* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **Order on reference in CS (OS) No. 1416/2009, arising from IAs No.3856/2016 (of D-2 for transfer of suit) & 3857/2016 (of plaintiff for enhancement of pecuniary jurisdiction)**

% **Reserved on : 01st June, 2016**
Pronounced on :6th September, 2016

SUBHASHINI MALIK ..... Plaintiff
Through: Mr. Samar Bansal, Mr. Vinayak Mehrotra and Mr. Adit S. Pujari, Advs.

Versus

S.K. GANDHI & ORS … ....Defendants
Through: Mr. Niraj Kumar Mishra with defendant in person.
Mr. Shobhan Mahanti and Mr. Sanjay Baranawal, Advs. for D-2 with D-2 in person.

CORAM:-
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MR. JUSTICE R.K. GAUBA

RAJIV SAHAI ENDLAW, J.

1. Hon'ble the Chief Justice has constituted this Bench pursuant to the order dated 27th April, 2016 of the learned Single Judge of this Court in I.A. No.3857/2016 supra of the plaintiff for amendment of the plaint to enhance the valuation of the suit for the purposes of jurisdiction. The relevant paras of the order dated 27th April, 2016 (reported as 2016 SCC Online Del 2497) are reproduced herein below:

*"6. Accordingly, let the present file be placed before Hon'ble the Chief Justice for constituting a larger Bench as regards whether the judgment in **Mahesh Gupta's** case **(supra)** has rightly been interpreted and applied to the ratio of the judgment in **Kamal Sharma's** case **(supra)** especially the last line of para 7 of **Mahesh Gupta's** case **(supra)**. In my respectful opinion, the larger Bench may also decide the issue as to whether a court which does not have pecuniary jurisdiction to entertain the suit, such court can entertain an application to amend the plaint to bring the suit plaint within the pecuniary jurisdiction of the court.*

7. After obtaining the appropriate orders of Hon'ble the Chief Justice, list the matter before the larger Bench for consideration of the issue in question on 26th May, 2016.

8. I note that on the decision by the larger bench as to whether this Court cannot or can entertain and allow the IA No.3857/2016 filed by the plaintiff under Order VI Rule 17 of the Code of Civil Procedure, 1908 for enhancement of pecuniary jurisdiction, the application of the defendant no.2 in IA No.3856/2016 would also stand decided and which is for transfer of the suit to the transferee court having pecuniary jurisdiction."

The reference to ***Mahesh Gupta's*** case is to ***Mahesh Gupta Vs. Ranjit Singh*** AIR 2010 Delhi 4 (DB) and the reference to ***Kamal Sharma's*** case is to ***Kamal Sharma Vs. Blue Coast Infrastructure Development Pvt. Ltd.*** 2016 SCC Online Delhi 2261.

2. The facts relating to the suit, for the purpose of this Reference, are that the plaintiff, on or about 6th August, 2009 instituted this suit for the reliefs of (a) declaration that she is the owner and the person entitled to possession of the garage on the right side drive-way of property No.C-63, Friends Colony (East), New Delhi; (b) mandatory injunction directing the defendants No.1 to 3 to remove their lock from the said

garage; (c) permanent injunction restraining the defendants No.1 to 3 from interfering in the plaintiff's use and enjoyment of the said garage; (d) declaration that the plaintiff is entitled to the area on the portions above the second floor in the suit property that had been encroached upon by the defendants; (e) mandatory injunction directing the defendants to remove and demolish the unauthorised construction and encroachment on the rear side of the second floor of the property; (f) recovery of *mesne* profits of Rs.4,80,000/- and future *mesne* profits; and, (g) recovery of damages in the sum of Rs.15 lakhs. The total valuation of the suit for the purpose of jurisdiction for all the reliefs claimed in the plaint was put at Rs.47,95,530/- and court fees of Rs.56,231/- was paid on the plaint.

3. As per Section 5(2) of the Delhi High Court Act, 1966 (HC Act) as it stood at the time of institution of this suit in the year 2009, this Court, in respect of the territories for the time being included in the Union Territory of Delhi also had ordinary original civil jurisdiction in every suit, the value of which exceeded Rs.20 lakhs. Accordingly, this suit having total valuation exceeding Rs.20 lakhs was instituted in this Court.

4. The defendants filed a written statement, in which qua the valuation of the suit for the purposes of jurisdiction it was *inter alia* pleaded that the plaintiff had not paid proper court fees and had invoked the pecuniary jurisdiction of this Court by joining the valuation for different reliefs and when the valuation of none of the reliefs was above Rs.20 lakhs,

being the minimum pecuniary jurisdiction of this Court and thus the plaint was liable to be rejected.

5. No issues have been framed in the suit as yet.

6. It appears that another suit being CS(OS) No.3241/2011 filed by the defendant No.2 Smt. Geeta Gandhi with respect to the same property was also pending consideration in this Court. Vide order dated 23rd February, 2014 in IA No.1261/2012 in CS(OS) No.3241/2011, on the no objection of the plaintiff herein, the two suits were consolidated for the purposes of trial and decision.

7. However, vide the Delhi High Court (Amendment) Act, 2015 (Amendment Act) which came into force on 26th October, 2015 the words "rupees twenty lacs" in Section 5(2) of the HC Act were substituted with the word "rupees two crores", thereby providing for ordinary original civil jurisdiction of this Court in suits the value whereof exceeded Rs.2 crores. Thus, w.e.f. 26th October, 2015, filing/ institution in this Court of suits, valuation whereof was upto Rs.2 crores stopped. With respect to the pending suits, Section 4 of the Amendment Act provided as under:

> *"4. The Chief Justice of the High Court of Delhi may transfer any suit or other proceedings which is or are pending in the High Court immediately before the commencement of this Act to such subordinate court in the National Capital Territory of Delhi as would have jurisdiction to entertain such suit or proceedings had such suit or proceedings been instituted or filed for the first time after such commencement."*

8. In exercise of the aforesaid power, Hon'ble the Chief Justice, on 24th November, 2015 passed the following Office Order:

> *"**HIGH COURT OF DELHI, NEW DELHI***
> ***OFFICE ORDER***
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> *Notification No.27187/DHC/Orgl. dated 24-11-2015 in exercise of powers conferred by Section 4 of the Delhi High Court (Amendment) Act, 2015 (Act 23 of 2015), which came into force with effect from 26.10.2015 vide Notification No.F.No.L-19015/04/2012-Jus dated 26.10.2015 issued by the Government of India, Ministry of Law, Justice and Company Affairs, published in Gazette of India Extraordinary, Part II, Section 3 sub-section (ii), Hon'ble the Chief Justice has been pleased to order as under:-*
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> *(i) All suits or other proceedings pending in the Delhi High Court on the Original Side up to the value of rupees one crore, excepting those cases in which final judgments have been reserved, be transferred to the jurisdictional subordinate courts.*
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> *(ii) All suits or other proceedings the value of which exceeds rupees one crore but does not exceed rupees two crores, **other than those relating to commercial disputes the specified value of which is not less than rupees one crore (as defined in The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Ordinance, 2015)**, pending in the Delhi High Court on the Original Side, excepting those cases in which final judgments have been reserved, be transferred to the jurisdictional subordinate courts.*
>
> *The transfer of cases to the subordinate courts shall commence from today, i.e. 24.11.2015.*
>
> *Sd.*
> *Registrar General*
> *24.11.2015"*

9. This suit, before the date of the aforesaid Office Order, was listed on 29th October, 2015 when it was adjourned to 12th January, 2016. On 12th January, 2016, though in accordance with the aforesaid Office

Order this suit ought to have been transferred to the Subordinate Courts but was not so transferred because transfer of CS(OS) No.3241/2011 with which it had been consolidated had been deferred. Accordingly, both suits were ordered to be listed on 23rd March, 2016.

10. However, CS(OS) No.3241/2011, valuation whereof also was of less than Rs.2 crores, was transferred to the Subordinate Courts on 8th February, 2016 itself.

11. The plaintiff, on 19th March, 2016 filed IA No.3857/2016 for amendment of the plaint pleading that it had come to her knowledge that the value of the subject property was in fact higher than that reflected in the plaint as filed and particularly when the value of the plaintiff's half of the terrace above second floor of the property had increased substantially over the past few years due to an increase in the market rates in the locality where the property is situated and in the light thereof, she was seeking to amend the plaint to enhance the valuation of the relief of declaration qua the terrace from that earlier pleaded of Rs.8,15,000/- to Rs.1,70,00,000/- and thereby increasing the total valuation of the suit for the purposes of jurisdiction to Rs.2,00,80,530/- and undertaking to pay the deficient court fees.

12. The defendant No.2 on the other hand, filed IA No.3856/2016 supra for transfer of this suit, in accordance with the Office Order supra, to Subordinate Court.

13. Both applications came up before the learned Joint Registrar on 23rd March, 2016 when they were ordered to be placed before the Hon'ble

Judge and on which date the order leading to constitution of this Bench, as aforesaid was passed.

14. We now proceed to notice ***Mahesh Gupta*** and ***Kamal Sharma***, finding inconsistency wherein reference to this 'larger Bench' has been made. Division Bench of this Court in ***Mahesh Gupta*** held that once the Court does not have pecuniary jurisdiction to try the matter then it cannot entertain an application and pass the orders allowing an application for amendment of a plaint to bring the suit plaint within the pecuniary jurisdiction of this Court. However a learned Single Judge of this Court in ***Kamal Sharma*** supra, after noticing ***Mahesh Gupta*** supra and relying on ***Lakha Ram Sharma Vs. Balar Marketing Pvt. Ltd.*** (2008) 17 SCC 671 and ***Mount Mary Enterprises Vs. Jivratna Medi Treat Pvt. Ltd.*** (2015) 4 SCC 182, entertained and allowed the application for amendment of the plaint to bring the suit within the pecuniary jurisdiction of this Court. Holding that the single judge in ***Kamal Sharma*** was bound by judgment of Division Bench in ***Mahesh Gupta***, the reference order dated 27.04.2016 has been made.

15. We may in this respect notice that another leaned Single Judge of this Court in ***Sharada Nayak Vs. V.K. Shunglu*** 2016 SCC Online Del 2498 has also since held that the application for amendment of plaint to bring the suit within the minimum pecuniary jurisdiction of this Court can be entertained. FAO(OS) No.164/2016 filed thereagainst is found to be pending before the Division Bench of this Court and further proceedings in the suit have been stayed by order dated 26th May, 2016 therein.

16. Finding the question to be arising in a number of cases, we have also deemed it appropriate to hear the counsels on the reference expeditiously so that the question does not continue to vex different Benches.

17. Having bestowed our consideration on the matter, we are of the view that even after coming into force of the Amendment Act and the Office Order dated 24th November, 2015 supra, this Court can entertain and hear application for amendment of plaint in a suit which in terms of the aforesaid Office Order has been administratively ordered to be transferred to the subordinate Courts and where this Court finds (applying the principles of amendment) the amendment enhancing the valuation of the suit for the purposes of pecuniary jurisdiction to be necessary for purpose of determining the real question in controversy, this court has jurisdiction to allow the said amendment. Our reasons for holding so are as under:

(A) Section 15 of the Code of Civil Procedure, 1908 (CPC) requires the suit to be instituted in the Court of the lowest grade competent to try.

(B) The Court of lowest grade competent to try the suit, the valuation whereof for the purposes of jurisdiction as per the plaint was in excess of Rs.20 lakhs, till coming into force of the Amendment Act on 26th October, 2015, was the High Court of Delhi.

(C) It is the settled principle of law that certain rights accrue on the date of institution of a legal proceeding and which cannot be prejudicially affected subsequently. Supreme Court recently in ***Manager, VKNM Vocational Higher Secondary School Vs. State of Kerala*** (2016) 4 SCC 216 summarised the principle by observing that

> "for the legal pursuit of a remedy it must be shown that the various stages of such remedy are formed into a chain or rather as series of it, which are connected by an intrinsic unity which can be called as one proceeding, that such vested right, if any, should have its origin in a proceeding which was instituted on such right having been crystallized at the time of its origin itself, in which event all future claims on that basis to be pursued would get preserved till the said right is to be ultimately examined. In the event of such preservation of the future remedy having come into existence and got crystallized, that would date back to the date of origin when the so-called vested right commenced, that then and then only it can be held that the said right became a vested right and it is not defeated by the law that prevails at the date of its decision or at the date of subsequent filing of the claim. One other fundamental principle laid down which is to be borne in mind is that even such a vested right can also be taken away by a subsequent enactment if such subsequent enactment specifically provides by express words or by necessary intendment. In other words, in the event

of the extinction of any such right by express provision in the subsequent enactment, the same would lose its value." Notice may also be taken of ***Rajesh D. Darbar Vs. Narasingrao Krishnaji Kulkarni*** (2003) 7 SCC 219 where it was held "subsequent events in the course of the case cannot be constitutive of substantive rights enforceable in that very litigation….but may influence the equitable jurisdiction to mould reliefs. Conversely, where rights have already vested in a party, they cannot be nullified or negated by subsequent events save where there is a change in the law and it is made applicable at any stage….Courts of justice may, when the compelling equities of a case oblige them, shape reliefs - cannot deny rights - to make them justly relevant in the updated circumstances. Where the relief is discretionary, Courts may exercise this jurisdiction to avoid injustice….Where a cause of action is deficient but later events have made up the deficiency, the Court may, in order to avoid multiplicity of the litigation, permit amendment and continue the proceeding, provided no prejudice is caused to the other side. All these are done only in exceptional situations and just cannot be done if the statute, on which the legal proceeding is based, inhibits, by its scheme or otherwise, such change in the cause of action or relief. The primary concern of the Court is to implement the justice of the legislation…..There can be no quarrel with the proposition….that a party cannot be made to suffer on account of an act of the Court."

