REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs.5094 OF 2005

Mahadev Govind Gharge & others ..Appellant(s)

- Versus -

The Special Land Acquisition Officer,
Upper Krishna Project, Jamkhandi,
Karnataka ..
Respondent(s)

WITH

CIVIL APPEAL NO. 5113 OF 2005

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- Versus -

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J U D G M E N T

GANGULY, J.

1. Interesting questions involving interpretation of Order XLI Rule 22 of the Civil Procedure Code (hereinafter "CPC") fall for

decision in this case in which the relevant facts are that a preliminary notification under section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was issued on 24.4.1997, for acquisition of land in Survey No. 616/1/1 measuring 2 acres 29 guntas and in Survey No. 616/1B/1 measuring 1 acre 2 guntas. The award was passed by the Special Land Acquisition Officer on 13.04.1999; he considered the land acquired to be dry land and fixed compensation amount at the rate of Rs.31,650/- per acre.

2. Aggrieved, the claimants (landowners) filed references under section 18 of the Act. The Reference Court enhanced compensation to Rs.3,50,000/- per acre, along with all statutory benefits.

3. The respondents filed an appeal against the judgment of the Reference Court to the High Court of Karnataka on 12.09.2001. The landowners were on a caveat. The High Court admitted the appeal on the same day and directed the office to post the same for hearing immediately after LCR were received. On 19.11.2002, the appellants filed cross-objections before the High Court, under Order XLI, Rule 22 of CPC, along with an

application for condonation of delay of 404 days in filing the cross-objections.

4. On 22.10.2003, the High Court, vide the first impugned judgment, dismissed the appeal of the State holding that the point for consideration in the appeal was squarely covered by the judgment of that court dated 12.8.2003 in M.F.A. No. 3278 of 2001, as a result of which the appeal was liable to be dismissed. The High Court also held that the landowners were entitled to interest with effect from the date of the award, i.e. from 13.4.1999. Against the said judgment, the State came up in the present appeal before this court i.e. Civil Appeal No. 5113 of 2005.

5. On the same day, the High Court, vide the second impugned judgment, also dismissed the cross objections filed by the landowners. In the appeal dismissing the cross objections, two points came up for consideration before the High Court:

(i) Whether the limitation period of one month prescribed under Order XLI Rule 22 (1) of CPC shall run from 12.9.2001 as contended by learned government advocate or from the date

of service of notice of date of hearing of appeal fixed by the court, as contended by the learned advocate of the landowner.

(ii) If the limitation of one month prescribed under Order XLI Rule 22(1) of CPC did not begin to run with effect from 12.9.2001, whether the alternative argument by way of explanation offered by the cross objectors would constitute 'sufficient cause' warranting condonation of delay in filing the cross objection?

6. The High Court stated that the Division Bench had admitted the appeal on 12.9.2001 and had also stayed the operation of the impugned award subject to the land acquisition officer depositing 50% of the enhanced compensation with statutory benefits. On the same day, the Division Bench had directed the office to list the appeal for final hearing after the records were received. Accordingly, the office called for the records and they were received by the office. Subsequently, on 25.1.2002, the Division Bench permitted the cross objectors to move for an early hearing of the appeal. It held as follows:

> "Therefore, it is quite clear that on 12.9.2001 itself, the Division Bench thought it appropriate to hear the appeals out of turn and accordingly directed the office to post the appeal for hearing

immediately after the records are received. The submission of Sri Kalagi that since the Division Bench did not fix a particular date for final hearing of the appeal, it would not satisfy the requirement of Order XLI Rule 22(1) CPC, is not acceptable to us. We can take judicial notice of the fact that quite often courts direct the final hearing of the matters out of turn or in regular course without fixing a specific date for final hearing of cases. Once an order is made by the court for final hearing, the registry, in compliance with the direction and having regard to the workload of the court concerned, would post cases for final hearing. Therefore, it could not be said that the Division Bench did not direct final hearing of the appeal on 12.9.2001. The language implied by the Division Bench would go to show that the High Court wanted the registry to post the appeal for final hearing out of turn immediately after the records were received. It is quite apparent from the records that the cross objection was not filed either within one month from the date of fixing the date of the appeal or from the date the records of the lower court were received by the registry of this court. Therefore, the cross objectors' contention based on the provisions of Order XLI Rule 22(1) CPC is misconceived and untenable."

7. On the second point, the High Court was of the opinion that the explanation offered by the cross objectors for the delay of 404 days was vague and did not amount to sufficient cause so as to condone the delay. Consequently, the cross objections were dismissed.

8. Thus, the landowners (cross objectors) approached this court by filing Civil Appeal No. 5094 of 2005 against the impugned judgment of the High Court.

9. Both the appeals were heard together by this Court.

10. Before this court, the landowners in their appeal (Civil Appeal No. 5094 of 2005), raised the following contentions:

a. The limitation period of one month, prescribed under Order XLI Rule 22, would not begin to run till an actual date was fixed for hearing by the High Court and notice of it was served on the cross objectors, i.e. landowners.

b. Powers of an Appellate Court are very wide under Order XLI Rule 33 and relief could be granted to the landowners even under the said provision.

c. The landowners had shown sufficient cause for the delay.

d. Land of the landowners was compulsorily acquired and the court was duty bound to award just compensation to the landowners.

