) was not circumscribed by the requirement that it must raise a substantial question PART E of law. In Section 51(2) of the Act of 2019, an appeal to the NCDRC lies on a substantial question of law.

E Legislative intendment underlying Section 107 of the Act of 2019

62. Section 107(1) of the Act of 2019 repeals the Act of 1986. In State of Rajasthan v. Mangilal Pindwal52, this Court accepted the principle that the effect of a repeal, in the absence of a savings clause or a general savings statute, is that "a statute is obliterated" subject to the exception that it exists in respect of transactions past and closed. Section 107 (2) has saved "the previous operation"

> of any repealed enactment or "anything duly done or suffered thereunder to the extent that it is not inconsistent with the provisions of the new legislation". Finally, Section 107(3) indicates that the mention of particular matters in sub-Section (2) will not prejudice or affect the general application of Section 6 of the General Clauses Act.

63. Section 6 of the General Clauses Act provides governing principles with regard to the impact of the repeal of a central statute or regulation. These governing principles are to apply, "unless a different intention appears". Clause

(c) of Section 6 inter alia stipulates that a repeal would not affect “any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed". The right to pursue a validly instituted consumer complaint under the Act of 1986 is a right which has accrued under the law which was repealed. Clause (e) of Section 6 stipulates that the repeal will not affect, inter alia, any (1996) 5 SCC 60 PART E "legal proceeding or remedy" in respect of any such right…as aforesaid". Any such legal proceedings may be continued as if the repealing legislation had not been passed. Clause (c) of Section 6 has the effect of preserving the right which has accrued. Clause (e) ensures that a legal proceeding which has been initiated to protect or enforce "such right" will not be affected and that it can be continued as if the repealing legislation has not been enacted. The expression such a right in clause (e) evidently means the right which has been adverted to in clause (c). The plain consequence of clause (c) and clause (e), when read together is two- fold: first, the right which has accrued on the date of the institution of the consumer complaint under the Act of 1986 (the repealing law) is preserved; and second, the enforcement of the right through the instrument of a legal proceeding or remedy will not be affected by the repeal.

64. Having stated the above position, we need to harmonize it with the principle that the right to a forum is not an accrued right, as discussed in Part C of this judgement. Simply put, while Section 6(e) of the General Clauses Act protects the pending legal proceedings for the enforcement of an accrued right from the effect of a repeal, this does not mean that the legal proceedings at a particular forum are saved from the effects from the repeal. The question whether the pending legal proceedings are required to be transferred to the newly created forum by virtue of the repeal would still persist. As discussed, this Court in New India Assurance(supra) and Maria Christina(supra) has held that forum is a matter pertaining to procedural law and therefore the litigant has to pursue the legal proceedings at the forum created by the repealing act, unless a contrary intention appears. This principle would also apply to pending proceedings, as PART E observed in Ramesh Kumar Soni(supra), Hitendra Kumar Thakur(supra) and Sudhir G Angur(supra). In this backdrop, what is relevant to ascertain is whether a contrary intent to the general rule of retrospectivity has been expressed under the Act of 2019 to continue the proceedings at the older forum.

65. Now, in considering the expression of intent in the repealing enactment in the present case, it is apparent that there is no express language indicating that all pending cases would stand transferred to the fora created by the Act of 2019 by applying its newly prescribed pecuniary limits. In deducing whether there is a contrary intent, the legislative scheme and procedural history may provide a relevant insight into the intention of the legislature.

66. The Act of 2019, as indicated by its long title, is enacted to provide "for protection of the interests of consumers". The Statement of Objects and Reasons took note of the tardy disposal of cases under the erstwhile legislation. Thus, the necessity of inducing speed in disposal was to protect the rights and interests of consumers. The Act of 2019 has taken note of the evolution of consumer markets by the proliferation of products and services in light of global supply chains, e- commerce and international trade. New markets have provided a wider range of access to consumers. But at the same time, consumers are vulnerable to exploitation through unfair and unethical business practices. The Act has sought to address "the myriad and constantly emerging vulnerabilities of the consumers". The recurring theme in the new legislation is the protection of consumers which is sought to be strengthened by procedural interventions such as strengthening PART E class actions and introducing mediation as an alternate forum of dispute resolution.

67. In this backdrop, something specific in terms of statutory language - either express words or words indicative of a necessary intendment would have been required for mandating the transfer of pending cases. One can imagine the serious hardship that would be caused to the consumers, if cases which have been already instituted before the NCDRC were required to be transferred to the SCDRCs as a result of the alteration of pecuniary limits by the Act of 2019. A consumer who has engaged legal counsel at the headquarters of the NCDRC would have to undertake a fresh round of legal representation before the SCDRC incurring expense and engendering uncertainty in obtaining access to justice. Likewise, where complaints have been instituted before the SCDRC, a transfer of proceedings would require consumers to obtain legal representation before the District Commission if cases were to be transferred. Such a course of action would have a detrimental impact on the rights of consumers. Many consumers may not have the wherewithal or the resources to undertake a fresh burden of finding legal counsel to represent them in the new forum to which their cases would stand transferred.

