

THE 'RES' IN RES-JUDICATA

By

—R.S. REDDY* AND SANTHALA REDDY

Advocates, at Hyderabad

In a recent case law of *Jupiter Auto Mobiles v. Greater Vishakapatnam Municipal Corporation*, (reported in 2016 (2) ALT 210), His Lordships Mr. Justice M.S. Ramachandra Rao, of our High Court at Hyderabad, is pleased to rule as a Quotable Point “On Principle of constructive *res judicata*, respondents in writ petition are precluded from raising a plea which was available to them to be taken in the earlier writ petitions but not taken” it is far reaching, if not formidable! From the prevailing position of ‘*Res-judicata*’ which literally means a “thing adjudicated” or “an issue that has been definitively settled by judicial decision”. The principle operates as a bar to try the same issue once over. (Such an important case law is not properly covered in Page No.346 of ALT (Yearly Digest 2016 Vol.30). Inspired by the rousing rulings of this case law, on *res judicata*, these references are being recapitulated herein.

To refer to the Legal Maxim ‘*Res-judicata pro veritate accipitur*’, meaning *Res-judicata* is accepted for truth. The literal meaning of ‘*Res*’ is everything that may form an object of rights and includes an object, subject-matter or states and ‘*Res-judicata*’ literally means a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgments. (To see the case law in *Subrahmanyam Swamy v. State of Tamilnadu*, reported in (2014) 5 SCC 75). Again as held by a five Judge Bench of apex Court in the case of *Daryao and others v. State of U.P.*, “The rule of *res-judicata* is not merely a technical rule, but is based on Public Policy. Also to see another Case Law of a four Judge Bench of apex Court cited in this Case Law, reading thus :

“Now the rule of *res-judicata* as indicated in Section 11 of CPC has no doubt some technical aspects, for instance the rule of constructive *res judicata* may be said to be technical, but the basis on which the said rule rests is founded on considerations of Public Policy. It is in the interest of the public at large that a finality should attach to the binding decisions pronounced by Courts of competent jurisdiction and it is also in the public interest that individuals should not be vexed twice over the same kind of litigation.”

“The same question can be considered from another point of view. If a judgment has been pronounced by a Court of competent jurisdiction, it is binding between the parties unless it is reversed or modified by appeal, revision or other procedure prescribed by law.”

Though the doctrine of *res judicata* is enshrined in Section 11 of the Code of Civil Procedure (CPC), the Section 11 is not exhaustive of the concept of *res judicata* as enshrined therein, it is ever growing. As such, the scope of this principle is not confined to what is contained in Section 11 of CPC, but it is of more general application. Again, *res judicata* could be as much applicable to different stages of the same suit as to findings in different suits. As held by the apex Court in the Famous and oft cited Case Law of *Y.B. Patel v. Y.L. Patel*, AIR 1977 SC 392. “Principles of *res judicata* can be invoked not only in separate subsequent proceedings, they also get attached in subsequent stage of the same proceedings. Once an order made in the course of a proceeding becomes final, it would be binding at the subsequent stage of that proceedings.” As finally held by the apex Court in the case of *U.P. State Road Transport Corporation v. State of U.P.*, citing

* A Senior Counsel holding double Gold Medal Distinctions from University of Mysore

the old Case Law of AIR 1960 SC 941, “said Principle which prevents the same case being litigated twice is of general obligations and is not limited by the specific words of Section 11 of CPC in this respect. *Res judicata* applies also between two stages with same litigation.”

Somehow, the concept of *res judicata*, got stranded at the level of ‘Previous Suit’ and ‘Present Suit’, when more importantly, it should come down to proceedings at different stages, interlocutory or intermediary, in the same suit. As such, it would require to be emphasized, even over-emphasized, since, its appreciation is more often avoided than adhered to, at the Lower Judiciary Level.

To consolidate, however, in order to invoke the principle of *res judicata*, certain conditions are to be satisfied and they are :

- (i) The matter directly and subsequently in issue in the subsequent suit or issue must be the same matter which was directly and substantially in issue either actually or constructively in the former suit.
- (ii) The former suit must have been a suit between the same parties or any of their claim.
- (iii) Such parties must have been litigating under the same title in the former suit.
- (iv) The matter directly and substantially an issue in the subsequent suit must have been heard and finally decided by the Court in the former suit.
- (ii) Parties and their representatives.
- (iii) Matters in issues.
- (iv) Matters which ought to have been made ground for defence or attack in the former stage.
- (v) The final decision.