11. The State, in its appeal (Civil Appeal No. 5113 of 2005), contended as follows:

a. The High Court wrongly dismissed the appeal by relying on M.F.A. No. 3278 of 2001 since there was absence of evidence to show that the land

in question and the land covered by the said judgment were similar in all respects.

b. The High Court erred in awarding interest from the date of the award and the same was contrary to section 28 of the Act.

12. We have heard the parties and perused the material on record.

13. Rule 22(1) makes it clear that the limitation for filing a cross-objection is one month from the date of service of notice of date fixed for the hearing of appeal. The relevant provision read as follows:

> **22. Upon hearing respondent may object to decree as if he had preferred a separate appeal-** (1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree but may also state that the finding against him in the court below in respect of any issue ought to have been in his favour; and may also take any cross-objection to the decree which he could have taken by way of appeal provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.
>
> *Explanation*- A respondent aggrieved by a finding of the court in the judgment on which the decree appealed against is based may, under this rule, file cross-objection in respect of the decree in so far as it is based on that finding, notwithstanding that by

> reason of the decision of the court on any other finding which is sufficient for the decision of the suit, the decree, is, wholly or in part, in favour of that respondent.

14. Notice of this Court was drawn to the judgments of different High Courts where the provisions of Order XLI Rule 22 of CPC came up for consideration.

15. In the case of ***Rashida Begum (since deceased now represented through LRs)*** *v.* ***Union of India*** reported in 91 (2001) Delhi Law Times 664 (DB), the High Court while considering other judgments of the same High Court in ***Union of India*** *v.* ***Jhutter Singh*** [46 (1992) DLT 364] and **Union of India** v. **Shibu Ram Mittal** [1999 (49) DRJ 166] held that limitation for the purpose of filing cross objection under Order XLI, Rule 22 will run only after the appellate court has fixed the date of hearing of the appeal and notice thereof has been served on the respondent or his pleader. In coming to the said conclusion, the courts sought to make a distinction between the date of hearing of the appeal under Order XLI, Rule 11 and date for hearing of the appeal under Order XLI, Rule 12.

16. In **Shibu Ram Mittal** (supra), the Division Bench of the Delhi High Court specifically held as follows:

> "9. A bare perusal of the relevant provisions contained in Sub-Rule (1) of Rule 22 of Order XLI C.P.C makes it clear that the limitation would begin to run from the date of service of notice on the respondent or his pleader of the day fixed for hearing of the appeal. A notice informing the respondent that an appeal has been admitted against him and intimating a Farzi (tentative) date of hearing cannot be taken as the notice envisaged under this provision. The provision is specific- "notice of the date fixed for hearing the appeal". A Farzi date cannot be said to be the date fixed for hearing the appeal. Simply because a counsel appeared for the respondents does not displace the requirement of service of notice of actual date of hearing of appeal. The emphasis on the words "notice of date fixed for hearing an appeal" cannot be allowed to be diluted. The provision ensures that the appellant has advance notice before the hearing of the appeal about the cross objections by the respondent."

17. In the case of ***Karnataka State Road Transport Corporation*** *v.* ***R. Sethuram & Anr.***, reported in AIR 1996 Karnataka 380, the Karnataka High Court has taken a similar view by holding that the provisions of limitation are to be strictly construed and the rule does not speak of limitation from the date of knowledge of appeal, rather it speaks of limitation from the date of service of notice which would

indicate the date of fixation of hearing of appeal by the High Court.

18. However, a different view has been taken by the Rajasthan High Court in the case of ***The East India Hotels Ltd.*** *v.* ***Smt. Mahendra Kumari and another,*** reported in AIR 2008 Raj. 131. In the said case, the cross objector has put in his appearance before the High Court and a caveat had been lodged even before admission of the appeal. It also appears that the counsel was present and the appeal was admitted in his presence. Under those circumstances, the High Court held that notice prescribed under Order XLI, Rule 14 was not be essential to be served upon the respondents who participated in the proceedings.

19. De hors the facts of the present case, it will be appropriate for us to examine the legislative scheme as well as the principles governing the application of Order XLI and its various rules of the Code of Civil Procedure, 1908 (in short the 'Code'). The Code is a law relating to procedure and procedural law is always intended to facilitate the process of achieving the ends of justice. The Courts would normally favour the

interpretation which will achieve the said object. In the case of ***Sardar Amarjit Singh Kalra (dead) by LRs.,*** v. ***Pramod Gupta (Smt.) (dead) by LRs. and others*** [2003 (3) SCC 272], a Constitution Bench of this court held, "*laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice.*"

20. Similar views are also expressed by this Court in the case of ***The State of Punjab and another*** v. ***Shamlal Murari and another*** [(1976) 1 SCC 719] where the Court held as under: -

> "…We must always remember that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. Where the non-compliance, tho' procedural, will thwart fair hearing or prejudice doing of justice to parties, the rule is mandatory. But, grammar apart, if the breach can be corrected without injury to a just disposal of the case, we should not enthrone a

> regulatory requirement into a dominant desideratum. After all, courts are to do justice, not to wreck this end product on technicalities..."

