ANDHRA LEGAL DECISIONS

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INAUGURAL SPEECH OF HON'BLE Dr. AR. LAKSHMANAN, CHIEF JUSTICE OF A.P. AT THE ZONAL WORKSHOP II AT VISAKHAPATNAM ON 17-8-2002

My dear colleagues on the Bench - Justice *Bilal Nazki*, Justice *B.Sudershan Reddy* and *G.Bikshapathy*, Sri *P.Lakshmana Reddy*, Director of Judicial Academy and my dear Judicial Officers of Zone I, Ladies and Gentlemen,

I am happy to be amongst you on the occasion of inauguration of II Zonal Workshop for Judicial Officers of Srikakulam, Vizianagaram, Vishakapatnam and East Godavari Districts.

The movement of providing Training to Judicial Officers is gathering momentum in India. The purpose of judicial training is to assist in producing a better and more effective judiciary. Today we have assembled here in this zonal workshop to study and understand the latest developments in law. We organize this sort of periodical workshops to sharpen our knowledge so that there will be qualitative and quantitative improvement in our work. Law is not a static or inanimate thing. Society is ever changing. So also law Dynamic society like ours demands the dynamic application of legal principles. Law cannot lag behind society. We have to understand the dynamics of society in all their multi-facets for effective adjudication of matters that come before us. We have to keep in view the changes that are creeping in social institutions like property, family and other human relations. We cannot decide the causes in isolation taking it out of social context. Need of the day is that every social institution shall keep pace with the march of society. We are no exception. I, therefore, feel that we have to keep in touch with change in all spheres of social life around us and latest trends in law.

The 117th Report of the Law Commission of India acknowledged the need for an integrated, professionally organized, independent judicial system in the country. During the last few years, several States have set Judicial Academies under the Administrative Control of the High Courts and have started induction courses for the newly recruited judicial officers and refresher courses for serving Judges.

At the national level, the long- awaited ***National Judicial Academy*** at Bhopal is going to be launched by His Excellency Dr.*A.P.J.Abdul Kalam*, President of India on 5th September, 2002. On the same day, the Hon'ble Sri *B.N.Kirpal*, Chief Justice of India will also inaugurate the morning Session of Training Methodology ***"Gender and Law".***

As far as our Andhra Pradesh is concerned, Judicial Academy started functioning since 1991. Couple of years back, the High Court has resolved to hold the zonal workshops in different parts of the State taking into account various problems and other allied aspects in conducting the training courses at the Capital. All the Judicial Officers in the State cannot be called to the Judicial Academy and it was therefore considered desirable to hold the workshops for the officers on zonal basis so that we can meet all of you at one place nearer to your work place and address you on subjects which are of daily routine and also on other important subjects of the latest law. We can also know about your work, culture and problems and suggest solutions for the same and to keep you abreast with the latest developments in law and enable

the Judicial Officers themselves to interact with each other so as to improve the quality and quantity of disposals. In this workshop being inaugurated today, you will have the opportunity to know a detailed account on *"Directive Principles .of State Policy* - Socio *Economic Justice envisaged in the Constitution of India, Appreciation of Evidence, Interpretation of documents, particularly Wills, C.P.C. amendments and Trial of Civil Cases- Problems* and *Solutions"*.

I will now briefly refer to the above subjects. Directive principles are the dictates of reason and are the embodiment of ideals and goals towards which the State is expected to govern. The directive principles reinforce what has been stated in the preamble of the Constitution. They elaborate the welfare concept which the Government shall have to take into consideration while administering the country. They aim at achieving socio economic justice devoid of any difference owing to caste, colour, creed *etc.*

During the Constituent Assembly debates, Dr. *Ambedkar* paid glowing tributes to the efficacy of directive principles in the following words:

> "It is the intention of the Assembly that in future both the Legislative and Executive should not merely pay lip service to these principles but they should be made the basis of the legislation and executive actions that may be taken hereafter in the matter and governance of the country".

It is therefore, necessary even to the Subordinate Judicial Officers to have some sort of insight into the Constitutional philosophy as projected through Directive Principles of State Policy, which reflect the hopes and aspirations of the people.

The trial Judges day in and day out come across a variety of documents, which are sought to be admitted in evidence by the parties in support of their respective claims. Mere admission of the documents as part of evidence does not suffice. They have to be properly interpreted so as to further the cause of justice. Interpretation of the documents sometimes poses difficult and mind-boggling situations, because the interpreter has to necessarily peep into the mind of the author of the document to know and perceive the real intention and purport thereof. It is figuratively stated that while interpreting a Will, one has to sit in the arm chair of the testator to know the mind of the testator while making disposition. Going by the letter alone of the document may not always subserve the cause of justice. Besides the letter, the spirit of the document has also be captured and then only the document can be interpreted in a proper manner which ultimately meets the ends of justice.