As such, the subject-matter of grant of reliefs or the nature of proceedings in two proceedings need not be the same, that is to say, even if the subject-matter and the reliefs sought are not the same, yet if there is a final decision on an issue, arising in the former proceedings and the same issue arises in the subsequent proceedings, may be as an ancillary of main reliefs, which was not the subject-matter of earlier proceedings, still the findings on issue in the former proceedings will operate as *res judicata* in the subsequent proceedings so far as the decision on the particular issue is concerned.

To reiterate, *res judicata* debars a Court from exercising its jurisdiction to determine the “*lis*” if it has attained finality between the parties, whereas the doctrine of “issue estoppel” is invoked against the party. If such an issue decided against him he would be estopped from raising the same in the later proceeding. How far, this principle is being strictly complied with at the lower judiciary is not of sure certain factum, since its application and appreciation seem to leave, much to be desired.

While on the consolidation, as laid down by the apex Court, in the case of *Jaswant Singh v. Custodian*, AIR 1985 SC 1096, it is summed up, “the order do decide the question whether, a subsequent proceeding is barred by *res judicata*, it is necessary to examine the question with reference to the”.

However, our own High Court at Hyderabad, has gone in much more elaboration, way back in 1969 itself, in the case of *Bansilal v. Lakshminarayana* (Reported in 1969 An. WR 246 (AP)(HC)) holding that : “When the final decision in any matter at issue between the parties is based by a Court on its decision on more than one point each of which by itself would be sufficient for the ultimate decision, the decision on each of these points operates as *res judicata* between the parties”. Also in a

- (i) Forum or the competence of the Court.

later Case Law of *D. Vidya Sagar Rao and another v. Smt. K. Indira Devi and others*, reported in 2004 (2) ALT 689 (APHC), ruled by his Lordship, Mr. Justice N.V. Ramana, that : “Section 11 Doctrine of *res judicata* – Decisions on a question of fact or law attained finality between two parties cannot be allowed to be canvassed on the very same issue once again in future proceedings.”

Much later, Kerala High Court, in the case of *Sarojini Prabhu and others v. Pappi Kutty Arieshar and others*, reported in AIR 2007 Ker. 44, Held : “Principle of *res judicata* applies to even different stages of the same proceedings – contention originally raised and over ruled by the Court – Cannot be agitated again.”

To cap it up, the apex Court, in the Case Law of *Prabhlad Singh v. Col. Sukebdev Singh*, reported in AIR 1987 SC 1145, ruled by the legal luminary His Lordship, Mr. Justice O. Chinnappa Reddy, has categorically held that : “The Principle of *res judicata* applies also between two stages in the same litigation to this extent that a Court, whether the trial Court or a higher Court having at an earlier stage decided a matter in one way will not allow the parties to reargue the matter again at a subsequent stage of the same proceedings.” Requires to be carefully, noted and to be insisted upon to comply with. Since no exceptions or excuses are permissible.

In conclusion, getting back to the introductory reference, of the latest Case Law of *Jupiter Auto Mobiles v. Greater Vishakapatnam Municipal Corporation*, reported in 2016 (2) ALT 210, it would be relevant to refer to the old Case Law in the case of *Narayana Prabhu Venkateshwara Prabhu v.*

Narayana Prabhu Krishna Prabhu, reported in AIR 1977 SC 1268, in which it is held :

“An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided is incidental to or essentially connected with the subject-matter of the litigation and every matter coming with the legitimate preview of the original action both in respect of the matter of claim or defence. The Principle underlying constructive *res judicata* is that whether the parties have had an opportunity of contravening a matter that should be taken to be the same thing as if the matter had been actually controverted and decided.”

In finale, as ruled by the eight Judge Constitutional Bench of the apex Court in the case of *M.S.M. Sharma v. Dr. Shree Krishna Sinha and others*, reported in AIR 1960 SC 1186, to the effect that :

“For the application of the General Principles of *res judicata* it is not necessary to go into the question whether the previous decision was right or wrong.”

“The rule of *res judicata* is meant to give finality to a decision arrived at after due contest after hearing the parties interested in the controversy”.

Any decision of any Court in any case, not falling within the parameters of the above case law rulings, cannot be taken as ‘Good Law’ and liable to be rejected as *per incurium*. Let the legal fraternity be firm on that, if not have already been so.