21. Order XLI of the Code deals with appeals from original decrees. Rules 1 and 2 give the right to file an appeal against a decree in the manner and on the grounds specified therein. Rule 3 provides for rejection of the memorandum of appeal. Rule 3A which was added by the Amendment Act 104 of 1976 (w.e.f. February 1, 1977) provides for application for condonation of delay where the appeal is filed beyond the period of limitation. Rule 5 defines power of the Court to grant stay, conditional or otherwise, of the decree under appeal. Rule 11 is an important provision which requires the Appellate Court to fix a day for hearing the appellant or his pleader and, on hearing, it may even dismiss the appeal at that very stage. The expression 'after fixing a date for hearing the appellant' is of some significance. It obviously means that the Court should fix a date for hearing the appellant on the merits of the appeal. The hearing contemplated under Rule 11 is not an empty formality but denotes the substantive right of being heard,

available to the appellant(s). The Court has to apply its mind to the merits of the appeal and then alone the Court can pass an order of dismissal. In terms of Rule 12, unless the Appellate Court dismisses the appeal under Rule 11, it shall fix a day for hearing of the appeal. The hearing contemplated under Rule 12 is normally called 'final hearing'. Between the day of hearing fixed under Rule 11 and that fixed under Rule 12 there is a requirement to issue notice to the respondent(s). Besides this two other aspects need to be highlighted. First is that Rule 11A of the Code requires the Court to hear the appeal under Rule 11 as expeditiously as possible and to conclude such hearing within 60 days from the date on which the memorandum of appeal is filed. Second is that the fixation of the appeal for hearing under Rule 12 would be on such day which the court may fix with reference to the current business of the court. As is evident, the intention of the legislature is to ensure expeditious disposal of the appeals keeping in mind the heavy burden on the courts. The Appellate Court is vested with very wide powers including framing of additional issues, permitting additional evidence, remanding a case, pronouncing

judgments in accordance with law and even admitting an appeal for re-hearing where the appeal was dismissed in default. The provisions of Rule 22 which have been reproduced by us above gives right to a respondent to file cross-objections to the decree under appeal which he could have taken by way of an appeal. This right is available to the respondent provided he had filed such objections in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

22. A bare reading of the provisions of Rule 22 clearly show that they do not provide for any consequences, leave any adverse consequence, in the event the respondent-cross objector defaults in filing the cross objections within the statutory period of one month. On the contrary they provide that the cross objections can be filed within such further time as the Court may see fit to allow. The expression 'or within such further time as the court may see fit to allow' clearly shows that wide judicial discretion is vested in the courts to permit the filing of the cross-objections even after the expiry of

30 days or for that matter any period which, in the facts and circumstances of the case, is found to be just and proper by the Court.

23. Rule 22 is not only silent on the consequences flowing from such default from filing appeal within one month, from the period fixed hereunder, but it even clothes the Court with power to take on record the cross-objections even after the expiry of the said period. Thus, right of the cross-objector is not taken away in absolute terms in case of such default. The Courts exercise this power vested in them by virtue of specific language of Rule 22 itself and thus, its provisions must receive a liberal construction.

24. *Maxwell on The Interpretation of Statutes*, (12th Edn., by P. St. J. Langan), states as follows:-

> "A reference to the power of a court being exercisable "at any time thereafter" will receive a literal construction {*L. v. L.* [1962] P.101}. But where something is to be done "forthwith" by some person or body, a court will not require instantaneous compliance with the statutory requirement [*Sameen v. Abeyewickrema (1963) A.C. 597*] " 'Forthwith,' " Harman L.J. has said, "is not a precise time and, provided that no harm is done, 'forthwith' means any

> reasonable time thereafter," and so may, according to the circumstances, involve action within days or years [*Hillingdon London Borough Council v. Cutler (1968) 1 Q.B.* 124]"

25. Such provisions should be construed on their plain meaning and it may not be necessary for the Court to bring into service other principles of statutory interpretation. However, the maxim *De minimis non curat lex* shall apply to such statutory provisions.

26. *Bennion on Statutory Interpretation* (5th Edn., 2008, at page 55) states that

> "W*here discretion exists* The Court will be more willing to hold that a statutory requirement is merely directory if any breach of the requirement is necessarily followed by an opportunity to exercise some judicial or official discretion in a way which can adequately compensate for that breach."

27. In the case of ***Kailash*** v. ***Nanhku & others***, [(2005) 4 SCC 480], a Bench of three Judges of this Court while interpreting the provisions of Order VIII Rule 1 of the Code, which has more stringent language and provides no such

discretion to extend the limitation as provided to the Courts in Order XLI Rule 22, had observed that despite the use of such language in the provisions of Order VIII Rule 1 of the Code, the judicial discretion to extend the limitation contained therein has been a matter of legal scrutiny for quite some time but now the law is well settled that in special circumstances, the Court can even extend the time beyond the 90 days as specified therein and held as under:

> "The object is to expedite the hearing and not to scuttle the same. The process of justice may be speeded up and hurried but the fairness which is a basic element of justice cannot be permitted to be buried... In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice."