The next topic *i.e.,* Appreciation of evidence is an important aspect in the decision making process. A just decision in the matter depends to a large extent on the quality of appreciation of evidence. Any amount of evidence - oral and documentary is of no value if it is not appreciated the way in which it has to be under the circumstances of the case. A trained judicial mind alone can master the art of appreciating the evidence by segregating the grain from the Chaff. It is not quantity but quality of evidence which matters and again it is the quality of appreciation of such evidence which leads to a just decision. The subject with which the trial Judges are constantly engaged is aptly included in the agenda of this work shop.

Now, I would like to deal with some of the important amendments to the Civil Procedure Code brought about by the Code of Civil Procedure (Amendment) Act, 1999 (Act No.46 of 1999) and the Code of Civil Procedure (Amendment) Act, 2002 (Act No.22 of 2002) which came into effect from 1st July, 2002.

The efforts of the Central Government to effectively tackle the docket explosion and to reduce the burden on the Courts in the expeditious disposal of cases has eventually led to the enactment of crucial amendments to the Civil Procedure Code, 1908. By Act 46 of 1999 several radical amendments to civil procedure were introduced. Insertion of Section 89 in the principal Act of Civil Procedure Code, 1908 providing for settlement of disputes outside the Court is one of them. Though the Act of 1999 was passed by both the Houses of Parliament there was a tremendous opposition to these amendments which even took violent turn in some parts of the country. The Central Government then took time to have a re-look into these amendments and after prolonged discussions with the advocates and other concerned persons re-introduced these amendments after making some changes and the re-introduced Civil Procedure Code was also passed by both the Houses of Parliament which is now the Act 22 of 2002. This Act by the notification issued by the Central Government came into force with effect from 1-7-2002. The newly inserted Section 89 of the Civil Procedure Code with which we are concerned is in the following terms:

In the principal Act, after Section 88, the following section shall be inserted, namely:

> **"89. Settlement of disputes outside the Court :—**(1) Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for—
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> a. arbitration;
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> b. conciliation;
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> c. judicial settlement including settlement through Lok Adalat; or
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> d. mediation.
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> 2. Where a dispute has been referred -
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> a. for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;
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> b. to Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of Section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute referred to the Lok Adalat;
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> c. for judicial settlement, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;
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> d. for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed".

It will be seen from the above that where it appears to the Court that if there are elements of settlement of the dispute and the Court is of the opinion that the settlement is acceptable to the parties, the Court is enjoined with the duty of formulating the terms of settlement and give them to the parties for their observations. Even though the phrase "terms of settlement" was used, it actually means "issues for settlement"

because the Court cannot introduce a term of settlement on its own and in settlement, it is always for the parties to decide upon the terms. These terms have to be gathered from the issues raised. ("This section it may be noted here is bodily lifted from Section 73 of the Arbitration and Conciliation Act of 1996 with little modifications").

After the issues are framed and are given to the parties for their observations, the parties have to offer their observations. The Court after the receipt of observations has to again re-formulate the issues after taking into consideration the observations of the parties for a possible settlement and refer the same either for (a) Arbitration or for (b) Conciliation or (c) for settlement including Lok Adalats or (d) Mediation. The use of the statement of "possible settlement" raises the hopes of the Court as well as of the parties for settlement. Thereafter the section categorically states that if the dispute is referred to Arbitration or Conciliation it will be the Act of Arbitration and Conciliation Act of 1996 that will apply and not Civil Procedure Code. Similarly if the matter is referred to Lok Adalats the provisions of Legal Services Authority Act of 1987 will apply. If the matter is referred for Mediation, the Court shall effect a compromise by following such procedures as may be prescribed which means in the context the Court has to fix the procedures. In this context, it may be mentioned that there are very well developed techniques of Mediation by Institutions like ICADR. Thus the Court has to first try Arbitration, Conciliation, Lok Adalat and Mediation for the settlement of dispute before the dispute is taken up for trial. In 9 out 10 cases, the cases are amenable it is hoped for settlement because they turn upon the factual matrix of the case. It is much easier and faster in Arbitration and Conciliation proceedings to arrive at and settle the facts, than in the Courts inasmuch as the Courts are burdened with the rules of Evidence and Civil Procedure Code which are likely to take time and for which reason they are explicitly avoided for application to proceedings under Arbitration or Conciliation.

Now Order X in the First Schedule is also amended by re-introducing the following rules:

> 20. **Amendment of Order X** :- In the First Schedule, in Order X after Rule 1, the following rules shall be inserted, namely:-
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> ***"1-A. Direction of the Court to opt for any one mode of alternative dispute resolution :***—After recording the admissions and denials, the Court shall direct the parties to the suit to opt either mode of the settlement outside the Court as specified in sub-section (1) of section 89. On the option of the parties, the Court shall fix the date of appearance before such forum or authority as may be opted by the parties.
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> ***1-B. Appearance before the conciliatory forum or authority :***—Where a suit is referred under Rule 1A, the parties shall appear before such forum or authority for conciliation of the suit.
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> ***1-C. Appearance before the Court consequent to the failure of efforts of conciliation :—***Where a suit is referred under Rule 1-A and the presiding officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then, it shall refer the matter again to the Court and direct the parties to appear before the Court on the date fixed by it".