(D) A distinction in this regard has also been made between a procedural right and a substantive right. A right of appeal has been held to be a substantive right which accrues on the date of institution of legal proceedings. It is settled principle of law that a party to a suit who is dissatisfied with a judgment passed in civil proceedings has a right of appeal which had accrued to him on the date of institution of the suit or proceeding in the Court of first instance, according to the law then in force and it is immaterial whether the judgment is passed before or after the change in law. The right to go from Court to Court in appeal is the right which vests at the date of institution of the proceedings in the Court of the first instance. As far back as in ***Mohd. Idris Vs. Sat Narain*** AIR 1966 SC 1499 a bench of five Judges, finding the application under Section 12 of the U.P. Agriculturist Relief Act for redemption of a mortgage to have been filed before the Munsif, Allahabad to have been filed before the repeal thereof by amendment to the U.P. Zamindari Abolition and Land Reforms Act, 1950 and further finding that the repealing provision did not state whether the repeal was to be operative retrospectively or not and relying on Section 6 of the U.P. General Clauses Act held that the repealing provision did not take away the right with respect to a pending action and the proceeding before the Munsif to be maintainable notwithstanding the repeal.

(E) Seen in this light, the Amendment Act appeared to us to be prospective in its nature and not retrospective and thus not affecting the suits instituted prior to the coming into force thereof. It appeared

that the suits, valuation whereof for the purposes of jurisdiction was in excess of Rs.20 lakhs and which as per the law in force at the time of institution were filed in this Court, even after coming into force of the Amendment Act were to continue and would have continued in this Court, inspite of their valuation being less than Rs.2 crores but for Section 4 thereof which empowered Hon'ble the Chief Justice to transfer any suit or other proceeding pending in this Court immediately before the commencement of the Amendment Act to such subordinate Courts as would have jurisdiction to entertain such suit had the same been instituted post coming into force of the Amendment Act.

(F) Thus seen, it appeared that this Court, at the time of institution of this suit as well as after the coming into force of the Amendment Act, continued to have jurisdiction to try the suit; that it was not as if this Court by way of the Amendment Act lost its pecuniary jurisdiction to try the suits instituted prior to coming into force of the Amendment Act and the valuation whereof for the purposes of jurisdiction though more than Rs.20 lakhs, was less than Rs.2 crores. Transfer of the pending suits is in terms of the notification dated 24th November, 2015 read with the power conferred on the Chief Justice under Section 4 of the Amending Act.

(G) However we find that earlier, when the minimum pecuniary jurisdiction of this Court was raised from over Rs.1,00,000/- to over Rs.5,00,000/- vide Delhi High Court Amendment Act, 1991 containing identical language, a Division

Bench of this Court, in ***Delhi High Court Bar Association Vs. Hon'ble Chief Justice, High Court of Delhi*** (1993) 50 DLT 532, dealing with a challenge to Section 4 of the then Amendment Act similarly authorising the Chief Justice with respect to pending suits and the Office Order of the Chief Justice transferring certain category of pending suits, to have held i) that but for Section 4 of the Amendment Act, all suits of the value of Rs.5 lakhs and below would have stood transferred to the District Court from the date of enforcement of Amendment Act and this court would cease to have jurisdiction to try any of such suits – this is clear from the language of Section 5(2) of the High Court Act as after the amendment thereof High Court would have ordinary original jurisdiction in civil suits of the value exceeding 5 lakhs; ii) this ordinary original jurisdiction had been conferred on the High Court by the High Court Act and that jurisdiction, by the Amendment Act, had been limited to the cases of value exceeding Rs.5 lakhs; iii) Section 4 prevents this result flowing from the amendment of Section 5(2) and allows retaining of suits of the value of below Rs.5 lakhs pending in this Court; iv) this is clear from last line of Section 4 of Amendment Act which provides that when cases are so transferred to subordinate Court, those courts shall entertain those suits as if they had been instituted for the first time before them after the commencement of the Amendment Act; v) then, an appeal from a decree or order of subordinate court shall lie to a forum as provided in Section 39 of the Punjab Courts Act, 1918; vi) a change of forum is a change of procedural law and not a substantive law; vii) though a right of

appeal is a substantive right which vests on date of institution of lis but the forum where such appeal could be lodged was a procedural matter.

(H). We may in this respect also notice that Supreme Court recently in ***Ramesh Kumar Soni Vs. State of Madhya Pradesh*** (2013) 14 SCC 696 also held that any amendment shifting the forum of trial, on principle is retrospective in nature in the absence of any indication in Amendment Act to the contrary and that no vested right of forum of trial could be claimed. It was further held that amendments relating to procedure operate retrospectively subject to the exception that whatever be the procedure which was correctly adopted and proceedings concluded under old law, the same cannot be re-opened for the purpose of applying new procedure.

(I). Without going into the correctness of the view taken by the Division Bench of this Court in judgment supra on interpretation of Section 5(2), of this Court ceasing to have jurisdiction with respect to pending proceedings and Section 4 saving the same, even as per the said view this Court did not cease to have jurisdiction with respect to pending suits on coming into force of Amendment Act, till the Chief Justice took the decision.

(J) Notice may next be taken of the difference between minimum pecuniary jurisdiction of a Court and maximum pecuniary jurisdiction of the Court. While a Court is said to be not having jurisdiction to try a suit above its maximum pecuniary jurisdiction,

the converse is not true. A Court cannot be said to be not having jurisdiction over suits below its minimum pecuniary jurisdiction. Reference in this regard can be made to ***V. Ramamirtham Vs. Rama Film Service*** AIR 1951 Madras 93 (FB) where it was held in the lead judgment that while Section 15 of the CPC enjoins the institution of a suit in the Court of the lowest grade competent to try it, it does not oust the jurisdiction of the Court of a higher grade; even if the Court of a higher grade tries and disposes of a suit which could have been instituted in a Court of a lower grade, the decision rendered is not without jurisdiction and is not a nullity. Viswanatha Sastri, J. in his concurring opinion observed that the object of Section 15 CPC is only to prevent superior Courts being flooded or overcrowded with suits triable by Courts of inferior grade and it merely regulates procedure and not jurisdiction. It was further held that a Court of superior grade does not act without jurisdiction in trying a suit which under Section 15 might and ought, by reason of its valuation, to have been tried by an inferior Court. A Full Bench of the High Court of Andhra Pradesh also in ***Kesavarapu Venkateswarlu Vs. Sardharala Satyanarayana*** AIR 1957 Andhra Pradesh 49 held that Section 15 CPC lays down a rule of procedure and not of jurisdiction of the superior Court. This Court also in ***Taran Jeet Kaur Vs. G.S. Bhatia*** 2009 (108) DRJ 89 has taken the same view.

K. This Court, in our view, by virtue of Section 5(2) of the High Court Act, is in the hierarchy of pecuniary jurisdiction and the

jurisdiction of this Court under Section 5(2) is not to be understood differently. We may in this regard refer to ***Bakshi Lochan Singh Vs. Jathedar Santokh Singh*** AIR 1971 Delhi 277 where the contention before the Division Bench of this Court was that the jurisdiction under Section 5(2) did not make this Court the "Principal Civil Court of Original Jurisdiction" for Delhi with respect to the suits filed thereunder as Section 24 of the Punjab Courts Act provided that the Court of the District Judge shall be deemed to be the Principal Civil Court of Original Jurisdiction for Delhi and there cannot be two Principal Civil Courts of Original Jurisdiction. Negativing the said contention the Division Bench held that in view of the *non obstante* clause contained in Section 5(2), the Court of the District Judge ceased to remain the Principal Civil Court of Original Jurisdiction with respect to the suits value whereof was in excess of that prescribed in Section 5(2).

(L) Notice may further be taken of Section 21 of the CPC, sub-section (2) whereof provides that no objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, before settlement of issues and unless there has been a consequent failure of justice and which suggests that the outcome of a suit above the minimum pecuniary jurisdiction of a Court also cannot be said to be a nullity or without jurisdiction, unless there has been a "consequent failure of justice". Supreme

Court in ***Kiran Singh Vs. Chaman Paswan*** AIR 1954 SC 340 was concerned with a situation where the appeal was heard by the District Court instead of by the High Court. The argument, that the right of appeal was a valuable one and that deprivation of the right to have the appeal heard by the High Court constituted prejudice, was held to be based on a misconception. It was held that the right of appeal though is a substantive right and its deprivation is a serious prejudice but no prejudice had been caused because in hearing of the appeal by the District Court, the right of appeal had been enlarged, with the right of second appeal to the High Court which was otherwise not available also becoming available. It was further held that the prejudice must be something other than the appeal being heard in a different forum. It was yet further held that prejudice in Section 11 of the Suits Valuation Act, 1887 with which the Supreme Court was concerned in that case does not include errors in findings on question of fact and that prejudice on the merits must be directly attributable to valuation and an error in a finding of fact reached on a consideration of the evidence cannot possibly be said to have been caused by valuation. Mere errors in the conclusions on the point for determination were held to be not amounting to prejudice. Giving instances of prejudice, it was observed that if there is no proper hearing that had resulted in injustice or if the procedure followed in that Court is different or the right of appeal arising therefrom is different, can a case for prejudice be made out.

(M) The law thus makes a distinction between a case of lack of inherent jurisdiction and a case of lack of pecuniary jurisdiction. While a decree passed by the Court lacking pecuniary jurisdiction does not automatically become void; at the most becomes voidable in the sense that it can be appealed on limited grounds,a decree passed by a Court with lack of inherent jurisdiction becomes null and void in law and its validity can be set up whenever it is sought to be enforced or relied upon, even at the stage of execution or even in collateral proceedings.

(N) The Division Bench of this Court in ***Mahesh Gupta*** supra, in holding that an application for amendment of a plaint to enhance valuation for the purposes of pecuniary jurisdiction cannot be entertained by this Court after the coming into force of the Amendment Act, if we may respectfully say so, fell in error in reasoning that "the Court which does not have jurisdiction to try the matter would have no jurisdiction to pass any orders which affect the rights of the parties" and that "the orders which are passed by a Court which has no jurisdiction to determine the matter, are without jurisdiction and, therefore, of no effect and purport" and that the Court "which does not have pecuniary jurisdiction cannot pass any orders allowing an application seeking amendment of a plaint to bring the suit plaint within the pecuniary jurisdiction of a Court". We have already noted herein above the difference between the maximum pecuniary jurisdiction and minimum pecuniary jurisdiction and that the minimum pecuniary jurisdiction does not

mean that the Court has no jurisdiction over suits, valuation whereof for the purposes of jurisdiction is below its minimum pecuniary jurisdiction. The rule of institution of suit in Courts of minimum pecuniary jurisdiction under Section 15 of the CPC, as aforesaid, has to be read along with Section 21 of the CPC.

(O) That brings us to the Office Order dated 24th November, 2015 supra and the effect thereof. It needs to be also examined, whether the said Office Order takes away the jurisdiction of this Court over matters, which till before its issuance, were within the jurisdiction of this Court so as to say that this Court would cease to have jurisdiction to entertain such an application.

(P) In our view, the nature of the power in exercise of which the said Office Order has been issued, though having its source in Section 4 of the Amendment Act, is administrative in its essence. Justice R.C. Lahoti, speaking for this Court in ***D.P. Bhalla Vs. Cement Corporation of India Ltd*** 58 (1995) DLT 188 concerned with a similar Office Order issued pursuant to the Delhi High Court (Amendment) Act, 1991 enhancing the minimum pecuniary jurisdiction of this Court from earlier existing of Rs.1 lakh and above to Rs.5 lakhs and above, held that the Office Order has to be given an object oriented interpretation; cases in which issues have been framed means the cases which are ripe for trial on merits; if only preliminary issues have been framed and not all the issues arising for decision in the suit, it cannot be retained in the High Court for it cannot be deemed that it was ripe and ready for trial. It

was further held that cases where inspite of issues having been framed there may have been a development of events which may render previously framed issues redundant, were also not exempted.

(Q) Reference may also be made to the judgment of the Division Bench of the High Court of Himachal Pradesh in ***Subhash Chand Goel Vs. Union of India*** 1997 SCC Online HP 38 in the context of the Himachal Pradesh Courts (Amendment) Act, 1994 enhancing the minimum pecuniary jurisdiction of the Court of the District Judge in original civil suits from earlier existing of Rs.2 lakhs to Rs.5 lakhs and that of Subordinate Courts from earlier existing of Rs.60,000/- to Rs.2 lakhs and the Office Order issued by the Chief Justice in pursuance thereto. It was held that the Amendment Act did not provide that the amendments brought into force were retrospective in operation or that they were applicable to pending proceeding but rather conferred power on the Chief Justice to transfer any suit, appeal or proceeding which were pending before the High Court immediately before the commencement of the Amendment Act and thus the Amendment Act did not provide for automatic transfer of any proceeding and if any proceedings were to be transferred on the basis of the amendments, an order had to be passed by the Chief Justice and without which order no proceedings could be transferred. It was further observed that the Amendment Act did not take away the jurisdiction of the High Court to deal with any matter in which the value was below that mentioned in the Amendment Act and did not deprive the High Court of its

jurisdiction to deal with any matter irrespective of the value of the subject matter. It was held that even if a proceeding of a lesser value is pending before a Subordinate Court, it is always open to the High Court to withdraw such proceedings and to dispose of the same.

(R) The Office Order with which we are concerned also directs the suits below the enhanced minimum pecuniary jurisdiction of this Court "to be transferred" and the transfer to commence from 24th November, 2015. The language thereof is also indicative of this Court not becoming *functus officio* with respect to suits below its minimum pecuniary jurisdiction on the issuance thereof because the Office Order requires further steps to be taken for the said transfers. In fact, the order of transfer in itself is an exercise of jurisdiction over the said suits, again indicating that on the issuance of the Office Order, this Court did not become *functus officio.* Till the suit is so transferred, this Court would continue to have jurisdiction.

(S) Such transfer, we may notice is in the nature of "transfer of business" within the meaning of Section 150 of the CPC which was invoked by the Full Bench of this Court in ***Arjan Singh Vs. Union of India*** ILR (1973) 2 Del 933 in the context of creation of original jurisdiction of this Court for the first time vide the High Court Act and the pending proceedings. The same also does not speak of the court from which business is transferred losing its powers.