68. It would be difficult to attribute to Parliament, whose purpose in enacting the Act of 2019 was to protect and support consumers with an intent that would lead to financial hardship, uncertainty and expense in the conduct of consumer litigation. Ironically, the objection which has been raised in the present case to the continued exercise of jurisdiction by the NCDRC in regard to the consumer PART E complaint filed by the appellant is by the developer who is the respondent herein. It is a developer who opposed the continuation of the proceedings before the NCDRC on the ground that under the new consumer legislation the pecuniary limits of the jurisdiction exercisable by the NCDRC have been enhanced and the complaint filed by the appellant which was validly instituted under the erstwhile law should be transferred to the SCDRC. Such a course of action will result in thousands of cases being transferred across the country, from the NCDRC to the SCDRCs and from the SCDRCs to the District Commission.

69. Data drawn from annual reports of the Union Ministry of Consumer Affairs indicates pendency from financial year 2015-16 to financial year 2019-20:

> Report for FY 2015-16 (figures as on 31.12.2015)53 Commissions/Forums Cases filed Cases Cases % of since disposed of Pending Disposal inception since inception NCDRC 98,952 88,893 10,059 89.83 SCDRC 6,97,964 6,01,216 96,748 86.14 District Forums 36,59,486 33,73,529 2,85,957 92.19 Total 44,56,402 40,63,638 3,92,764 91.19 Report for FY 2016-17 (figures as on 31.12.2016)54 https://consumeraffairs.nic.in/sites/default/files/file-uploads/annualreports/1535004604_AR_201
>
> 16.pdf, page 34 https://consumeraffairs.nic.in/sites/default/files/file-uploads/annualreports/1535004643_AR_201
>
> 17.pdf , page 47
>
> | Commissions/Forums | Cases filed since inception | Cases disposed of since inception | Pending | Cases Pending | % D |
> |---|---|---|---|---|---|
> | NCRC | 1,06,711 | 94,581 | | 12,130 | 8 |
> | SCDRC | 7,28,526 | 6,27,289 | | 1,01,237 | 8 |
> | District Forums | 38,53,422 | 35,51,649 | | 3,01,773 | 9 |
> | Total | 46,89,280 | 42,74,136 | | 4,15,144 | 9 |
>
> Report for FY 2017-18 (figures as on 29.01.2018)55 Commissions/Forums Cases filed Cases Cases % of since disposed of Pending Disposal inception since inception NCRC 1,17,430 1,00,419 17,011 85.51 SCDRC 7,57,887 6,49,606 1,08,281 85.71 District Forums 40,62,476 37,59,249 3,03,227 92.54 Total 49,37,793 45,09,274 4,28,519 91.32 Report for FY 2018-19 (figures as on 31.03.2019)56 Commissions/Forums Cases filed Cases Cases % of since disposed of Pending Disposal https://consumeraffairs.nic.in/sites/default/files/file-uploads/annualreports/1535004742_AR_201
>
> 18.pdf, page 49 https://consumeraffairs.nic.in/sites/default/files/file-uploads/annualreports/_. , page 41 PART E inception since inception NCDRC 1,28,152 1,08,112 20,040 84.36

SCDRC 8,29,477 7,11,507 1,17,970 85.78 District Forums 41,59,692 38,38,473 3,21,219 92.28 Total 51,17,321 46,58,092 4,59,229 91.03 Report for FY 2019-20 (figures as on 31.10.2019)57 Commissions/Forums Cases filed Cases Cases % of since disposed of Pending Disposal inception since inception NCDRC 1,33,148 1,11,932 21,216 84.07 SCDRC 9,44,841 8,19,685 1,25,156 86.75 District Forums 43,05,234 39,62,438 3,42,796 92.04 Total 53,83,223 48,94,055 4,89,168 90.91 The above data indicates that as on 31 October 2019, 21,216 cases were pending before the NCDRC and 1,25,156 cases were pending before the SCDRC. Many of these cases would have to be transferred if the view which the developer propounds is upheld. This will seriously dislocate the interests of consumers in a manner which defeats the object of the legislation, which is to protect and promote their welfare. Clear words indicative of either an express https://consumeraffairs.nic.in/sites/default/files/file-