These rules show that after recording the admission and denials the Court has again given a mandatory function to direct the parties to the suit to opt for either of the modes of settlement outside the Court. The

wording of these rules show that the parties will then have no option except to settle for one of the modes of settlement referred to in sub-section (1) of Section 89 (*i.e.*,) Arbitration, Conciliation, Judicial Settlement and Mediation. This rule postulates that the parties have to appear before a forum or authority. On the exercise of the option by the parties, the Court is to fix a date for appearance before the forum or authority chosen by the parties. The parties shall then have to appear before the forum or authority. If for any reason it is not possible for the forum or authority to settle the matter, if the parties are unwilling for Conciliation then the forum or authority has to refer the case back to the Court and it is only then that the Courts have to take up the case for trial.

Depending upon the efficiency, ability, impartiality, fairness, credibility of the forum and authority it is likely that 9 out of 10 cases will be decided by the forum or authority for the very simple reason that the proceedings before the forum or authority will be more informal, leaving mostly everything to the parties, and the forum and authority to decide upon the procedures including the evidence to be produced and the need and length of oral submissions. Once the forum or authority decides the cases in terms of Conciliation, there is no further appeal provided, because for Conciliations it is not the Civil Procedure Code that applies, but the Arbitration and Conciliation Act of 1996 that applies, under which there is no provision for appeal against settlements arrived at on Conciliation. Even if the matter is of Arbitration, the award passed by the Arbitrator will then become a decree of the Court unless the right given to set it aside the scope of which is highly restricted and limited is exercised. The insertion of this section and the rules if fairly and frequently utilised by the Courts there is every scope for the litigation to come to an end much faster and at less cost. This will go a long way in reducing the burden on the Courts.

The Courts are therefore now under an obligation to utilise these provisions more frequently and freely rather than trying to hold on to the cases, in which case the very purpose of the Act will be frustrated.

There is another point which needs to be mentioned in this context (*i.e.*) the amendment made to the Order XVIII by inserting certain rules which concern the conduct of the proceedings before Courts.

12. Amendment of Order XVIII :—In the First Schedule, in Order XVIII,—

a. in Rule 2, after sub-rule (3), the following rules shall be inserted, namely:-

"(3-A) Any party may address oral arguments in a case, and shall, before he concludes the oral arguments, if any, submit if the Court so permits concisely and under distinct headings written arguments in support of his case to the Court and such written arguments shall form part of the record.

(3-B) A copy of such written arguments shall be simultaneously furnished to the opposite party.

(3-C) No adjournment shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.

(3-D) The Court shall fix such time-limits for the oral arguments by either of the parties in a case, as it thinks fit."

Though the Civil Procedure Code is not applicable to the proceedings of Arbitration and Conciliation, still these rules being of general character and are intended to reduce delays, there is no reason why could not be adopted as guidelines by the fora or

authorities in conducting Arbitration and Conciliation proceedings. This procedure will have a distinct advantage of limiting the arguments and help expeditious disposal of disputes.

Thus it would appear on a combined reading of Section 89 and the rules made in Order 20 that now two routes are available for resolution of disputes, one the traditional trial and the other the fast track namely the Arbitration and Conciliation etc., and the parties have been given the choice to opt one of the two. Though the trial prevails if Arbitration *etc.*, fails.

The whole idea behind the various amendments made to the Code of Civil Procedure is to simplify the procedure and reduce the time taken for disposal of a matter and also bring down the cost of litigation. After considering the recommendations made by the Law Commission in its 27th, 40th, 54th and 55th reports, the Government brought forward the Bill for amendment of Civil Procedure Code with a view to ensure that a litigant should get a fair trial to expedite disposal of civil cases, so that justice is not delayed and that the procedure should not be complicated and on the other hand it should extend a fair deal to the poorer sections of the society. It is necessary that all the subordinate Judicial Officers shall not only get acquainted with the various changes brought out in the Code of Civil Procedure but also make every endeavour to effectively apply the new provisions for achieving better results keeping in view the intendment behind the amendments.

Dear Judicial Officers, though there is some change in the trends of law, there are certain never changing principles which have relevancy to this ever changing society. What is truth, how could we arrive at such truth and to what extent we are just - are the social facts. Though science and technology brought in its train the changes in equipments and techniques, there is no change so far as the moral and human aspects. Though there is change in property and family relations, there is no change in our concern to preserve the integrity of family and to hold intact the social peace. Though law provides for decree for divorce, it is not the first choice. Conciliation is the first preference. There can never be any change in the perception of society as to the duty of the Judge to hear courteously, to answer wisely, to consider soberly and to decide impartially.