(T) Notice at this stage may be taken of ***Jagdish Prasad Sharma Vs. Standard Brands Ltd.*** (2006) 135 DLT 698 in the wake

of enhancement of minimum pecuniary jurisdiction of this Court from over Rs.5 lakhs to over Rs.20 lakhs. The same was effected vide Delhi High Court Amendment Act, 2001 passed by the Legislative Assembly of Delhi. On challenge thereto being made, a bench of five judges of this Court in ***Geetika Panwar and Delhi High Court Bar Association Vs. GNCTD*** (2002) 99 DLT 840 held the same, in so far as amending Section 5(2) as *ultra vires* the Legislative Assembly of Delhi. However since in the interregnum suits of the valuation of upto Rs.20 lakhs had been filed in and entertained by the District Court, it was ordered that they will remain valid and stand transferred to this court. In appeals preferred to Supreme Court, vide interim order, such transfer was stayed. Before the appeals could be decided, the minimum pecuniary jurisdiction of this Court was enhanced from over Rs.5 lakhs to over Rs.20 lakhs vide Delhi High Court Amendment Act, 2003 of the Parliament. It was the contention in ***Jagdish Prasad Sharma*** supra that the decree of the District Court in the suit for over Rs.5 lakhs passed while the appeals were pending in Supreme Court and before the Delhi High Court Amendment Act, 2003, being beyond its pecuniary jurisdiction, was *non est.* The said argument was rejected. It would thus be seen that the decree in a suit beyond the maximum pecuniary jurisdiction of the District Court also was not interfered with.

(U) It is also significant that Section 4 permitted Hon'ble the Chief Justice to not necessarily transfer all suits and the words

therein "may transfer any suit" are indicative of the Chief Justice being empowered to transfer any category of suits, while retaining another category of suits in this Court. If the intent of Section 4 of the Amendment Act or of the Office Order dated 24th November, 2015 had been to transfer the suits, the valuation whereof for the purposes of jurisdiction was Rs.2 crores or less, without any further act to be done by the Court the words used would have been that the suits "shall stand transferred" as were used in Section 16 of the High Court Act with respect to transfer of pending proceedings to this Court on creation vide Section 5(2) of the Original Civil Jurisdiction of this Court. The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 also uses the words "shall stand transferred". Supreme Court in ***Allahabad Bank Vs. Canara Bank*** (2000) 4 SCC 406 (overruled on another point in ***Andhra Bank Vs. Official Liquidator*** (2005) 5 SCC 75) and in ***Hara Parbati Cold Storage Pvt. Ltd. Vs. UCO Bank*** (2000) 9 SCC 716 explained that the same indicates automatic transfer, with the High Court being required only to perform the ministerial act of transferring the papers to the Tribunal. Similar were the words used in Section 8 of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 which came up for consideration before the Supreme Court in ***Konda Lakshmana Bapuji Vs. Government of Andhra Pradesh*** (2002) 3 SCC 258.

(V) We find that the learned Single Judge in ***Kamal Sharma*** supra has reasoned that transferring the suit, requiring the plaintiff to argue the application for amendment of the plaint before the Court

of the District Judge / Additional District Judge and the District Judge / Additional District Judge to, in the event of allowing the amendment, return the plaint for being filed in this Court and retaining the rest of the file in the District Court would be injurious to the substantial cause of justice and which reasoning we fully endorse.

(W) This Court in ***Aviat Chemicals Pvt. Ltd. Vs. Magna Laboratories (Gujarat) Pvt. Ltd.*** AIR 2006 Delhi 115 was concerned with a petition under Section 24 of the CPC for transfer of suit instituted in the Court of the District Judge, within whose pecuniary jurisdiction the suit fell at the time of institution, to this Court after the amendment of the plaint, enhancing the valuation to beyond that of which the District Judge had pecuniary jurisdiction. The petition was opposed on the ground that the only course open to the District Judge after allowing the amendment enhancing the pecuniary jurisdiction was to return the plaint to be filed in the Court of appropriate pecuniary jurisdiction and in exercise of powers under Section 24 of the CPC, only such a suit could be transferred to this Court which was on the date of the petition under Section 24 of the CPC within the jurisdiction of the District Judge. The reason for applying under Section 24 of the CPC was to enable the entire file of the suit containing the proceedings held till then to be transferred this Court, rather than only the plaint being returned. It was held that both Section 24 as well as Order VII Rule 10 of CPC fall in the domain of procedural law and the intent of procedural law always is

to achieve the comments of justice and not to frustrate the same or to throttle the progress of the proceedings in a manner which would be prejudicial to the very administration of justice and expeditious disposal of the suits. It was held that judicial discretion is to be exercised and provisions of a statute are to be interpreted in a manner which would further the cause of justice, rather than in the manner which would frustrate the same. Finding that requiring the plaint to be returned and thereafter being filed in this Court would entail loss of time and which could be saved by exercise of power under Section 24 of the CPC, it was held that it is difficult to accept the reasoning that loss of pecuniary jurisdiction before a Court, whether by virtue of operation of law or by act of the parties covered by an order of the Court, should be permitted to vest parties with different consequences in law, particularly when one of such consequences could be adverse to the very system of expeditious disposal of suits.

(X) Notice in this regard may also be taken of the fact that as far as the Union Territory of Delhi is concerned, the law with respect to a large category of suits, valuation whereof is permitted to be done by the plaintiff who is *dominus litis* vests an election in the plaintiff to invoke the jurisdiction, either of the Court of the Civil Judge or of the District Judge or of this Court depending upon the valuation given of the reliefs claimed in the suit. This Court in ***Govind Gopal Vs. Banwari Lal*** AIR 1983 Del 323 held that Section 7(v) of the Court Fees Act, 1870 gives a discretion to the plaintiffs

to put their own valuation on the relief for the purpose of court fees. The Full Bench of the High Court of Patna also in ***Md. Alam Vs. Gopal Singh*** AIR 1987 Patna 156 held that in suits falling under Section 7(iv) of the Court Fees Act, irrespective of the various sub-clauses thereof, the estimation of the relief by the plaintiff has to be ordinarily accepted, unless the plaintiff is found to have manifestly and deliberately undervalued or underestimated the same.

(Y) When the law vests the plaintiff with such an election, we are also of the view that such a plaintiff who has opted to invoke the jurisdiction of this Court cannot be deprived of electing to retain the suit in this Court and which suit otherwise by virtue of the Amendment Act and the Office Order aforesaid would stand transferred to the Subordinate Courts. Supreme Court in ***Management Committee of Montfort Senior Secondary School Vs. Vijay Kumar*** (2005) 7 SCC 472 held that where there are plural or multiple remedies available, the principle of *dominus litis* has clear application and that there is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute, one may, at one's peril bring a suit of one's choice and it is no answer to a suit that the law confers no such right to sue; a suit for its maintainability requires no authority of law and it is enough that no statute bars it. It was further held that the plaintiff as *dominus litis* is the master of and has dominion over the case and is the person who has carriage and control of an action and in whom in case of conflict of jurisdiction, the choice of forum lies, unless there

be a rule of law excluding access to a forum of the plaintiff's choice or permitting recourse to a forum will be opposed to public policy or will be an abuse of the process of law. In the same vein in ***Lakha Ram Sharma*** supra in the context of an application for amendment of plaint enhancing the valuation of the suit from Rs.1 lakh to Rs.10 lakhs in the wake of an earlier change in minimum pecuniary jurisdiction of this Court, it was held that merely because an amendment may take the suit out of the jurisdiction of a Court is no ground for refusing that amendment and the amendment was allowed. Reference in this regard may also be made to ***Dr. Subramaniam Swamy Vs. Ramakrishna Hegde*** (1990) 1 SCC 4 where also it was held that the plaintiff as *dominus litis* has a right to choose the Court and the defendant cannot demand that the suit be tried in a particular Court convenient to him and to ***Nahar Industrial Enterprises Ltd. Vs. Hong Kong and Shanghai Banking Corporation*** (2009) 8 SCC 646 also holding that if a plaintiff is entitled to maintain an action in two different forums, he may choose one of them being *dominus litis*. The same is the view in the illuminating judgment of Justice H.L. Anand of this Court in ***Hans Raj Kalra Vs. Krihan Lal Kalra*** (1976) ILR 2 Delhi 745 holding that Section 7(iv) of the Court Fees Act gives a right to the plaintiff to place any valuation that he likes on the relief that he seeks and that the Court has no power to interfere with the plaintiff's valuation.

(Z) We have also perused ***Anil Goel Vs. Sardari Lal*** 75 (1998) DLT 641 noticed in ***Mahesh Gupta*** supra and where a learned Single Judge of this Court without discussion and relying on ***Lok Kalyan Samiti Vs. Jagdish Prakash Saini*** (1995) 33 DRJ 290 held that amendment of plaint to raise valuation of the suit for the purposes of jurisdiction and court fees so as to bring the suit within the jurisdiction of the Court is likely to defeat the provisions of the Delhi High Court (Amendment) Act, 1991 and could not be allowed. A perusal of ***Lok Kalyan Samiti*** supra shows that the reason given therein also for refusing the amendment was that it would defeat the provisions of the Amendment Act, 1991 and was not found necessary for adjudication of the questions in controversy in the suit. In our view, the said two judgments are not good law, in view of ***Lakha Ram Sharma*** supra.

18. We therefore hold that the Amendment Act or the Office Order dated 24th November, 2015 do not come in the way of this Court considering the applications for amendment of the plaint for enhancement of the valuation of the suit for the purposes of pecuniary jurisdiction.

19. We accordingly answer the reference as under:

The judgment in ***Mahesh Gupta*** supra to the extent holding that this Court, upon enhancement of its minimum pecuniary jurisdiction, ceases to have jurisdiction to entertain an application in a suit, which on the date of its institution was properly instituted, for enhancement of valuation for the purposes of jurisdiction, does not lay down the correct law and hold that this Court inspite of Amendment Act and the Office

Order dated 24th November, 2015 supra can entertain an application to amend the plaint to bring the suit within the pecuniary jurisdiction of this Court.

20. List IA No.3857/2016 of the plaintiff for amendment of the plaint and IA No.3856/2016 of the defendant No.2 for transfer of the suit before the learned Single Judge, as per the date specified in the Final Order.

-sd-

RAJIV SAHAI ENDLAW
(JUDGE)

R.K.GAUBA, J :

21. Before putting my thoughts on paper, I have had the benefit of going through the draft of the order penned by brother Justice Rajiv Sahai Endlaw, the opinion expressed wherein is in consonance with the views of brother Justice Sanjiv Khanna that have since been shared. Though the reasoning in the said draft orders seem to be persuasive, I am unable to subscribe to the conclusions reached and, therefore, respectfully expressing my dissent through this separate order.

22. There may be a repetition of facts and discussion on law here but, for completion of narration, it is deemed essential and, therefore, the reader of this separate opinion may have to bear with it. Some of the discussion hereunder has become necessary as I feel obliged to set out elaborately the reasons why I am not agreeing with the approach to

certain legal issues mentioned in the majority opinion**.** I am conscious that the question as to whether the amendment application moved by the plaintiff of the case, on its merits, is allowable or not is to be considered by the appropriate court and not by the larger bench called upon to answer the reference. But discussion on the law concerning amendment of pleadings has been necessitated because of certain observations in the majority opinion.

THE REFERENCE

23. The issue referred to this larger bench constituted by Hon'ble the Chief Justice, by her order dated 24.05.2016, in the wake of observations of a learned single Judge of this court recorded in order dated 27.04.2016 on the file of CS(OS) 1416/2009, *Subhashini Malik Vs. S.K. Gandhi and Ors.* revolves around the question as to whether the judgment of a division bench of this court in the case reported as *Mahesh Gupta Vs. Ranjit Singh and Ors., AIR 2010 Delhi 4* had been rightly interpreted and applied to the ratio of the order dated 01.04.2016 of a learned single judge of this court in *Kamal Sharma and Ors. Vs. Blue Coast Infrastructure Development Pvt. Ltd. and Ors*. in CS (OS) 176/2015 [*2016 (229) DLT 438 : 2016 (156) DRJ 349]*. The reference order succinctly posits the question for being addressed to be "*as to whether a court which does not have pecuniary jurisdiction to entertain the plaint suit ...can entertain an application to amend the plaint to bring the plaint within the pecuniary jurisdiction of the court...*"

FACTUAL MATRIX

24. It will be apposite at the outset to take note of the background factual matrix of the case from which the present reference arises, *albeit* briefly.

25. The litigation concerns parts of the property comprised of a plot of land bearing no.C-63, Friends Colony (East) New Delhi and the superstructure built thereupon ("the subject property"). The said property was originally owned by Jaswant Singh Uppal. It appears that, during his life time, the said Jaswant Singh had entered into a collaboration agreement dated 09.06.1995 with M/s. Gandhi Architects Pvt. Ltd. (third defendant). It is stated in the plaint that the said third defendant, M/s. Gandhi Architects Pvt. Ltd. (also referred to as "the builder") was a family concern of, and managed by, S.K. Gandhi (original first defendant, since deceased) and his wife Geeta Gandhi (second defendant). It is stated that in terms of the collaboration agreement, the builder was to re-develop the property, *inter alia*, by constructing two additional floors and, by way of his consideration, was to receive the title to the entire second floor with front half terrace above the second floor besides right side driveway with servant room on the second floor of garage block (described in entirety as the "builder's share"). The plaintiff claims to have purchased, alongwith her husband Ashvini Kumar Malik, by two separate registered sale deeds, both dated 31.12.1996, the first floor of the property from its erstwhile owner, Jaswant Singh Uppal. After his demise on 05.02.2000, the right, title and interest in the property of Jaswant Singh

Uppal devolved on his wife Pritam Kaur Uppal. It is stated that, by registered gift deed dated 07.09.2001, Pritam Kaur Uppal transferred her right, title and interest in the ground floor portion of the property in favour of her son, Raminder Singh Uppal. The plaintiff states that Raminder Singh Uppal and Pritam Kaur Uppal had entered with her into an agreement to sell on 26.03.2009, duly registered with the Sub-Registrar, in respect of the entire ground floor portion with front lawn and back court yard besides exclusive ownership of the left side driveway alongwith garage on right side drive way, and a toilet next to the staircase on the rear side (ground floor portion) with rear half terrace above second floor and one servant room and bathroom above the second floor of garage floor (second floor terrace portion) alongwith one-third undivided and indivisible share in the land underneath alongwith all fixtures and fittings, etc. in the subject property (described in entirety as "the plaintiff's property"), following it up by a proper transfer through registered sale deed executed on 01.05.2009. The plaintiff has pleaded that pursuant to the collaboration agreement, the first and second defendants have been in occupation and possession of the second floor portion and part of the terrace above the second floor (the builder's share).