28. Thus, it is an undisputed principle of law that the procedural laws are primarily intended to achieve the ends of justice and, normally, not to shut the doors of justice for the

parties at the very threshold. We have already noticed that there is no indefeasible divestment of right of the cross-objector in case of a delay and his rights to file cross-objections are protected even at a belated stage by the discretion vested in the Courts. But at the same time, the Court cannot lose sight of the fact that meaning of 'ends of justice' essentially refers to justice for all the parties involved in the litigation. It will be unfair to give an interpretation to a provision to vest a party with a right at the cost of the other, particularly, when statutory provisions do not so specifically or even impliedly provide for the same. The provisions of Order XLI Rule 22 of the Code are akin to the provisions of the Limitation Act, 1963, i.e. when such provisions bar a remedy, by efflux of time, to one party, it gives consequential benefit to the opposite party. Before such vested benefit can be taken away, the Court has to strike a balance between respective rights of the parties on the plain reading of the statutory provision to meet the ends of justice. If a cross-objector fails to file cross-objections within the stipulated time, then his right to file cross-objections is taken away only in a limited sense. To that extent a benefit is

granted to the other party, i.e. the appellant, of having their appeal heard without such cross-objections. Still, however, if the Court is of the opinion that it is just and proper to permit the filing of cross-objection even after the expiry of the statutory limitation of one month, it is certainly vested with power to grant the same, but of course, only after hearing the other party. That is how the rights of the parties are to be balanced in consonance with the scheme of Order XLI Rule 22 of the Code.

29. In Justice G.P. Singh's *Principles of Statutory Interpretation* (11th Edn., 2008), the learned author while referring to judgments of different Courts states (at page 134) that procedural laws regulating proceedings in court are to be construed as to render justice wherever reasonably possible and to avoid injustice from a mistake of court. He further states (at pages 135 and 136) that: "Consideration of hardship, injustice or absurdity as avoiding a particular construction is a rule which must be applied with great care. "The argument *ab inconvenienti*", said LORD MOULTON, "is one which requires to be used with great caution"."

30. The learned author while referring to the judgments of this Court in the case of ***Sangram Singh*** v. ***Election Tribunal, Kotah*** [(1955) 2 SCR 1] recorded (at page 384) that "while considering the non-compliance with a procedural requirement, it has to be kept in view that such a requirement is designed to facilitate justice and further its ends and therefore, if the consequence of non-compliance is not provided, the requirement may be held to be directory..."

31. This Court in the case of ***Byram Pestonji Gariwala*** v. ***Union Bank of India & others*** [(1992) 1 SCC 31] referred to *Crawford's Statutory Construction* (para 254) to say that: "Statutes relating to remedies and procedure must receive a liberal construction 'especially so as to secure a more effective, a speedier, a simpler, and a less expensive administration of law'."

32. The consistent view taken by this Court is that the provisions of a statute are normally construed to achieve the ends of justice, advance the interest of public and to avoid multiplicity of litigation. In the case of ***Dondapati Narayana Reddy*** v. ***Duggireddy Venkatanarayana Reddy & others***

[2001 (8) SCC 115], this Court expressed similar view in relation to amendment of pleadings. The principles stated in this judgment may aptly be applied generally in relation to the interpretation of provisions of the Code. Strict construction of a procedural law is called for where there is complete extinguishment of rights, as opposed to the cases where discretion is vested in the courts to balance the equities between the parties to meet the ends of justice which would invite liberal construction. For example, under Order XLI Rule 22 of the Code, cross objections can be filed at any subsequent time, even after expiry of statutory period of one month, as may be allowed by the Court. Thus, it is evidently clear that there is no complete or indefeasible extinguishment of right to file cross objections after the expiry of statutory period of limitation provided under the said provision. Cross-objections within the scheme of Order XLI Rule 22 of the Code are to be treated as separate appeal and must be disposed of on same principles in accordance with the provisions of Order XLI of the Code.

33. This Court in the case of ***Sangram Singh*** (supra) while dealing with the principles of interpretation of provisions of the

Code, laid down three principles which have to be kept in mind while interpreting any portion of the Code and held as under:

> "31. In our opinion, Wallace, J., and the other judges who adopt the same line of thought, are right. As we have already observed, our laws of procedure are based on the principle that, as far as possible, no proceeding in a Court of law should be conducted to the detriment of a person in his absence. There are of course exceptions, and this is one of them. When the defendant has been served and has been afforded an opportunity of appearing, then, if he does not appear, the Court may proceed in his absence. But, be it noted, the Court is not directed to make an ex parte order. Of course the fact that it is proceedings ex parte will be recorded in the minutes of its proceedings but that is merely a statement of the fact and is not an order made against the defendant in the sense of an ex parte decree or other ex parte order which the Court is authorised to make. All that Rule 6(1)(a) does is to remove a bar and no more. It merely authorises the Court to do that which it could not have done without this authority, namely to proceed in the absence of one of the parties. The contrast in language between rules 7 and 13 emphasises this.