In this context, I strongly urge the judicial officers, who are part of intelligentsia of this society, to always strike a balance between these ever changing social facts and never changing moral and human principles. For this we must have thorough knowledge of the social dynamics as well as indepth understanding of life. We have to cultivate the habit of understanding the things in social context and integrate it with humane considerations. Adjudicate the men and matters with a holistic approach.

Dear Officers! We have been discharging the divine functions. But still we are flesh and blood mortals with individual personalities and with normal human traits. A human being discharging divine functions must grow himself and develop the magnanimity to treat all our subjects with all divine qualities like love, compassion *etc.,* We have to rise above ourselves and put ourselves in *loco parentis.* Judges always stand in the place of parents to the needy litigants who approach the temples of justice with folded hands.

Next aspect I would like to advert to is about hearing courteously and to answering wisely. In this respect, I quote from the decision reported in *A.M. Mathur v. Pramod Kumar Gupta* (AIR 1990 SC 1737)

> "Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint, this humility of function should be a constant theme of our Judges. This quality in decision making is as much necessary for Judges to command respect as to protect the independence of the judiciary. Judicial restraint in this regard might better be called judicial respect; that is, respect by the judiciary. Respect those who come before the Court as well to other coordinate branches of the State, the Executive and Legislature. There must be mutual respect. When these qualities fail or when litigants and public believe that the Judge has failed in these qualities, it will be neither good for the Judge nor for the judicial system."

The Judge's Bench is a seat of power. Not only do judges have power to make binding decisions, their decisions legitimate the use of power by other officials. The Judges have the absolute and unchallengeable control over the Court domain. But they cannot misuse their authority by unbalanced comments, undignified chat or scathing criticism of Counsel, parties or witnesses. It is true that the Court has the inherent power to act freely upon its own conviction on any matter coming before it for adjudication, but it is a general principle of the highest importance to the proper administration of justice that derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the case.

Yet another aspect that needs a mention is that, in the society around us, there is a serious erosion of values. Judiciary, being an intrinsic part of this society, closely interwoven in this social fabric, cannot close its eyes to it. Day by day, man is becoming increasingly a money making machine. Public started believing that ends would justify the means. In pursuit of money making, all the humane values are left to winds. People are craving to make as much money as possible to be left to their next generation. But they are forgetting that in that process, they are leaving behind a hostile atmosphere around the children. Being Judges, we have to think this aspect in depth, with a philosophical outlook. By saying philosophical approach, I do not mean any religious or spiritual aspects. What all I mean is the indepth understanding of the problem with its individual and social implications.

At the same time we are aware of the limitations and problems that stare at our face. In *All India Judges' Association v Union of India* (AIR 1992 SC 165) the Supreme Court observed that "The service conditions of Judges are no more attractive, they take no notice of the earnings of an average lawyer". It is further observed that "Politico-legal issues are also diverted to Courts which consume a lot of judicial time. There has been an environmental degradation which has also affected the work culture of the judiciary."

For variety of reasons, pendency of cases before the Courts is very alarming. Delays in Courts are worrying us. Let us recollect the observations of the Supreme Court in *All India Judges' Association* case to the effect that "The role of the Judiciary under the Constitution is a pious trust reposed by the people. The Constitution and the democratic-polity thereunder shall not survive, the day Judiciary fails to justify the said trust. If the Judiciary fails, the Constitution fails and the people might opt, for some other alternative."

Unless we take effective steps to preserve the confidence a common man reposed in the Judiciary, I am afraid the institution would crush under its own weight. Our fight

against this docket explosion of cases is twofold. At the ground level, we have been organising legal literacy camps to arrest the strong social currents of litigative tendencies among the people. We are developing an atmosphere of mutual trust and honesty amongst them. We are also imparting them the legal knowledge necessary to understand the *pros and cons* and the vagaries of litigation. We are also inculcating amongst them the culture of settlement of disputes in an amicable manner at their family and village levels. I am sure that we would be successful in taking this message to the grass-root level, which will have a tremendous impact over the number of cases that would reach up to Court.

Simultaneously, we are also organizing Lok-Adalaths and establishing fast-track Courts to clear off the pending cases in a time-frame. We are leaving no stone unturned in this regard.

What all I expect from my officers is to understand the philosophy behind all these programmes, which are well thought of and to extend your whole-hearted co-operation in tackling the situations. Myself and my colleagues on the Bench are here for you. Finally my appeal to all of you is - Give this problem-stricken society the maximum best you can and ensure that your learning through this workshop is reflected in your judgments.

Thank you one and all!