26. The civil suit, in the context of which the present controversy arises, was filed by the plaintiff on 06.08.2009, *inter alia*, alleging that when she had gone up to the terrace on the second floor of the property to secure possession of the rear half, she had learnt that the defendants had wrongfully and illegally appropriated more than half of the terrace

above the second floor, having illegally constructed a wall to encroach upon a part of her portion of the terrace and having illegally constructed a roof on the open balcony on the rear side of the second floor merging it with the second floor over the garage / servant quarter block in violation of the sanctioned building plans. Reference was made to some 'false complaints' having been lodged by the defendants with the police on 02.05.2009 with malafide intention to pressurize her against raising the issue of illegal construction and encroachment and to wrongfully and dishonestly claim right over the portions which fell into her share.

27. By the above said plaint, the plaintiff prayed for the following reliefs :

"...(a). Pass a decree of declaration to declare that the plaintiff is the legal owner and person entitled to possession of the garage on the right side driveway of the Ground Floor portion of the said Property shown in red court boundary in the plan annexed hereto as Annexure-A;

(b). Pass a decree of mandatory injunction directing the defendants No.1 to 3, jointly and severally, to remove their lock from the garage on the right side driveway on the Ground Floor Portion of the said property.

(c). Pass a decree of permanent injunction restraining the defendants No.1 to 3, their servants and agents from interfering in any manner whatsoever with the Plaintiff's rights to unobstructed and peaceful use, occupation and enjoyment of the garage on the right side driveway of the Ground Floor portion of the said property;

(d). Pass a decree of declaration declaring the plaintiff to be entitled to the area on the terrace above the second floor in the said property that has been encroached upon by the defendants and that

is required to make up the plaintiff's entitlement on the said terrace to be half of the total terrace, without taking into account any extra area made available upon coverage of the balcony on the rear side of the second floor on the said property, and may be pleased to appoint a Local Commissioner to make a partition and separation of the said terrace above the second floor in the main building by meters and bounds according to the rights of the plaintiff as declared in the decree and the plaintiff may be put into possession of her share as may be found to be in possession of the defendants, or either of them;

(e). Pass a decree of mandatory injunction directing the defendants no.1 to 3, jointly and severally, to remove and demolish the unauthorised construction and encroachment on the rear side of the second floor of the said property.

(f). Pass a decree of mesne profits of Rs.4,80,000/- (Rupees Four Lakhs eighty thousand only) in favour of the plaintiff and against the defendants with future mesne profits @ Rs.5,000/- (Rupees Five thousand only) per day that the defendants or either of them continue to remain in unlawful use, occupation or possession of any share of the plaintiff in the terrace above the second floor in the said property.

(g). Pass a decree of damages of Rs.15,00,000/- (Rupees fifteen lakhs only) in favour of the plaintiff and against the defendant no.1 to 3, jointly and severally, for wrongful and illegal denial to the plaintiff of access to, and use and enjoyment of, the garage on the right side driveway of the said property;

(h). Pass a decree of costs of the suit in favour of the plaintiff and against the defendants 1 to 3, jointly and severally..."

28. It is pertinent to note here that in (paragraph 41 of) the plaint, as originally presented, the averments germane to the reference were made as under :

> *"41. The value of the suit for the purposes of court fee and jurisdiction is as under :-*
>
> *a). For the relief of declaration of the plaintiff's rights, title and interest in the garage on the right side driveway of the Ground Floor portion of the said property, the suit is valued at Rs.20,00,000/- and ad valorem court fee of Rs.21,864/- has been paid;*
>
> *b). For the relief of mandatory injunction directing the defendant no.1 to 3 to remove their lock from the garage on the right side driveway on the Ground floor portion of the said property, the suit is valued at Rs.200/- and ad valorem court fee of Rs.20/- has been paid.*
>
> *c). For the relief of permanent injunction restraining the Defendants No.1 to 3 from interfering in any manner whatsoever with the plaintiff's right of unobstructed and unhindered enjoyment of the garage on the right side driveway of the Ground floor portion, the suit is valued at Rs.130/- and ad valorem court fee of Rs.13/- has been paid.*
>
> *d). For the relief of declaration declaring the plaintiff to be entitled to the area on the terrace above the second floor in the said property that has been encroached upon by the Defendants and that is required to make up the area of the plaintiff on the said terrace to be half of the total terrace, without taking into account any extra area made available upon coverage of the balcony on the rear side of the second floor on the said property, and for possession of plaintiff's share in the said terrace as may be found to be in possession of the defendants, or either of them, the suit is valued at Rs.8,15,000/-,*

being the market value of the area of 163 sq. ft. approx. encroached upon by the defendants and ad valorem court fee of Rs.10,300/- has been paid. The plaintiff undertakes to pay deficit, if any, in the court fee upon the actual measurements of the said terrace and determination of the area encroached upon by the defendants.

e). For the relief of mandatory injunction direcgting the defendants 1 to 3 to demolish the unauthorized construction carried out in covering the rear balcony on the second floor of the said property, the suit is valued at Rs.200/- and ad valorem court fee of Rs.20/- has been paid.

f). For mesne profits of Rs.4,80,000/- (Rupees Four lacs eighty thousand only), the suit is valued at Rs.4,80000/- and ad valorem court fee of Rs.7,030/- has been paid.

g). For recovery of damages of Rs.15,00,000/- (Rupees fifteen lacs only), the suit is valued at Rs.15,00,000/- and ad valorem court fee of Rs.16,984/- has been paid.

Thus, the total valuation of the suit for the purposes of jurisdiction is Rs.47,95,530/- and court fee of Rs.56,231/- has been paid..”

29. The suit was entertained and summons on the plaint with notice on the application under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 (CPC) were issued to the defendants by order dated 07.08.2009. By way of an *ad-interim exparte* order, also passed on same date, it was directed that the defendants shall not part with the possession of the terrace portion which was disputed.

30. A perusal of the proceedings recorded over the period reveals that the defendants eventually appeared and filed written statement. The first defendant (S.K. Gandhi) having died, upon application under Order 22

Rule 4 CPC being moved, he has since been substituted by his legal representatives. Since the dispute related to the share in the terrace floor, on an application under Order 26 Rule 9 CPC (IA No.9887/2009), an inspection under the supervision of a local Commissioner was directed to be carried out by order dated 14.12.2011. The proceedings have been hanging fire ever since on account of various interim applications including several moved under Order 6 Rule 17 CPC for amendment of the pleadings. Issues are yet to be settled and the trial yet to commence.

31. Pertinent to mention here that, on 25.02.2014, it was noted by the learned single judge then in *seisin* of the case that another CS(OS) 3241/2011, *Geeta Gandhi Vs. Subhashini Malik and Ors.*, had since been preferred, by the second defendant herein, impleading the plaintiff of this case and another as defendants. An application (IA 1261/2012) had been moved by the plaintiff of the other case (Geeta Gandhi) seeking consolidation of both the suits. The plaintiff of the present case Subhashini Malik gave her no objection to the said prayer and taking note of the same, by a common order passed on the files of both the cases on 25.02.2014, the single bench directed both the suits to be consolidated '*for the purposes of trial and decision*'.

32. When the suit at hand [CS(OS) 1416/2009], and the suit that was clubbed [CS(OS) 3241/2011], were filed in this court, the relevant provision of Delhi High Court Act, 1966 (Act 26 of 1966) read as under :

> *"5. Jurisdiction of High Court of Delhi*

(1) The High Court of Delhi shall have, in respect of territories for the time being included in the Union territory of Delhi, all such original, appellate and other jurisdiction as, under the law in force immediately before the appointed day, is exerciseable in respect of the said territories by the High Court of Punjab.

(2) Notwithstanding anything contained in any law for the time being in force, the High Court of Delhi shall also have in respect of the said territories ordinary original civil jurisdiction in every suit the value of which exceeds rupees twenty lakhs."

33. It may also be noted here that the subject of constitution, jurisdiction, hierarchy, distribution of business etc., *inter alia*, of subordinate civil courts in Delhi is governed and regularized by the provisions contained in the Punjab Courts Act, 1918, as extended to Delhi by notification published in Gazette of India on 11.04.1964. Section 24 of this enactment declares that the court of the District Judge, shall be deemed to be the District Court or the principal civil court of original jurisdiction in the District. Section 25 of Punjab Courts Act (as in force in Delhi), at the time of presentation of plaints in the two suits referred to above, read as under:

> "Section 25 - Original jurisdiction of District Judge in suits
> Except as otherwise provided by any enactment for the time being in force, the court of the District Judge shall have jurisdiction in every original civil suit the value of which does not exceed rupees twenty lakhs."

34. Whilst the above mentioned two civil suits were pending before the learned single bench of this court, Delhi High Court (Amendment) Act, 2015 (Act 23 of 2015) came to be enacted and brought into force with

effect from 26.10.2015, in terms of the Notification F.No.L-19015/04/2012-Jus dated 26.10.2015, issued by the Government of India, Ministry of Law, Justice and Company Affairs, published in the Gazette of India Extraordinary Part-II. The relevant provisions of the amending Act are as under :

> *"2. In sub-section (2) of section 5 of the Delhi High Court Act, 1966, for the words "rupees twenty lakhs", the words "rupees two crore" shall be substituted.*
>
> *3. In the Punjab Courts Act, 1918, as in force in the National Capital Territory of Delhi, in section 25, for the words 'rupees twenty lakhs', the words 'rupees two crore' shall be substituted.*
>
> *4. The Chief Justice of the High Court of Delhi may transfer any suit or other proceedings which is or are pending in the High Court immediately before the commencement of this Act to such subordinate court in the National Capital territory of Delhi as would have jurisdiction to entertain such suit or proceedings had such suit or proceedings been instituted or filed for the first time after such commencement."*

35. In exercise of the powers conferred by Section 4 of Delhi High Court (Amendment) Act, 2015, Hon'ble the Chief Justice issued an office order on 24.11.2015 which reads as under :

> *"Notification No.27187/DHC/Orgl. Dated 24.11.2015*
>
> *In exercise of powers conferred by Section 4 of the Delhi High Court (Amendment) Act, 2015 (Act 23 of 2015), which came into force with effect from 26.10.2015 vide notification No.F.No.L-19015/04/2012-Jus dated 26.10.2015 issued by the Government of*

India, Ministry of Law, Justice and Company Affairs, published in Gazette of India Extraordinary , Part II, Section 3 sub-section (ii), Hon'ble the Chief Justice has been pleased to order as under :-

(i). All suits or other proceedings pending in the Delhi High Court on the Original side up to the value of rupees one crore, excepting those cases in which final judgments have been reserved, be transferred to the jurisdictional subordinate courts.

(ii). All suits or other proceedings the value of which exceeds rupees one crore but does not exceed rupees two crores, other than those relating to commercial disputes the specified value of which is not less than rupees one crore (as defined in the Commercial Courts, Commercial Division and commercial Appellate Division of High Courts Ordinance, 2015), pending in the Delhi High Court on the Original Side, excepting those cases in which final judgments have been reserved, be transferred to the jurisdictional subordinate courts.

The transfer of cases to the subordinate courts shall commence from today, i.e. 24.11.2015.."

36. Clearly, when these two civil suits were instituted, having regard to the valuation put by the respective plaintiffs, they were properly presented and maintained invoking ordinary original pecuniary jurisdiction of the court. Further, both these suits do not fall in the category of "commercial disputes" within the meaning of the expression used in Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (for short, "the Commercial Courts Act"). As a consequence of the change in the pecuniary jurisdiction and upon issuance of the notification by Hon'ble the Chief Justice on 24.11.2015, both suits as originally presented, now fall within the

ordinary pecuniary jurisdiction of Court of District Judge and thus, are to "*be transferred to the jurisdictional Subordinate Courts*", since they do not fall in the exception.

37. It be noted here that in the course of proceedings arising out of the other civil suit, CS (OS) 3241/2011, Geeta Gandhi (plaintiff in the said case), *inter alia*, had moved certain applications including '*to change the pecuniary jurisdiction value*' in respect of the relief in the nature of cancellation and rectification of certain sale deed. While the amendment applications appear to have been withdrawn, two of the interim applications viz. IA No.1603/2016 (for modification of order dated 08.01.2016) and IA No.1860/2016 (for refund of excess of court fees paid) came up before the learned single bench on 08.02.2016. It appears from the copy of the order passed by the court on the said date (08.02.2016), that the first said application (IA 1603/2016) concerns the issue of incorrect valuation and / or incorrect payment of court fee. The learned single Judge by his order dated 08.02.2016 disposed of the said application as having been rendered infructuous '*for the time being*' though reserving liberty to the defendants (which includes Subhashini Malik, the plaintiff herein) to raise the issue about valuation and / or court fee. Again, keeping the other application (of Geeta Gandhi for refund of excess court fee) pending to be considered and decided by the '*concerned jurisdictional court*' falling under the District & Sessions Judge (South East), Saket Courts, New Delhi, observing that this court '*no longer has pecuniary jurisdiction in terms of the existing plaint*' (i.e. the plaint in the suit instituted by Geeta Gandhi, second defendant herein), by the same order dated 08.02.2016, the learned single judge

held that in terms of office order dated 24.11.2015, issued by Hon'ble the Chief Justice in exercise of powers conferred by Section 4 of Delhi High Court (Amendment) Act, 2015, ordinary suits (which are not commercial matters), having pecuniary jurisdiction upto the value of Rs.2 Crores cannot be tried by this court. The civil suit of Geeta Gandhi, CS(OS) 3241/2011 was thus '*transferred for decision to the jurisdictional court under the District & Sessions Judge (South East), Saket Courts, New Delhi*' by order dated 08.02.2016 directing the parties to appear before the transferee court accordingly on 22.03.2016.