34. This Court has reiterated the above dictum with approval in the case of ***Kailash*** (supra). The above-stated principles

require the Court to give precedence to the right of a party to put forward its case. In other words unnecessary and avoidable technical impediments should not be introduced by virtue of interpretative process. At the same time any irreparable loss should not be caused to a party on whom the right might have vested as a result of default of other party. Furthermore, the courts have to keep in mind the realities of explosion of litigation because of which the Court normally takes time to dispose of appeals. It would be a travesty of justice, if after passage of substantial time when the appeal is taken up for final hearing a cross-objector who was heard and participated in the hearing at the admission stage itself, claims that the limitation period for him to file his cross-objection will commence only from the date of service of a fresh notice on him or his pleader, in terms of Order XLI Rule 22 of the Code. Such an interpretation would jeopardize the very purpose and object of the statute and prejudicially affect the administration of justice as the appeal which has come up for final hearing and disposal would again be lost in the bundle of pending cases on this pretext. It is trite that justice must not only be

done but must also appear to have been done to all the parties to a *lis* before the Court.

35. Procedural laws, like the Code, are intended to control and regulate the procedure of judicial proceedings to achieve the objects of justice and expeditious disposal of cases. The provisions of procedural law which do not provide for penal consequences in default of their compliance should normally be construed as directory in nature and should receive liberal construction. The Court should always keep in mind the object of the statute and adopt an interpretation which would further such cause in light of attendant circumstances.

36. To put it simply, the procedural law must act as a linchpin to keep the wheel of expeditious and effective determination of dispute moving in its place. The procedural checks must achieve its end object of just, fair and expeditious justice to parties without seriously prejudicing the rights of any of them.

37. Now, we would proceed to examine the language of Order XLI Rule 22 of the Code. The stipulated period of one month is to commence from the date of service, on the concerned party

or his pleader, of notice of the day fixed for hearing the appeal. A cross-objection may also be filed within such further time as the Appellate Court may see fit to allow.

Date of hearing

38. First and foremost, we must explain what is meant by 'hearing the appeal'. Hearing of the appeal can be classified in two different stages; one at the admission stage and the other at the final stage. Date of hearing has normally been defined as the date on which the court applies its mind to the merits of the case. If the appeal is heard *ex-parte* for admission under Order XLI Rule 11 of the Code, the Court could dismiss it at that very stage or admit the same for regular hearing. Such appeal could be heard in the presence of the other party at the admission stage itself, particularly, in cases where a caveat is lodged by the respondent to the appeal.

39. The concept of 'hearing by the Court', in fact, has common application both under Civil and Criminal jurisprudence. Even in a criminal matter the hearing of the case is said to be commenced by the Court only when it applies

its mind to frame a charge etc. Similarly, under civil law also it is only when the Court actually applies its mind to averments made by party/parties, it can be considered as hearing of the case. This Court in the case of ***Siraj Ahmad Siddiqui*** v. ***Prem Nath Kapoor*** [1993 (4) SCC 406] while dealing with the provisions of the U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972, referring to the concept of first hearing, held as under:

> "13. The date of first hearing of a suit under the Code is ordinarily understood to be the date on which the court proposes to apply its mind to the contentions in the pleadings of the parties to the suit and in the documents filed by them for the purpose of framing the issues to be decided in the suit. ....We are of the view, therefore, that the date of first hearing as defined in the said Act is the date on which the court proposes to apply its mind to determine the points in controversy between the parties to the suit and to frame issues, if necessary."

40. The date of hearing must not be confused with the expression 'step in the proceedings'. These are two different concepts of procedural law and have different connotation and

application. What may be a 'step in the proceeding', essentially, may not mean a 'hearing' by the Court. Necessary ingredients of 'hearing' thus are application of mind by the court and address by the party to the suits.

41. Now we would proceed to discuss the purpose of giving one month's time and notice to the respondent to file cross-objection. The primary intention is, obviously, to give him a reasonable opportunity to file cross-objections in the appeal filed by the other party. It may be noticed that filing of cross-objections is not an exclusive but, an alternate remedy which a party can avail as alternative of filing a separate appeal in its own right.

42. The language of Order XLI Rule 22 of the Code fixes the period of limitation to be computed from the date of service of notice of hearing of the appeal upon the respondent/cross-objector and within one month of such date he has to file cross objections. Thus, the crucial point of time is the date on which the notice of hearing of the appeal is served. This could be a notice for actual date of hearing or otherwise.

43. There appears to be a dual purpose emerging from the language of Order XLI Rule 22 of the Code. Firstly, to grant time of one month or even such further time as the Appellate Court may see fit to allow; and secondly, to put the party or his pleader at notice that the appeal has been admitted and is fixed for hearing and the Court is going to pronounce upon the rights and contention of the parties on the merits of the appeal. Once such notice is served, the period of limitation under Order XLI Rule 22 of the Code will obviously start running from that date. If both these purposes are achieved any time prior to the service of a fresh notice then it would be an exercise in futility to issue a separate notice which is bound to result in inordinate delay in disposal of appeals which, in turn, would be prejudicial to the appellants. A law of procedure should always be construed to eliminate both these possibilities.