uploads/annualreports/1596167686_Annual%20Report%202019-20.pdf page 45 PART E intent or an intent by necessary implication would be necessary to achieve this result. The Act of 2019 contains no such indication. The transitional provisions contained in Sections 31, 45 and 56 expressly indicate that the adjudicatory personnel who were functioning as Members of the District Commission, SCDRC and NCDRC under the erstwhile legislation shall continue to hold office under the new legislation. Such provisions are necessary because persons appointed to the consumer fora under the Act of 1986 would have otherwise demitted office on the repeal of the legislation. The legislature cannot be attributed to be remiss in not explicitly providing for transfer of pending cases according to the new pecuniary limits set up for the fora established by the new law, were that to be its intention. The omission, when contextualized against the statutory scheme, portends a contrary intention to protect pending proceedings through Section 107(2) of the Act of 2019. This intention appears likely, particularly in light of previous decisions of the NCDRC which had interpreted amendments that enhanced pecuniary jurisdiction, with prospective effect. The NCDRC, in Southfield Paints and Chemicals Pvt. Ltd. v. New India Assurance Co. Ltd.58 construed amending Act 62 of 2002 by which the pecuniary limits of jurisdiction were enhanced with effect from 15 March 2003 as prospective by relying on its earlier decision in Premier Automobiles Ltd. v. Dr Manoj Ramachandran59, where the NCDRC held that the amendments enhancing the pecuniary jurisdiction are prospective in nature [albeit on a reliance of the principle in Dhadi Sahu(supra)]. Parliament would be conscious of this governing principle and yet chose not to alter it in its application to the consumer fora.

Consumer Case No. 286 of 2000 (NCDRC) Revision Petitions Nos 400 to 402 of 1993 (NCDRC) PART E

70. It is accepted, that in defining the jurisdiction of the District Commission, Section 34 of the Act of 2019 entrusts the jurisdiction to “entertain” complaints. A similar provision is contained in Section 47 and Section 58 in regard to the SCDRC and NCDRC. The expression “entertain” has been considered in a two judge Bench decision of this Court in Hindusthan Commercial Bank Ltd. v. Punnu Sahu (Dead) Through Legal Representatives60, in the context of the provisions of Order XXI Rule 90 of the CPC. The Court has accepted that the expression “entertain” means to adjudicate upon or proceed to consider on merits. In Nusli Neville(supra), while considering the provisions of

Section 9A of the CPC as inserted by a Maharashtra Amendment, a two judge Bench followed the exposition in Hindusthan Commercial Bank(supra). Undoubtedly, the expression "entertain" has been construed in the context of Section 9A of the Code of Civil Procedure, as amended in Maharashtra, by a three judge Bench of this Court in Nusli Wadia(supra) to mean "to adjudicate upon or to proceed to consider on merits". Sections 34, 47 and 58 similarly indicate that the respective consumer fora can entertain complaints within the pecuniary limits of their jurisdiction. These provisions will undoubtedly apply to complaints which were instituted after the Act of 2019 came into force. However, the mere use of the word "entertain" in defining jurisdiction is not sufficient to counteract the overwhelming legislative intention to ensure consumer welfare and deliberately not provide for a provision for transfer of pending proceedings in the Act of 2019 or under Section 106 of the Act of 2019 which is a power to remove difficulties for a period of two years after the commencement of the Act of 2019.

"Hindusthan Commercial Bank"; (1971) 3 SCC 124

PART F

F Summation

71. For the above reasons, we have come to the conclusion that proceedings instituted before the commencement of the Act of 2019 on 20 July 2020 would continue before the fora corresponding to those under the Act of 1986 (the National Commission, State Commissions and District Commissions) and not be transferred in terms of the pecuniary jurisdiction set for the fora established under the Act of 2019. While allowing the appeals, we issue the following directions:

(i) The impugned judgment and order of the NCDRC dated 30 July 2020 and the review order dated 5 October 2020, directing a previously instituted consumer case under the Act of 1986 to be filed before the appropriate forum in terms of the pecuniary limits set under the Act of 2019, shall stand set aside;

(ii) As a consequence of (i) above, the National Commission shall continue hearing the consumer case instituted by the appellants;

(iii) All proceedings instituted before 20 July 2020 under the Act of 1986 shall continue to be heard by the fora corresponding to those designated under the Act of 1986 as explained above and not be transferred in terms of the new pecuniary limits established under the Act of 2019; and

(iv) The respondent shall bear the costs of the appellant quantified at Rupees Two lakhs which shall be payable within four weeks.

PART F

72. The appeals are allowed in the above terms.

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

.....J. [Dr Dhananjaya Y Chandrachud]
.....J. [M R Shah] New Delhi;

March 16, 2021.