38. It may also be noted here that, by order dated 12.01.2016, the civil suit at hand had been earlier adjourned for further proceedings to 23.03.2016 to be taken up with the other civil suit [CS (OS) 3241/2011] upon the parties pointing out that both had been consolidated, transfer of the connected suit having been deferred. For reasons which cannot be fathomed from the record, the civil suit of Geeta Gandhi [CS (OS) 3241/2011] was taken up on 08.02.2016 and transferred to the District Court thereby delinking it from the present case. Pertinently, by order dated 08.02.2016, the next date (23.03.2016), earlier fixed in the said case [CS (OS) 3241/2011], was noted but cancelled.

39. On the close heels of the transfer of the civil suit of Geeta Gandhi, CS(OS) 3241/2011 by order dated 08.02.2016, two applications came to be filed in the present civil suit, one dated 08.03.2016 (IA No.3856/2016) by Geeta Gandhi, the second defendant and the other dated 19.03.2016 (IA No.3857/2016) of the plaintiff Subhashini Malik.

It is these two applications which were taken up by the learned single Judge on 27.04.2016 leading to the referral order.

40. By her application (IA 3856/2016), Geeta Gandhi (second defendant in the case) prayed for transfer of this civil suit also to the jurisdictional court under the District & Sessions Judge (South East) on the same lines as her civil suit [CS (OS) 3241/2011], had been transferred by order dated 08.02.2016. By her application (IA 3857/2016), the plaintiff of the case, prayed for liberty to amend the plaint under Order 6 Rule 17 of the CPC, in particular, para 41(d) to instead read as under :

> "*...41(d). For the relief of declaration declaring the plaintiff to be entitled to the area on the terrace above the second floor in the said property that has been encroached upon by the defendants and that is required to make up the area of the plaintiff on the said terrace to be half of the total terrace, without taking into account any extra area made available upon coverage of the balcony on the rear side of the second floor on the said property, and for plaintiff's share in the said terrace as may be found to be in possession of the defendants, or either of them, the suit is valued at Rs.1,70,00,000/-, being the market value of the area of 163 sq. ft. approx. Encroached by the defendants and ad valorem court fee of 1,59,580/- has been paid. The plaintiff undertakes to pay deficit, if any, in the court fee upon the actual measurements of the said terrace and determination of the area encroached upon by the defendants;*
>
> *Thus, the total valuation of the suit for the purposes of jurisdiction is Rs.2,00,80,530/- and requisite court fee has been paid...*"

41. The application seeking amendment pleads as under :

"...6. It is submitted that this Hon'ble Court has jurisdiction to entertain and decide the present application for amendment despite the current valuation of the suit being less than Rupees Two Crore. It is a settled position of law when a Court has the inherent jurisdiction to pass certain orders even though it may not have the pecuniary or territorial jurisdiction to try the suit, that would not be a ground to disallow an amendment to the plaint. The object must be to abjure a pedantic approach and interpret procedural rules with the idea of promoting the cause of justice and shunning unnecessary and avoidable delay in the suit proceedings. That this position has been recognized and reiterated by this Hon'ble Court in the case of Sanofi Aventis vs. Intas Pharmaceuticals & Ors., 227 (2016) DLT 296..."

42. While making the reference to the larger bench, the learned single Judge observed thus :

"*..3. In my opinion, the last line of para 7 of the judgment of the Division Bench in the case of Mahesh Gupta (supra) is clear that once the court does not have pecuniary jurisdiction to pass any order then no order can be passed for allowing an application which seeks amendment of the plaint to bring the suit plaint within the pecuniary jurisdiction of a court. This judgment is binding on this court.*

4. Counsel for the plaintiff to argue to the contrary has placed reliance upon the recent judgment of a learned Single Judge of this court in the case of Kamal Sharma & Ors. vs. Blue Coast Infrastructure Development Pvt. Ltd. and Ors., in CS (OS) No.176/2015 decided on 01.04.2016 wherein the learned Single Judge had allowed the application for amendment of the plaint filed after passing of the Delhi High Court Amendment Act, 2015. The learned Single Judge in Kamal Sharma's case (supra) has referred to the ratio as drawn in Mahesh Gupta's case (supra) but

the learned Single Judge has not emphasised upon the last line of para 7 which specifically states that the court which does not have the pecuniary jurisdiction cannot pass an order allowing an application seeking amendment of the plaint to bring the suit plaint within the pecuniary jurisdiction of the court.

5. Though, the ratio of the judgment of the Division Bench of this Court is binding on all subsequent Division Benches as also on Single Benches of this court, and therefore, the judgment in Kamal Sharma's case (supra) in my respectful opinion clearly is at direct variance with the ratio of the judgment in Mahesh Gupta's case (supra); especially the last line of para 7 of the judgment in Mahesh Gupta' case (supra); since however, the learned Single Judge seems to have taken a different view than the Division Bench of this Court, but by referring to the Division Bench judgment in the case of Mahesh Gupta (supra), it would be apposite that the issue itself be referred for decision to the larger bench of this court as to whether it is the ratio of the judgment in Kamal Sharma's case (supra) which will apply that a court can allow the application for an amendment of a suit plaint to bring the suit plaint within the pecuniary jurisdiction although when the application for amendment is filed the court does not have the pecuniary jurisdiction to try the application for amendment. No doubt procedures are handmaid of justice and may be the reasoning of the judgment in Kamal Sharma's case (supra) is persuasive, however, a Single Judge is bound by the ratio laid down by the Division Bench of this court which is squarely and directly on the point in issue viz the lack of jurisdiction of the court to entertain and allow an amendment application to enhance the pecuniary jurisdiction when the court otherwise does not have pecuniary jurisdiction to entertain the suit and hence the application for amendment of the plaint to increase the pecuniary jurisdiction..."

SUBMISSIONS OF PARTIES

43. During the course of arguments before us, the learned counsel for the plaintiff placed reliance on the judgments of the Supreme Court in the case reported as *Lakha Ram Sharma v. Balar Marketing Pvt. Ltd.*

(2008) 17 SCC 671 and *Mount Mary Enterprises vs. Jivratna Medi Treat Pvt. Ltd., (2015) 4 SCC 182*, arguing that it is the prerogative of the plaintiff to put valuation to the relief claimed and by allowing the prayer for amendment, no prejudice or irreparable harm were to be caused to the defendants nor the nature of the suit to undergo a change. It was submitted that while considering such an amendment, the court is not expected to go into the merits of the matter and merely because an amendment may take the suit out of the jurisdiction of a particular forum is no ground for refusing such amendment to be incorporated. It is pointed out that this is the spirit keeping which in view a number of learned single benches of this court have permitted similar amendments to be incorporated, in some cases with the clear assertion that the intent and objective of amendment to the valuation was to retain the case before this court thereby precluding its transfer to the file of the District Courts on account of change of the pecuniary jurisdiction by the Amendment Act of 2015. Reliance is placed on Order dated 16.12.2015 in CS (OS) 2998/2015, *Eicher Motors Ltd. Vs. Saurabh Katar and Ors. [2016 I AD (Delhi) 83];* Order dated 05.01.2016 in CS (OS) 2590/2008, *Sanofi Aventis V. Intas Pharmaceuticals Ltd. and Anr*., [227 (2016) DLT 296]; Order dated 28.03.2016 in CS (OS) 3213/2011, *Metal Box India and Anr. V. T.K. Sehgal and Sons (HUF) & Ors*; *Kamal Sharma (supra);* and Order dated 28.04.2016 in CS (OS) 2829/2015, *Mrs. Sharada Nayak Vs. Mr. V.K. Shunglu & Ors*. The plaintiff argued that the ruling of the division bench in *Mahesh Gupta* (supra) was duly taken note of by the learned single Judge in *Kamal Sharma* (supra) and yet a different view was

taken facilitating the amendment. It is urged by the learned counsel for the plaintiff that this court may take a pragmatic approach rather than a pedantic view.

44. *Per contra*, the second defendant, by her written submissions, opposing the prayer for amendment and requesting for the reference to be accordingly answered, has placed reliance on the view taken by the division bench of this court in *Mahesh Gupta* (supra), also referring to *Ms. Sadhna Sharma and Ors. Vs. Prem Lata Gautam and Ors., Manu/DE/2937/2005; Pirgonda Hongonda Patil vs. Kalgonda Shidgonda Patil and Ors., AIR 1957 SC 363: 1957 SCR 595; Hans Raj Kalra vs. Kishan Lal Kalra and Ors., ILR 1976 Delhi 745; Lok Kalyan Samiti Vs. Jagdish Prakash Saini and Ors., 1995 (33) DRJ 290; and Anil Goel Vs. Sardari Lal, 1998 VII AD Delhi 325.*

OPINION OF MAJORITY

45. The prime considerations on the basis of which the majority opinion rests its final conclusions stem from the doctrine of *dominus litis*; that is to say, the plaintiff is the master of the proceedings and has been vested, by law, with the prerogative not only to put a valuation to the reliefs claimed by him but also to choose the remedy and the forum for its pursuit. Reference has been made in this regard to the provisions contained in Section 7 of the Court Fees Act, 1870 and Section 8 of the Suits Valuation Act, 1887.

46. Reference has also been made to the decisions in *Dr. Subramanium Swami Vs. Ram Krishna Hedge, 1990 (1) SCC 4* and *Nahar Industrial*

Enterprises Ltd. Vs. Hongkong Shanghai Banking Corporation (2009) 8 SCC 646 to buttress the conclusion that the plaintiff, as the *dominus litis* has the right to choose the remedy and the forum and further that the opposite party (the defendant) cannot demand that the case be tried in a particular court convenient to him.

47. Quoting the rulings of Madras High Court in *V. Ramamirtham Vs. Rama Film Service, AIR 1951 Madras 93 (FB)*, of Andhra Pradesh High Court in *Kesavarapu Venkateswarlu Vs. Sardharala Satyanarayana, AIR 1957 Andhra Pradesh 49* and of this court in *Taran Jeet Kaur Vs. G.S. Bhatia, 2009 (108) DRJ 89*, it is observed that by ordaining that a suit is to be instituted "*in the court of the lowest grade competent to try it*", the law in Section 15 CPC does not oust the jurisdiction of the court of a higher grade and the proceedings before such higher forum are not rendered nullity or *non-est*, pointing out that exercise of jurisdiction beyond the pecuniary limits prescribed in law has been saved in the interest of justice in the past, illustratively in *Geetika Panwar Vs. GNCTD, (2002) 99 DLT 840*. Reference is made in the same context to *Bakshi Lochan Singh Vs. Jathedar Santokh Singh, AIR 1971 Delhi 277* to add that by virtue of Section 5(2) of the Delhi High Court Act, 1966, this court is in the hierarchy of pecuniary jurisdiction. The majority view accepts the argument of the plaintiff that unless prejudice directly attributable to valuation is shown to be the consequence, the defendant cannot raise objection of "over valuation or under valuation" under Section 11 of the Suits Valuation Act, 1887 or to the jurisdiction of the court under Section 21 of CPC.

48. My brothers on the bench conclude relying, *inter alia*, upon the rulings of the Supreme Court in *Lakha Ram Sharma* (supra) and *Mount Mary Enterprises* (supra), that the decisions of learned single Judges in *Anil Goel* (supra), *Lok Kalyan Samiti* (supra) and of the division bench in *Mahesh Gupta* (supra) are not good law. In their opinion, the amendment Act of 2015 is "prospective in nature" and "thus not affecting the suits instituted prior to coming into force thereof" and further that the office order issued by the Chief Justice on 24.11.2015 in exercise of the powers conferred upon her by Section 4 of Delhi High Court (Amendment) Act, 2015 does not result in the "automatic transfer" of the pending cases covered by such dispensation nor "take away the jurisdiction of the High Court" to deal with matters involving lesser value, not the least rendering this court *functus officio*. It has been observed that the power in exercise of which office order dated 24.11.2015 has been issued by Hon'ble the Chief Justice is, in essence, "administrative" and that the transfer of pending cases in its wake is in the nature of "transfer of business" within the meaning of the provision contained in Section 150 CPC, for which reason the court does not loose its powers to exercise its inherent jurisdiction. Based on the principles summarized in *Manager, VKNM Vocational Higher Secondary School Vs. State of Kerala, (2016) 4 SCC 216* and *Rajesh D. Darbar Vs. Narasingrao Krishnaji Kulkarni, (2003) 7 SCC 219*, the view expressed is that certain rights accrue to the plaintiff on the date of institution of legal proceedings which cannot be extinguished unless so expressly intended by the subsequent enactment. It is thus held by majority that the High Court can entertain an application –

notwithstanding the change of pecuniary jurisdiction – to amend the plaint to bring the suit within its pecuniary jurisdiction.

49. The majority opinion accepts the logic and ratio of the series of orders passed by learned single Judges of this court entertaining and allowing applications for amendment of the plaints in the pending suits to permit increase in the valuation such that the cases which, but for such amendment of plaints, would stand transferred to the District Court after the amendment of law in 2015, resultantly retaining them in the High Court on the original side observing that the transfer of the suits followed by amendment of plaint before District Court resulting in "return" of the plaint for fresh presentation before this Court "would be injurious to the substantial cause of justice".

50. It appears the order dated 16.12.2015 in *Eicher Motors Ltd.* (supra) was the first such order, followed by similar decisions in *Sanofi Aventis* (supra), *Metal Box India* (supra), *Kamal Sharma* (supra) and *Sharada Nayak* (supra).

51. It may be noted here itself that in *Eicher Motors Ltd.* (supra), the issue of jurisdiction of the High Court to entertain the application for amendment of pleadings did not even arise. It was a matter involving intellectual property rights and a "commercial dispute" attracting the provisions of the Commercial Courts Act and covered by the directions of a division bench of this court in order dated 03.12.2015 in WP(C) 11035/2015, titled as *Vifor (International) Ltd. Vs. The High Court of Delhi* and WP(C) 11043/2015, titled as *Asian Patent Association*

(Indian Group) Vs. Registrar General, Delhi High Court, whereby it was directed that :

> "....The cases arising out of Patents Act, 1870; Trademarks Act, 1999; Designs Act, 2000; Copyright Act, 2000; and the Geographical Indications of Goods (Registration And Protection) Act, 1999, shall not be transferred and in case application seeking amendment in the pecuniary value is filed, they shall be considered by the respective Single Judges in accordance with law..."
>
> (emphasis supplied)

52. Similarly, in *Sanofi Aventis* (supra), the objection to the forum for consideration of the amendment of pleadings was not raised. The defendant, instead, conceded to the prayer for increase of the valuation though reserving his right to refute on merits. Pertinent to add that the claim in the civil suit was for award of damages, the increase in valuation having been justified on account of enhanced claim attracting Section 7(i) of Court Fees Act, 1870. *Metal Box India* (supra), simply followed *Sanofi Aventis* (supra). Similarly, *Sharada Nayak* (supra) is a decision following the view taken in *Kamal Sharma* (supra).