44. A Bench of three Judges of this Court in the case of ***Salem Advocate Bar Association, Tamil Nadu*** v. ***Union of India*** [(2003) 1 SCC 49] while examining the constitutional validity of various amended provisions of the Code, (amended or introduced by Amendment Act 46 of 1999 and Amendment

Act 22 of 2002) discussed requirements of Section 27 of the Code which relates to issuance of summons to the defendants to appear and answer the claim. Such summons are required to be issued within one month from the date of institution of the suit. The Court held that once steps in furtherance to issuance of summons within one month are taken by the plaintiff, then even if the summons are not served within that period, it will be substantial compliance of the provisions of Section 27 of the Code. Following dictum of the court can be usefully noticed at this stage.

> "7. It was submitted by Mr. Vaidyanathan that the words "on such day not beyond thirty days from the date of the institution of the suit" seem to indicate that the summons must be served within thirty days of the date of the institution of the suit. In our opinion, the said provisions read as a whole will not be susceptible to that meaning. The words added by amendment, it appears, fix outer time frame, by providing that steps must be taken within thirty days from the date of the institution of the suit, to issue summons. In other words, if the suit is instituted, for example, on 1st January, 2002, then the correct addresses of the defendants and the process fee must be filed in the Court within thirty days so that summons be issued by the Court not beyond thirty days from the date of the

> institution of the suit. The object is to avoid long delay in issue of summons for want of steps by the plaintiff. It is quite evident that if all that is required to be done by a party, has been performed within the period of thirty days, then no fault can be attributed to the party. If for any reason, the court is not in a position or is unable to or does not issue summons within thirty days, there will, in our opinion, be compliance with the provisions of Section 27 once within thirty days of the issue of the summons the party concerned has taken steps to file the process fee along with completing the other formalities which are required to enable the court to issue the summons."

45. The learned counsel for the appellant also relied upon the judgment of this court in the case of ***Sushil Kumar Sabharwal*** v. ***Gurpreet Singh & others*** [2002 (5) SCC 377] to contend that knowledge of appeal cannot be equated to notice of date of hearing. There is no doubt that this Court in para 11 of that judgment made a distinction between the knowledge of the date of hearing and the knowledge of pendency of suit. Referring to the evidence in that case, this Court held that the version of the defendant should have been believed by the courts concerned because he was denied a reasonable opportunity to present his case before the Court. In

the present case this distinction is hardly of any help to the counsel for the appellant inasmuch as they have appeared and argued at the admission stage of the appeal which was admitted in their presence and an order was also passed for final hearing.

46. Adverting to the facts of the present case, as already noticed, the appellants had also filed caveat in the appeal. In law, the rights of a caveator are different from that of cross-objectors per se. In terms of Section 148A of the Code, a caveator has a right to be heard mandatorily for the purposes of passing of an interlocutory order. The law contemplates that a caveator is to be heard by the court before any interim order can be passed against him. But in the present case when the appeal was listed for hearing at the admission stage itself, the appellants had appeared and argued the matter not only in relation to grant of an interim order but also on the merits of the appeal. The High Court, on 12th of September, 2001, after applying its mind to the merits of the case had passed the following order:

"Admit.

> Heard the counsel for the appellant and respondent.
>
> Interim stay as prayed, in I.A. II/01 subject to the appellant depositing 50% of amount awarded with all statutory benefits etc., before the reference court, within eight weeks.
>
> Respondents permitted to withdraw 25% of the amount. Remaining 25% amount shall be kept in fixed deposit for the term of six months.
>
> Call for records.
>
> List for hearing immediately after the records are received with connected cases."

47. As is evident from the above order, the records were required to be called from the lower courts and thereafter, the appeal was to be heard finally. Though the court had not actually fixed any particular date, it had directed the appeal to be listed for hearing. Then again, vide its order dated 25th January, 2002, the High Court had directed the appellant(s) to move an application for early hearing of the appeal. On all these occasions, the appellant(s), or his pleader, was present and participated in the proceedings before the Court. Thus, the appellant(s) not only had the knowledge of pendency of the

appeal but also had notice of fixing of hearing of the appeal. Even on 18th September, 2003, the High Court took notice of the cross-objection and counsel for the appellant(s)/cross objector was directed to furnish copies of the cross-objection within three weeks to the Additional Advocate General. After the records from lower courts were received, the matter was heard and judgment impugned in the present appeal was pronounced by the High Court on 22nd October, 2003.

48. In these circumstances, it is difficult for this Court to hold that the period of 30 days, as contemplated under Order XLI Rule 22 of the Code, never commenced even till final disposal of the appeal. Such an interpretation will frustrate the very purpose of the Code and would be contrary to the legislative intent. We may also notice that the appeal was finally heard without fixing any particular date and in presence of the appellant(s). Under such circumstances, the requirement of fixing a final date separately must be deemed to be waived by the parties.