53. In *Kamal Sharma* (supra), reference was made to the ruling of division bench in *Mahesh Gupta* (supra) distinguishing it with observations that it was rendered against the backdrop of the facts that by the order under challenge in appeal, the learned single Judge in seisin of the civil suit had directed the return of the plaint on the premise that the total value of the suit for purposes of jurisdiction had been stated to be Rs.1600/-, on which plaintiff could not have paid the court fee of Rs.20,10,000/-, the proposal to amend the plaint by enhancement of the valuation of the relief to permanent injunction from Rs.200/- (as originally affixed) to

Rs.20,08,600/- having been rejected. It was noted that the division bench, notwithstanding the above view, had modulated the relief to one of transfer of the case to a civil court of competent jurisdiction under Section 24 CPC so that the proceedings which had already been undertaken in the suit were saved and by return of the plaint the plaintiff was not relegated to the initial stage.

54. The view expressed in the majority opinion follows the reasoning in the aforementioned orders of the learned single Judges, commending the "pragmatic approach", based on the principle that procedural law is hand-maid of justice, pointing out the possible travails of the plaintiff thus (extracted from the order in *Kamal Sharma*) :

> *"49. Procedures are handmaids of justice. Undue emphasis on following a procedure which, in the facts of a given case, would result in miscarriage of justice is not insisted upon in law, particularly when this Court has the power and jurisdiction under Section 24 CPC to withdraw from the subordinate Court any case or proceeding and to try and dispose of the same.*
>
> *50. ...Insistence on following the procedure - requiring transfer of the case to the concerned District Court; assignment of the case to an Additional District Judge; issuance of notice to such of the parties who do not appear before the Court to whom the case is assigned, in case they do not appear; fixing the date for hearing of the amendment application by the transferred Court; hearing of the application which, if allowed, would result in the suit not falling within the jurisdiction of the District Court, and consequential return of plaint to be presented once again before this Court would immensely prejudice the plaintiffs, who have been pursuing the present suit since January 2015. In the meantime, dozens of orders have been passed, eventually leading to delayed filing of written statements with applications to seek condonation of delay and an application under Section 8 of the*

Arbitration & Conciliation Act, 1996. If the procedure, as insisted upon by the defendants were to be adopted, it would mean that, eventually, in case the amendment application is allowed by the transferred Court, the plaintiff would have to re-serve all the defendants in the suit, and again await their filing of their written statements and other applications. Such a result must be avoided, since it can be avoided in law. The hands of this Court are not tied. The shackles of such procedural bounds can and should be broken with a view to, eventually, attain speedier disposal of the case, as no prejudice is caused to the defendants even if this Court considers the amendment application rather than transferring the suit along with the amendment application. Adoption of the procedure insisted upon by the defendants would, ironically, delay the disposal of the commercial cause, when the enactment of the Commercial Courts Act and the amendment to the Delhi High Court Act was intended to lead to speedier disposal of such commercial causes…"

55. Need it be noted here that in *Kamal Sharma* (supra), the learned single judge while making a departure drew satisfaction from the distinguishing fact that the application for amendment of plaint had been moved "*much earlier to the amendment of the Delhi High Court Act*."

56. The prime considerations expressed in the series of orders of learned single Judges, contrary to the principle laid down from the division bench in *Mahesh Gupta* (supra), and which is sought to be approved by the majority opinion, are summarized after referring to *Lakha Ram Sharma* (supra) and *Mount Mary Enterprises* (supra) in (para 19 of) the order in *Sanofi Aventis* (supra), and it has been quoted in the subsequent orders of learned single Judges, as under :

"The aforesaid decision is a reiteration of the settled legal position that when a court has the inherent jurisdiction to pass certain orders even though it may not have the pecuniary or territorial jurisdiction to try the suit, that would not be a ground to disallow an amendment to the plaint, the logic being that one cannot stick to the form of law to the point that the substance gets obliterated. That would amount to missing the wood for the trees. The object must be to abjure a pedantic approach and interpret procedural rules with the idea of promoting the cause of justice and shunning unnecessary and avoidable delay in the suit proceedings"

STATUTORY PROVISIONS

57. The provisions of law having a bearing on the issues, to the extent necessary, may be taken note of at this stage.

58. Section 7 of the Court Fees Act, 1870 reads as under :

"7. Computation of fees payable in certain suits – The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows :-

for money - (i) In suits for money (including suits for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically)- according to the amount claimed;

x x x

(iv) In suits for moveable property of no market-value - (a) for moveable property where the subject-matter has no market-value, as, for instance, in the case of documents relating to title, to enforce a right to share in joint family property.-(b) to enforce the right to share in any property on the ground that it is joint family property,

for a declaratory decree and consequential relief - (c) to obtain a declaratory decree or order, where consequential relief is prayed

for an injunction.-(d) to obtain an injunction

for easements - (e) for a right to some benefit (not herein otherwise provided for) to arise out of land, and

for accounts - (f) for accounts according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.

In all such suits the plaintiff shall state the amount at which he values the relief sought

for possession of land, houses and gardens – (v) In suits for the possession of land, houses and gardens-according to the value of the subject-matter; and such value shall be deemed to be ..."

59. Section 8 of the Suits Valuation Act, 1887 is in the following terms :

"*Court-fee value and jurisdictional value to be the same in certain suits -Where in suits other than those referred to in the Court-fee Act, 1870 (7 of 1870), Section 7, paragraphs V, VI and IX, and paragraph X, clause (d), court-fees are payable ad valorem under the Court-fees Act, 1870, the value as determinable for the computation of court-fees and the value for purposes of jurisdiction shall be the same."*

60. Sections 15, 21 and 24 of CPC provide thus :

"Section-15 - Court in which suits to be instituted : Every suit shall be instituted in the Court of the lowest grade competent to try it.

Section-21 - Objections to jurisdiction **:** *(1) No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases*

where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

(2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing court at the earliest possible opportunity, and unless there has been a consequent failure of justice.

Section-24 - General power of transfer and withdrawal : (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage -

(a) transfer any suit,, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and

(i) try or dispose of the same, or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which is thereafter to try or dispose of such suit or proceeding may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purpose of this section,-

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) "proceeding" includes a proceeding for the execution of a decree or order.

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it."

61. The procedural law recognizes the possibility of the need to amend the pleadings in a civil suit but circumscribes the principle for such purpose by the following provision contained in Order 6 Rule 17 CPC :

"17. Amendment of Pleadings : The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

PLAINTIFF AS DOMINUS LITIS : VALUATION OF SUIT

62. There is undoubtedly a discretion given to the plaintiff to put a valuation to the remedy sought by him in cases where the "market value" of the subject matter is not amenable to a proper estimation, the nature of such reliefs having been specified in Section 7(iv) of the Court Fees Act, 1870, the reliefs in the nature of declaration and injunction particularly falling in the said class.

63. A learned single Judge of this court while deciding certain preliminary issues arising out of three civil suits (two relating to declaratory reliefs and the third for rendition of accounts and recovery besides injunction) which had been consolidated for purposes of trial, in his order reported as *Hansraj Kalra Vs. Kishan Raj Kalra & Ors, (1976) ILR Delhi 745* observed as under :

> *"14. ...The Suits Valuation Act, 1887 prescribes the mode of valuing certain suits for the purpose of determining the jurisdiction of the courts with respect to such suits. Valuation of the suit for purposes of court fees and valuation for the purpose of jurisdiction are, therefore, two distinct matters. While in suits for which a fixed court fee is payable valuation of the subject matter for purposes of court fee is unnecessary, valuation for purposes of jurisdiction of courts is essential in all suits. Ordinarily valuation of a suit for one purpose has no impact on the valuation for the other purpose. However, Section 8 of the Suits Valuation Act incorporates an exception when it provides that "where any suits other than those referred to in the Court*

Fees Act, 1870, Section 7, paragraphs v, vi, and ix and paragraph x, clause (d), court fees are payable ad valorem under the Court Fees Act, 1870, the valuation as determinable for the computation of court fees and the value for purposes of jurisdiction shall be the same". The effect of this provision is that in certain type of suits envisaged by the provision the value determinable for the computation of court fees is also determinative of the value for purposes of jurisdiction. In such cases the plaintiff must first value the suit for purposes of court fees and the same valuation would enure for purposes of jurisdiction as well..."

64. The above observations have been the consistent view of this court and by way of illustration one may quote the following extract from the order in case reported as *Gobind Gopal Vs. Banwari Lal, AIR 1983 Delhi 323* :

"*6. ...The plaintiffs had a discretion to put their own valuation as the relief for purposes of the court-fees and under section 8 of the Suits Valuation Act the value of the suit for the purposes of jurisdiction would be the same as has been determined for the purposes of the court-fees...*"

65. But, it cannot be said that the discretion to put a valuation to the reliefs in the nature of declaration and injunction is an absolute right of the plaintiff. The valuation pleaded is open to objection by the opposite party subject, of course, to the rider that exception to the over-valuation or under-valuation must generally be taken "in the court of first instance" and "at or before the hearing at which issues were first framed" and further upon the prejudice (Section 11 of Suits Valuation

Act, 1887) or failure of justice consequentially caused (Section 21 CPC) being shown.

66. A full bench of the Patna High Court in the case reported as *Mohd. Alam & etc. Vs. Gopal Singh and Ors., AIR 1987 Patna 156* held as under :

> *"5. ...It is significant to notice that whilst the other clauses of S. 7 provide for a yardstick or a norm on the basis of which the court fee may have to be ultimately computed by the Court, under cl. (iv) this is conspicuous by the absence of any such criteria. Thus the rationale underlying the provision is both the difficulty of first valuing the property as such and the greater one of valuing the relief therein which is sought to be claimed by the plaintiff.*
>
> *x x x*
>
> *9. ... two competing principles vie for acceptance here. The first one stems from the fact that cl. (iv) of S. 7 does give liberty to the plaintiff to evaluate his relief. ...One cannot be unmindful of the fact that unscrupulous defendants may pointlessly raise issues of valuation in order to delay the matter at the very threshold and thereby obstruct the pace of the suit, by resorting thereafter to the revisional jurisdiction.*
>
> *10. Nor can one lose sight of the fact that <u>holding that the plaintiff has an absolute right to place any valuation whatever on his relief and the court has no jurisdiction in the matter at all would equally be capable of gross abuse and even public mischief</u>. Once it is so held, it may and is most likely to lead to a gross and deliberate undervaluing of the relief claimed. ...it is the plaintiff's duty to fairly attempt to estimate the value of the relief claimed even where it is not easy to compute it in money terms..."*
>
> (emphasis supplied)

67. The views expressed in *Mohd. Alam* (supra) were based, *inter alia*, on the following observations of the Supreme Court in *Meenakshisundaram vs. Venkatachalam, AIR 1979 SC 989* :

> *"7. ...If on the materials available before it the Court is satisfied that the value of relief as estimated by the plaintiff in a suit for accounts is undervalued the plaint is liable to be rejected. It is therefore necessary that the plaintiff should take care that the valuation is adequate and reasonable taking into account the circumstances of the case. In coming to the conclusion that the suit is undervalued the court will have to take into account that in a suit for accounts the plaintiff is not obliged to state the exact amount which would result after the taking of the accounts. If he cannot estimate the exact amount he can put a tentative valuation upon the suit for accounts which is adequate and reasonable. The plaintiff cannot arbitrarily and deliberately undervalue the relief. ...there must be a genuine effort on the part of the plaintiff to estimate his relief and that the estimate should not be a deliberate under-estimation..."*
>
> *(emphasis supplied)*

68. The majority opinion refers to *Kiran Singh and Ors. Vs. Chaman Paswan and Ors., AIR 1954 SC 340* to point out the circumspection of the provision contained in Section 21 CPC and highlight that the "prejudice" on which objection to the competence of a court may be taken cannot be founded on mere errors in the conclusions on the point of determination. I would like to extract the following observations of the Supreme Court in *Kiran Singh* (supra) :

> *"6. ...It is a fundamental principle well established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of*

execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties…

7. …an objection that a Court which had 'no jurisdiction over a suit or appeal had exercised it by reason of over-valuation or under-valuation, should not be entertained by an appellate Court, except as provided in the section… there is one principle which stands out clear and conspicuous. It is that a decree passed by a Court, which would have had no jurisdiction to hear a suit or appeal but for over-valuation or under-valuation, is not to be treated as, what it would be but for the section, null and void, and that an objection to jurisdiction based on over-valuation or undervaluation should be dealt with under that section and not otherwise.

x x x

...The policy underlying sections 21 and 99 of the Civil Procedure Code and section 11 of the Suits Valuation Act is the same, namely, that when a case had been tried by a Court on the merits and judgment rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice, and the policy of the Legislature has been to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate Court, unless there has been a prejudice on the merits..."

69. The above views of the Supreme Court leave no room for doubt that want of pecuniary jurisdiction, if properly raised at the threshold, also strikes at the roots incurably vitiating the proceedings. The instances of prejudice given in the said judgment do not provide an exhaustive enumeration. The civil suit at hand may add another illustration. As

noted earlier, the cross suit which had been earlier consolidated with the suit at hand has been unceremoniously delinked for reasons not cited and the application of the plaintiff of the said civil suit (defendant herein) concerning valuation discouraged. The defendant is objecting to the valuation at the earliest possible opportunity also on ground of prejudice.

70. Whilst there could be no quarrel with the proposition that law confers upon the plaintiff the discretion to put valuation to the relief (declaration or injunction) claimed by him, such valuation as is put is open to judicial scrutiny. The law conceives of possibility of incorrect valuation not only by it being under-stated but also on account of excessive assessment. If objections in this regard were raised – of course, at the first instance before the commencement of the trial – the civil court is bound to subject it to inquiry and reach appropriate conclusions. For present discussion what needs to be flagged here is that the discretion to state the valuation may be of the plaintiff's initiative but it cannot be arbitrary, whimsical, unguided or merely his *ipse dixit*. Further, want of jurisdiction, territorial or pecuniary, strikes at the root and vitiates the proceedings.

PLAINTIFF AS DOMINUS LITIS : AMENDMENT OF PLAINT

71. There can be no quarrel with the proposition that the law permits the parties to a civil suit to bring about amendment in the pleadings. But then, the said right to amend the pleadings is circumscribed by the provision contained in Order 6 Rule 17 CPC which has been extracted earlier. A bare perusal of the said clause shows that the right to amend

is not unrestricted or an absolute one. Though the guiding principles which have evolved say that the approach of the court would be liberal in this regard and all such amendments would be allowed as are necessary "for the purpose of determining the real question in controversy", the riders include inhibition in case the proposed amendment alters or substitute the cause of action or causes irreparable prejudice to the other side. In the event of the amendment proposed by one party being resisted by the opposite side, the court is bound to consider the issue and reject the prayer for amendment if the same is not *bonafide*. [see *Gurdial Singh and Ors. Vs. Raj Kumar Aneja and Ors., 2002 (2) SCC 445* and *P.A. Ahammed Ibrahim Vs. Food Corporation of India, (1999) 7 SCC 39*]

72. It may be added in this context that the muster on which the proposal to amend the relevant portions of the plaint to change the valuation (put at the threshold) for purposes of court fees and jurisdiction would be the same as stated above. In other words, the question as to whether such amendment is *bonafide* has to be examined by the court before amendment is allowed. The plaintiff cannot claim that he being the *dominus litis* and given the discretion by the provisions contained in Court Fees Act, 1870 and the Suits Valuation Act, 1887 has the unrestricted prerogative to put an appropriate valuation to the reliefs (declaration and injunction) and, therefore, possesses an absolute right to change at his will. The discretion to put an appropriate valuation at the threshold may generally not be questioned but the said prerogative, once exercised and availed of, does not mean it can be exercised over

and over again at his own discretion, fancy, whims or convenience, mid-way the proceedings.

PLAINTIFF AS DOMINUS LITIS : CHOICE OF REMEDY AND FORUM

73. It is trite that the plaintiff, as the master of the proceedings, is entitled to choose not only the remedy but also the forum where he wishes to agitate the same, should there be more than one available in law.

74. In *Management Committee of Montfort Sr. Secondary School Vs. Vijay Kumar and Ors., (2005) 7 SCC 472*, the principle of *dominus litis* was invoked leading to the conclusion that there is an inherent right in every person to bring a suit of civil nature and, where there are plural or multiple remedies available, the person may bring a suit of one's choice, he having the dominion also on the choice of forum.

75. Noticeably, in *Management Committee of Montfort Sr. Secondary School* (supra), the following observations of the Supreme Court in *Dhannalal Vs. Kalawatibai, (2002) 6 SCC 16* were noted :

> *"23. The plaintiff is dominus litis, that is, master of, or having dominion over, the case. He is the person who has carriage and control of an action. In case of conflict of jurisdiction the choice ought to lie with the plaintiff to choose the forum best suited to him unless there be a rule of law excluding access to a forum of the plaintiff's choice or permitting recourse to a forum will be opposed to public policy or will be an abuse of the process of law."*

(emphasis supplied)

76. In *Nahar Industrial Enterprises Ltd.* (supra), the Supreme Court ruled (para 136) that :

> *"...If (the plaintiff) is entitled to maintain an action in two different forums, (he being the dominus litis) may choose one of them..."*

77. There is not the least doubt that if more than one forum or remedy is available, the plaintiff being the *dominus litis* has a right to "choose". But, it would not be right to say that the decision in *Dr. Subramanium Swami(supra)* holds that the opposite party cannot ask such case to be tried by another court.

78. In *Dr. Subramanium Swami* (supra), the respondent before the Supreme Court had filed a suit in Bombay High Court against the petitioner claiming damages for injury caused to his reputation by publication of certain alleged defamatory statements. The petitioner had invoked the jurisdiction of the Apex Court, *inter alia*, referring to Section 25 of the CPC seeking transfer of the case to the City Civil Court, Bangalore in the State of Karnakata contending that would be most appropriate place for the trial since all the events connected to the subject matter of the litigation had occurred there, the documentary evidence having a bearing was available, *inter alia*, in the official files in Bangalore and most of the witnesses in the know of the facts were residents of Karnataka. The plaintiff of the suit had resisted the plea for transfer asserting the right of *dominus litis* to choose the forum.

79. The Supreme Court allowed the request for transfer, *inter alia*, observing thus :

10. ...The paramount consideration for transfer of the case under Section 25 of the Code must be the requirement of justice. If the ends of justice so demand, the case may be transferred under this provision notwithstanding the right of dominus litis to choose the forum and considerations of plaintiff's convenience, etc., cannot eclipse the requirement of justice. Justice must be done at all costs, if necessary by the transfer of the case from one Court to another..."

(emphasis supplied)

80. What was highlighted by the Supreme Court in the above mentioned decision was that the plaintiff's prerogative or convenience cannot override or "eclipse" the requirements of justice. The right of the plaintiff to choose the forum thus is not an absolute one. Similarly, it cannot be laid down as an unexceptional rule that once the plaintiff approaches a particular forum properly instituting a suit within its jurisdiction a right to continue the proceedings in the said forum vests which right cannot be taken away.

STARE DECISIS

81. The doctrine of "*stare decisis*" ("*stare decisis et non quieta movere"* which translates as "to stand by decisions and not to disturb settled matters") was evolved in the common law of England but has been followed by our jurisprudence. In fact, it is embodied in Article 141 of the Constitution of India which mandates that the law declared by the Supreme Court shall be binding on all courts in the territory, the words "*law declared*" definitely being of wider connotation. The general proposition expressed by the doctrine is that if a point of law has been

decided by the higher court, it is of "*binding authority*" in all the courts of such jurisdiction. Undoubtedly, as Roscoe Pound said, the legal order must be flexible as well as stable because "*continual changes in the circumstances of social life demand continual new adjustments to the pressure of other social interests as well as to new modes of endangering security*" [see Law Finding Through Experience and Reason Three Lectures by Roscoe Pound, University of Georgia Press, Athens, 1960]. But formulation of new normative has to be for reasons properly made out and by appropriate authority. As Salmond observed adherence to this doctrine "*is necessary to secure the certainty of law, predictability of decisions being more important than the approximation to an ideal…*" [see Salmond on Jurisprudence; P.J. Fitzgerald, Ed., 12th Edn., London, 1966].

82. It would be useful, for the discourse which must follow, to remind oneself about some decisions of the Supreme Court on the subject of binding nature of the precedents of a superior court or of co-ordinate bench.

83. In *Union of India Vs. Raghubir Singh, (1989) 2 SCC 754*, the Supreme Court held :

> "27. …*It is in order to guard against the possibility of inconsistent decisions on points of law by different Division Benches that the rule has been evolved, in order to promote consistency and certainty in the development of the law and its contemporary status, that the statement of the law by a Division Bench is considered binding on a Division Bench of the same or*

lesser number of Judges. This principle has been followed in India by several generations of Judges..."

84. In *Sub- Committee of Judicial Accountability Vs. Union of India, (1992) 4 SCC 97*, it was observed thus :-

> "5. … *Indeed, no coordinate Bench of this Court can even comment upon, let alone sit in judgment over, the discretion exercised or judgment rendered in a cause or matter before another coordinate Bench*."

85. In *Central Board of Dawoodi Bohra Community and Anr. Vs. State of Maharashtra and Anr., (2005) 2 SCC 673*, the Supreme Court summarized the legal position on the subject of binding precedents, ruling as under :-

> *"12. Having carefully considered the submissions made by the learned Senior Counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms:*
>
> *(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength.*
>
> *(2) A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for*

hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

(emphasis supplied)

86. In *Safiya Bee Vs. Mohd. Vajahath Hussain @ Fasi, (2011) 2 SCC 94*, it was further observed thus :

"27. ... It is an accepted rule or principle that the statement of the law by a Bench is considered binding on a Bench of the same or lesser number of Judges. In case of doubt or disagreement about the decision of the earlier Bench, the well-accepted and desirable practice is that the later Bench would refer the case to a larger Bench..."

(emphasis supplied)

87. Again in *Union of India & Ors. Vs. S.K. Kapoor, (2011) 4 SCC 589,* the Supreme Court ruled thus :

"9. ...It is well settled that if a subsequent coordinate Bench of equal strength wants to take a different view, it can only refer the matter to a larger Bench, otherwise the prior decision of a coordinate Bench is binding on the subsequent Bench of equal strength..."

(emphasis supplied)

88. It also needs to be borne in mind that a judgment cannot be read as a statute for being interpreted and applied in different context. In *H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Ors. Vs. Union of India, (1971) 1 SCC 85*, the Supreme Court held that :

"*It is difficult to regard a word, a clause or a sentence occurring in a judgment of this Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment"*

89. The said view was reiterated in *Commissioner of Income Tax Vs. Sun Engineering Works (P) Ltd., (1992) 4 SCC 363* and, again, in *Union of India Vs. Dhanawanti Devi and Ors., (1996) 6 SCC 44* wherein the court ruled thus :

" 9. …*A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into*

rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi..."

(emphasis supplied)

ORDINARY ORIGINAL CIVIL JURISDICTION : DICHOTOMY IN DELHI

90. Speaking of the territorial jurisdiction of this court and that of the eleven District Courts of the Union Territory of Delhi, a peculiar situation prevails. The High Court of Delhi was established by Delhi High Court Act, 1966 and, by Section 5 thereof, was vested with, in addition to the appellate or other jurisdiction, the "ordinary original civil jurisdiction" initially in suits the value of which exceeded Rs.25,000/-. Prior to the coming into force of the said enactment, and the establishment of this court, the jurisdiction over the territories included in the Union Territory of Delhi was exercisable by the High Court of Punjab. There were corresponding amendments effected in the Punjab Courts Act, 1988 (as extended to Union Territory of Delhi) whereby the original pecuniary jurisdiction of the District Courts was subjected to a cap of Rs.25,000/-. The said arrangement has continued till date, *albeit* with amendments in law brought about several times so as to increase the pecuniary jurisdiction of the District Courts and bring about corresponding changes in the pecuniary original jurisdiction of this court.

91. In the present context, one may refer to order dated 19.07.2016 passed by a division bench of this court (of which I was a member) in CS (OS) 411/2010 and IA No.12186/2010, titled *Amina Bharataram Vs. Sumant*

Bharatram and Ors. which had been instituted on the original side of this court, *inter alia*, to seek maintenance in a matrimonial dispute, a subject matter falling under the jurisdiction of Family Courts under Sections 7(1)(a) of the Family Courts Act, 1984. A learned single judge in seisin of the matter had referred a question of law for adjudication that necessitated consideration of the status of the High Court while exercising the original civil jurisdiction. It is in this context the decision was rendered, *inter alia*, as under :

> *"23. ...Although Section 2(4) (of CPC) does not expressly seek to define the term "District Court", the meaning that emerges therefrom also includes the definition of "District Court". This is because the term "District Court" is defined (in parenthesis) to mean the principal civil court of original jurisdiction that exercises such jurisdiction over a defined territory. Now, Section 5(2) of the Delhi High Court Act provides that the High Court shall exercise ordinary original civil jurisdiction in every suit where the value of the suit exceeds a certain limit (presently rupees 2 crores). Therefore, the court of ordinary original jurisdiction in Delhi for the purposes of suits exceeding such pecuniary value would be the High Court, and for all other purposes, it would be the District Court. This would be the result of a combined reading of Section 5(2) with Section 24 of the Punjab Courts Act, 1918, which provides that the court of District Judge shall be the District Court or the principal Civil Court of original jurisdiction in the District. Therefore, when it is clarified in Section 2(4) that "district" would include the local limits of a High Court exercising original civil jurisdiction, axiomatically, such High Court would be a "District Court" to the limited extent that it is exercising ordinary original civil jurisdiction...."*

PAST PRECEDENTS : ANALYSIS

92. It has been well accepted that the plaintiff being the *dominus litis* and having been vested with certain discretion in the matter of valuation under the provisions quoted earlier is entitled to choose the forum – District Court or the High Court – for pursuit of the appropriate remedy in law. While the initial prerogative of the plaintiff to choose the forum – District Court or High Court – has been well recognized, the issue as to whether the right to the forum continues to be "vested", notwithstanding the change in the jurisdiction by law, has vexed the court on a number of occasions. It is instructive to have regard to the view taken in the past on this issue so as to address the core question whether the plaintiff can insist on retaining the suit before this court even after it is rendered amenable to the pecuniary jurisdiction of the District Courts on account of statutory amendment and, to put it conversely, as to whether this court retains the jurisdiction in such regard post such amendment.

93. Since the territories had been transferred from under the control of the High Court of Punjab to this court, Delhi High Court Act, 1966, by Section 12, made the necessary provisions with regard to the transfer of pending matters in the following terms :

> *"12. Transfer of proceedings from the High Court of Punjab to the High Court of Delhi :-*
>
> *(1) Except as hereinafter provided, the High Court of Punjab shall, as from the appointed day, have no jurisdiction in respect of the Union territory of Delhi.*

(2) Such proceedings pending in the High Court of Punjab immediately before the appointed day as are certified, whether before or after that day, by the Chief Justice of that High Court having regard to the place of accrual of the cause of action and other circumstances to be proceedings which ought to be heard and decided by the High Court of Delhi, shall, as soon as may be after such certification, be transferred to the High Court of Delhi.

(3) Notwithstanding anything contained in sub- sections (l) and (2) of this section and in section 5, but save as hereinafter provided, the High Court of Punjab shall have, and the High Court of Delhi shall not have, jurisdiction to entertain, hear or dispose of, appeals applications for leave to appeal including leave to appeal to the Supreme Court, applications for review and other proceedings where any such proceedings seek any relief in respect of any order passed by the High Court of Punjab before the appointed day: Provided that if after any such proceedings have been entertained by the High Court of Punjab, it appears to the Chief Justice of that High Court that they ought to be transferred to the High Court of Delhi, he shall order that they shall be so transferred, and such proceedings shall thereupon be transferred accordingly.