49. It may be noticed that somewhat divergent views have been taken by different High Courts while interpreting the

provisions of Order XLI Rule 22 of the Code. The High Court of Rajasthan in the case of ***The East India Hotels Limited*** v. ***Smt. Mahendra Kumari*** [AIR 2008 Raj. 131] took the view that respondent cross-objector had put in appearance through his counsel as a caveator and the appeal was admitted on 28th March, 2006 in his presence and participation. As the appeal was admitted in their presence, the Rajasthan High Court opined that no notice thereafter was required to be served on the caveator for the purposes of Order XLI Rule 22 and period of limitation of one month would start from 28th March, 2006 (i.e. the date of admission) for filing of cross-objection. The filing of the cross objection in that case was delayed by 507 days. On the issue of condonation the High Court felt that the delay could not be condoned in the facts and circumstances of the case and thus dismissed the cross-objections as barred by time. It also needs to be noticed that the judgments of the Delhi High Court in the case of **Jhutter Singh** (supra) and **Rashida Begum** (supra) were also examined by the Rajasthan High Court and are distinguished on facts as in those cases at no point of time the objector or respondent had participated.

50. The Rajasthan High Court also relied upon the judgment of the High Court of Andhra Pradesh in the case of ***Mutyam Agaiah*** v. ***Special Deputy Collector, (NTPC) L.A. Unit.*** [2002 (2) ALT 715] wherein that High Court while accepting the submissions of the respondent had held that:

> "…We have to understand the issue of notices in the proper perspective. The notices are meant for giving knowledge to the other side regarding the judicial proceedings filed by the appellant. It is not every time necessary that the notices should be in writing in the prescribed form. If the knowledge of filing of the appeals can be proved, then it is sufficient notice in law. The respondent-cross objector engaged an Advocate, who filed vakalatnama and he defended the cause of the claimant in the Original Petition. It means that the cross-objector had sufficient knowledge regarding the appeals. Nothing prevented for the respondent-cross-objector for filing the objections……"

51. In the case of ***Rashida Begum*** (supra) the Delhi High Court had noticed that limitation for filing the cross objection would start from the date of service of notice of hearing of the appeal. A notice containing only the date of hearing of the stay

application but not the appeal would not be 'notice' as contemplated under Order XLI Rule 22 of the Code.

52. The view taken by the Delhi High Court is more in line with the intent of the provisions of Order XLI Rule 22 while the decision of the Rajasthan High Court was on its own facts and cannot be treated to be stating a preposition of law. The application of law would always depend upon the facts and circumstances of a given case and what is the true and correct construction of Order XLI Rule 22 we shall shortly proceed to state.

53. In the case of ***Pralhad & others*** v. ***State of Maharashtra and another*** [2010 (10) SCC 458], a Bench of this Court to which one of us was a member was dealing with the object and scope of the powers vested in the Court in terms of Order XLI Rule 33 of the Code. This Court observed that Rule 33 empowers the Appellate Court to pass any decree or make any order which ought to have been passed or made and also to pass or make such further decree or order as the case may require. The Appellate Court can exercise this power notwithstanding that appeal is only with respect to a part of

decree. This power may be exercised in favour of any of the respondents or the parties although such respondent or party may not have filed any appeal or objections. In other words, the Court has been vested with the power to pass such orders which ought to have been passed in the facts of a given case. While dealing with this issue, this Court held as under:

> "18. The provision of Order XLI Rule 33 CPC is clearly an enabling provision, whereby the appellate court is empowered to pass any decree or make any order which ought to have been passed or made, and to pass or make such further or other decree or order as the case may require. Therefore, the power is very wide and in this enabling provision, the crucial words are that the appellate court is empowered to pass any order which *ought* to have been made as the *case* may require. The expression "order ought to have been made" would obviously mean an order which justice of the case requires to be made. This is made clear from the expression used in the said rule by saying "the court may pass such further or other order as the *case* may require". This expression "case" would mean the justice of the case. Of course, this power cannot be exercised ignoring a legal interdict or a prohibition clamped by law."

54. The Court clearly held that the expression "order ought to have been made" obviously means an order which justice demands in facts of the case. The dictum of law stated by this

Court clearly demonstrates that justice between the parties to a case is the essence of procedural law and unless the statute expressly prohibits or put an embargo, the Courts would interpret the procedural law so as to achieve the ends of justice.

55. If we examine the provisions of Order XLI Rule 22 of the Code in its correct perspective and in light of the above stated principles then the period of limitation of one month stated therein would commence from the service of notice of the day of hearing of appeal on the respondent in that appeal. The hearing contemplated under Order XLI Rule 22 of the Code normally is the final hearing of the appeal but this rule is not without any exception. The exception could be where a party respondent appears at the time of admission of the appeal, as a caveator or otherwise and argues the appeal on merits as well as while passing of interim orders and the Court has admitted the appeal in the presence of that party and directs the appeal to be heard finally on a future date actual or otherwise, then it has to be taken as complete compliance of the provisions of Order XLI Rule 22 of the Code and thereafter, the appellant

who has appeared himself or through his pleader cannot claim that period mentioned under the said provision of the Code would commence only when the respondent is served with a fresh notice of hearing of the appeal in the required format. If this argument is accepted it would amount to travesty of justice and inevitably result in delay while causing serious prejudice to the interest of the parties and administration of justice. Such interpretation would run contra to the legislative intent behind the provisions of Order XLI Rule 11 of the Code which explicitly contemplate that an appeal shall be heard expeditiously and disposed of as far as possible within 60 days at the admission stage. All the provisions of Order XLI of the Code have to be read conjunctively to give Order XLI Rule 22 its true and purposive meaning. Having analytically examined the provisions of Order XLI Rule 22, we may now state the principles for its applications as follow:

(a) Respondent in an appeal is entitled to receive a notice of hearing of the appeal as contemplated under Order XLI Rule 22 of the Code;

(b) The limitation of one month for filing the cross-objection as provided under Order XLI Rule 22 of the Code shall commence from the date of service of notice on him or his pleader of the day fixed for hearing the appeal.

(c) Where a respondent in the appeal is a caveator or otherwise puts in appearance himself and argues the appeal on merits including for the purposes of interim order and the appeal is ordered to be heard finally on a date fixed subsequently or otherwise, in presence of the said respondent/caveator, it shall be deemed to be service of notice within the meaning of Order XLI Rule 22. In other words the limitation of one month shall start from that date.

56. Needless to notice that the cross-objections are required to be filed within the period of one month from the date of service of such notice or within such further time as the Appellate Court may see fit to allow depending upon the facts and circumstances of the given case.

57. Since the provisions of Order XLI Rule 22 of the Code itself provide for extension of time, the Courts would normally be inclined to condone the delay in the interest of justice

unless and until the cross-objector is unable to furnish a reasonable or sufficient cause for seeking the leave of the Court to file cross-objections beyond the statutory period of one month.

58. Examining the case in hand within the legal framework afore-stated, it has to be held that the case falls squarely within the principles formulated in clause (c). The appellant(s) herein were caveators before the High Court and they were heard not only while passing of interim orders but the appeal itself was admitted in their presence. Further, the Court directed that the records from lower court be called and after receipt of such record the appeal was directed to be listed for final disposal. Thus, the cross-objector not merely had the knowledge of pendency of the appeal and order of the High Court for its final disposal but he actually participated at all the stages of the proceedings before that Court, i.e. at the stage of admission of appeal, passing of interim orders and variation thereof and at the stage of consideration of application of the cross-objector, moved for early hearing of the appeal and, in fact, the appeal had been directed to be heard finally in his

presence. Thus, in these circumstances, one month of prescribed period in terms of Order XLI Rule 22 of the Code shall commence from 12th September, 2001, i.e. the date on which the High Court ordered that the appeal may be listed for hearing.

59. As the period for filing the cross objection had long expired, the application for condonation of delay was filed. It is interesting to note that the appellants in this Court themselves admitted that they had received the notice of the appeal through their counsel and the period of one month came to an end on 12th October, 2001. This submission has been made in paragraph 3 of the affidavit annexed to the application filed by the cross-objector before the High Court under Section 5 of the Limitation Act, 1963, along with the cross-objections, praying for condonation of delay and leave of that Court to file their cross-objections beyond the statutory period of one month as provided in Order XLI Rule 22 of the Code.

60. Delay was sought to be condoned on the ground that the appellants have appeared before the Court and despite receipt of the notice of final hearing they could not file cross-objections

within the prescribed time as they were out of their native place and have gone to Karwar to earn their livelihood and they could not therefore receive the letter and that too within one month. Later, the appellant fell down and his leg was twisted and because of swelling and pain he was not able to drive and consult his counsel in Bangalore. It is only after he got well, he met his counsel and filed the cross-objections on 19th November, 2002, i.e. after a delay of 404 days. The High Court did not find any merit in the reasons shown for condonation of delay and dismissed the said application. We have already noticed that Order XLI Rule 22 of the Code itself provides a discretion to the Appellate Court to grant further time to the cross-objector for the purposes of filing cross-objections provided the cross-objector shows sufficient or reasonable cause for his inability to file the cross-objections within the stipulated period of one month from the date of receipt of the notice of hearing of appeal. No specific reasons have been recorded by the High Court in the impugned judgment as to why the said averments did not find favour and was disbelieved. There is nothing on record to rebut these

averments made by the cross-objector.

61. In the peculiar facts and circumstances of this case, to do complete justice between the parties, we allow the landowner's appeal by setting aside the order of the High Court, limited to the extent that the appellants herein have been able to show sufficient/reasonable cause for grant of further time to file the cross objections beyond the period of one month in terms of Order XLI Rule 22 of the Code. This approach could even be adopted without the aid of Section 5 of the Limitation Act, 1963, which provisions may also find application to such matters. Be that as it may, we do not consider it necessary to delve on this issue in any further detail. Suffice it to say that the appellants were entitled to file cross-objections by grant of further time before the High Court. Delay in filing the cross-objections is thus condoned.

62. The High Court has therefore to hear afresh the appeal of the State as also the cross objections of the landowners. In that view of the matter, there is no need of passing a separate order on the appeal filed by the State before this Court and the same is thus disposed of.

63. Since considerable time has elapsed, we request the High Court to dispose of the appeal and the cross objections as early as possible, preferably within a period of three months from the date of production of this order before the High Court.

64. Parties to bear their own costs.

.....J.
(ASOK KUMAR GANGULY)

.....J.
(SWATANTER KUMAR)

New Delhi
May 10, 2011