(4) Any order made by the High Court of Punjab-
(a) before the appointed day, in any proceedings transferred to the High Court of Delhi by virtue of sub- section (2);

(b) in any proceedings with respect to which the High Court of Punjab retains jurisdiction by virtue of sub- section (3), shall for all purposes have effect, not only as an order of the High Court of Punjab, but also as an order made by the High Court of Delhi"

(emphasis supplied)

94. Noticeably, the power to take an appropriate decision about the pending matters was vested in the Chief Justice of High Court of Punjab from where such business was to be transferred.

95. Prior to the coming into the force of Delhi High Court Act, 1966, an exparte decree had been passed in favour of Union of India against one Arjan Singh. An execution application was moved in this court since the decree was of an amount in excess of the jurisdiction then conferred upon the District Courts in Delhi. The judgment debtor, on the other hand, had moved an application under Order 9 Rule 13 CPC before the civil court, which had passed the decree. The civil court sent the said application to this court on the ground that its jurisdiction to deal with the matter did not subsist on account of new pecuniary limits. The matter eventually came for consideration, upon reference, before a full bench. The decision rendered thereupon is reported as *Arjan Singh Vs. Union of India, ILR (1973) II Delhi 933*. It was held that a subordinate court which had actually passed the decree might "entertain" the application for its execution, this subject to its "transfer" for execution to the appropriate court having territorial or pecuniary jurisdiction, while in respect of applications other than execution applications in suits which had been decreed prior to the coming in force of the amendment where the suit was more than the pecuniary jurisdiction vested in the District Courts, only the High Court would have the jurisdiction to entertain and try the same. In above context the full bench, deciding the said reference, observed that the transfer of

proceedings was akin to "transfer of business" within the meaning of the expression used in Section 150 CPC.

96. I am unable to agree with the view of the majority that the above decision supports the proposition that the forum where business was to be transferred would not loose its powers. On the contrary, the decision clearly stipulated that the forum which had been divested of its pecuniary jurisdiction could be approached for "*only entertaining the application*" whereafter the matter was to be subjected to transfer in accordance with the new dispensation on territorial or pecuniary jurisdiction. Thus, the former was to act only as a post office with no authority to adjudicate except for taking a call about jurisdiction.

97. The Delhi High Court (Amendment) Act, 1991 had brought about similar changes in the pecuniary jurisdiction of this court and of the district courts in the matter of original suits, and had come into force with effect from 09.11.1992. By the said amendment, the pecuniary limits to the jurisdiction of the district court was enhanced to Rs.5 Lakhs in place of the then limit of Rs.1 Lakh. By Section 4 of the said amendment Act, 1991, which was worded on the same lines as Section 4 of the amendment Act 2015, the power to take a decision with regard to the transfer of suits and other proceedings pending in this court immediately before the commencement of the said change was conferred upon the Chief Justice of this court. In exercise of the said power conferred by Section 4, the then Hon'ble the Chief Justice made the following order (extracted to the extent necessary) :

"..3. "In exercise of powers conferred by Section 4 of the Delhi High Court (Amendment) Act, 1991, hereinafter referred to as the Act, I hereby order that all pending suits in the Delhi High Court on the original side upto the value of Rs. 5 lakhs with the exception of:—

(i) Execution Applications;

(ii) Arbitration cases;

(iii) Cases in which issues have been framed;

(iv) Cases in which any interlocutory application is either part-heard, or in case arguments till pronouncement of judgment in the said I.A. or the matter is released from being part-heard; and

(v) Cases in which ex-parte evidence by way of affidavits has been ordered to be filed;

be transferred to the District/Subordinate Courts in pursuance of the provision of the Act which came into force with effect from 9.11.1992 vide Notification No. S.O. 825(E) dated 9th November, 1992 issued by the Govt. of India, Ministry of Law, Justice and Company Affairs, published in Gazette of India Extraordinary, Part II, Section 3 Sub-section (ii).

4. The transfer of cases to the District/Subordinate Courts should commence from 4th of January, 1993…"

98. In a suit for recovery of money and decree of declaration, with valuation for purposes of court fee and jurisdiction at less than Rs. 5 Lakhs, then pending on the original side of this court, a preliminary issue with regard to the limitation had been framed. A contention was raised, against this backdrop, that the cases in which issues had been framed having been excluded from transfer by the order promulgated by the Chief Justice, the case was required to be retained. This contention was rejected by a learned single judge of this court in a decision reported as *D.P. Bhalla Vs.Cement Corporation of India Ltd.,*

58 (1995) DLT 188, *inter alia*, with observation that the preliminary issue being a mixed question of fact and law could not be decided except after recording evidence and, thus, the case could not be treated as one in which issues had been framed. It is in this context that it was observed that the order issued by the Chief Justice had to be given an "object oriented" interpretation.

99. The above case, with due deference to the majority opinion, cannot be a precedent for the conclusion that the power vested in the Chief Justice by Section 4 of the amendment Act is "administrative in its essence". On the contrary, the decision reinforces the proposition that this court upon such amendment "ceases" to have the jurisdiction to continue with the case, which was the principle laid down in no uncertain terms by a division bench of this court, also against the backdrop of 1991 amendment, in case reported as *Delhi High Court Bar Association and Anr. Vs. Hon'ble the Chief Justice, High Court of Delhi and Ors., (1993) 50 DLT 532 : ILR (1994) 1 Del 271*.

100. Noticeably, in *Delhi High Court Bar Association* (supra) the power conferred upon the Chief Justice to take a decision about pending cases by the similar provision of Section 4 of the said amendment Act (of 1991) was challenged as unconstitutional, *inter alia*, on the grounds that it took away the "vested right of appeal"; was discriminatory; and the order issued was vitiated because the Chief Justice had engaged the full court and a committee of judges in consultation. The division bench rejected all the said contentions finding no impropriety in the process of consultation and observing in this context that the "*discretion to be*

exercised by the Chief Justice is administrative in nature", pertinently concluding as under :

> *"(31) ...but for section 4 of the Amending Act all the cases pending in the High Court of the value of Rs 5 lakhs and less would stand transferred to the District Courts in view of the amendment of sub-section (2) of section 5 as the High Court would cease to have jurisdiction in those matters. Section 4 which confers discretion on the Chief Justice uses the word "may" and that word has been used in deference to the high status of the office of the Chief Justice otherwise, as again noted above, it would mean 'shall' .We do not agree with the petitioners that the fact that it is left to the Central Government to enforce the Act and the use of the word "shall" meant that the Amending Act has only prospective operation. The moment Amending Act comes into operation necessary consequences follow..."*
>
> (emphasis supplied)

101. It may be added that the grievance about the right of appeal was also repelled in above-noted case holding that, upon transfer of the pending cases, the subordinate courts were to entertain the same giving rise to the right of appeal before the forum under the Punjab Courts Act, observing further thus :

> *"(26). ...But for section 4 of the Amending Act all suit of the value of Rs.5 lakhs and below would have stood transferred to the District Courts as from the date of enforcement of the Amending Act Delhi High Court would cease to have jurisdiction to try any of such suits. This would be clear from the language of sub-section (2) of section 5 of the Principal Act after the amendment as after the coming into force of the Amending Act the High Court of Delhi shall have ordinary original civil jurisdiction in civil suits the value of which exceeds Rs.5 lakhs. This ordinary original civil jurisdiction has been conferred on*

the Delhi High Court by the Principal Act and that jurisdiction is now limited to cases of the value exceeding Rs. 5 lakhs. Section 4 prevents this result flowing from the amendment of sub-section (2) of section 5 of the Principal Act and allows retaining of suits of the value of Rs.5 lakhs earlier pending in the High Court..."

(emphasis supplied)

102. Clearly, the amending Act confers full discretion upon the Chief Justice to exercise the power in Section 4 to carve out exception to the general intendment for transfer. This necessarily means it is the terms of the order of Chief Justice that would regulate the action to follow.

103. The majority view takes note of the above decision of the division bench in the context of 1991 amendment and while declining to go into the "correctness" of the view thus taken proceeds to observe that even according to this dictum, this court did not "cease to have jurisdiction ... till the Chief Justice took the decision" in exercise of the power conferred by Section 4, referring in this context to *Ramesh Kumar Soni Vs. State of Madhya Pradesh, (2013) 14 SCC 696*.

104. With respect, I am unable to agree, the first reason being that the Chief Justice has already taken the decision and so it cannot be argued that the point of cessation has not arrived.

105. The controversy in *Ramesh Kumar Soni* (supra) arose out of amendment of Code of Criminal Procedure, 1973 by the State of Madhya Pradesh shifting the jurisdiction to try certain offences (punishable under Sections 408, 420, 467 and 471 of Indian Penal Code, 1860) from the court of Magistrate to the court of Sessions. The issue had arisen upon a reference made by a court of Sessions to which

a case involving such offences instituted prior to the amendment had been committed by the court of Magistrate. The Supreme Court held that there was no "*vested right of forum*" and the change in procedural law affecting the jurisdiction would operate "*retrospectively*" in absence of any indication to the contrary in the amendment Act, referring in this context to an earlier decision in *Sudhir G. Angur Vs. M. Sanjiv, (2006) 1 SCC 141*. The opinion of the majority, in my view, runs counter to the principle laid down in *Ramesh Kumar Soni* (supra) for the simple reason that Section 4 of the amendment Act of 2015 permits retrospective operation of the new dispensation on pecuniary jurisdiction and since the Chief Justice has exercised the power conferred upon her, by promulgating the order dated 24.11.2015, the rule of cessation of jurisdiction gets attracted.

106. I do not have the least doubt about the "correctness" of the view taken by the division bench in case of *Delhi High Court Bar Association* (supra), the said approach having been adopted in similar fact-situation as at hand, against the backdrop of return of the plaint upholding the preliminary objection of non- maintainability of the suit before this court on the ground of lack of pecuniary jurisdiction, in the case of *Mahesh Gupta* (supra) by another division bench of this court, rejecting the application for amendment for increase of the valuation, with the following observations :

> *"**7. ...** The issue therefore is, can this application for amendment be allowed. It is trite that the court which does not have jurisdiction to try the matter would have no jurisdiction to pass any orders which affect the rights of the parties. The orders which are passed by a court which has no jurisdiction to*

determine the matter, are without jurisdiction and, therefore, of no effect and purport. The Court therefore which does not have pecuniary jurisdiction cannot pass any orders allowing an application seeking amendment of a plaint to bring the suit plaint within the pecuniary jurisdiction of a Court..."

(emphasis supplied)

107. Reference may also be made here to the ruling of a division bench of this court in a case reported as *Bakshi Lochan Singh* (supra) where the court was called upon to decide whether for purposes of Section 92 of CPC, the High Court would be the principal civil court of original jurisdiction if the value of the suit exceeded the then pecuniary limit (Rs.50,000/-). The court held as follows :

"*...If only Section 24 of the Punjab Courts Act were to be taken into consideration then there will be no doubt that the principal Civil Court of original jurisdiction to try this suit would be the Court of the District Judge, Delhi. But a change was brought about by the Delhi High Court Act, 1966, as amended, by sub-section (2) of Section 5 which provides that notwithstanding anything contained in any law for the time being in force, the High Court of Delhi shall also have in respect of the territory of Delhi ordinary original civil jurisdiction in every suit the value of which exceeds fifty thousand rupees. This subsection starts with a non-obstante clause and is applicable to "every" suit the value of which exceeds fifty thousand rupees. This being a suit the value of which exceeds fifty thousand rupees would be covered by this sub-section.... In view of the non obstante clause contained in sub-section (2) of Section 5 of the Delhi High Court Act, 1966, the Court of the District Judge, Delhi, has ceased to remain the principal Civil Court of original jurisdiction with respect to any suit value of which exceeds fifty thousand rupees...*"

(emphasis supplied)

108. In *Raja Soap Factory and Ors. Vs. S.P. Shantharaj and Ors., AIR 1965 SC 1449*, the Supreme Court ruled that the jurisdiction to try a suit, appeal or proceeding, under the power reserved by Section 24(1)(b)(i) of CPC for the High Court arises only if such suit, appeal or proceeding is appropriately instituted in a court subordinate to it and the same is transferred by the High Court unto itself in exercise of power under the said provision. Pertinently, the Supreme Court observed that the High Court "*is not competent to assume to its jurisdiction which it does not otherwise possess*."

109. I am unable to subscribe to the view expressed in the majority opinion that by virtue of Section 5(2) of the Delhi High Court Act, 1966, this court is "in hierarchy of pecuniary jurisdiction" in the matters pertaining to ordinary original civil jurisdiction. As observed in *Amina Bharataram* (supra), this court is also a "District Court", and the pecuniary limits of the jurisdiction of District Courts, and of this court, have been clearly demarcated. The decision in *Bakshi Lochan Singh* (supra) referred to by the majority in this context only reinforces the contrarian view wherein this court is not vested with the jurisdiction to entertain suits value whereof is less than that prescribed in Section 5(2) of Delhi High Court Act, 1966.

110. In *Rajesh D. Darbar* (supra) while considering possible course of action in the face of the fact that the relief originally sought had become obsolete or unserviceable, while accepting the proposition that rights which had already vested could not be nullified or negated by subsequent events, the exception of "change in the law" was

recognized. The decision in *Manager, VKNM Vocational Higher Secondary School* (supra) also enunciates (para 21) a clear principle that :

> "...vested right can also be taken away by a subsequent enactment if such subsequent enactment specifically provides by express words or by necessary intendment. In other words, in the event of the extinction of any such right by express provision in the subsequent enactment, the same would lose it value..."

111. As observed earlier, the amendment in procedural law applies retrospectively. The amendment of 2015 came into force with effect from 26.10.2015. The enforcement of Section 4 with regard to the transfer of pending cases was subject to a decision (to be) taken by the Chief Justice. The Chief Justice in exercise of the said powers promulgated her order on 24.11.2015 clearly declaring that the transfer of cases in its terms to the subordinate courts "shall commence" from the said date. Thus, the change in the jurisdiction in so far as the pending cases are concerned would apply retrospectively upon issuance of the order on 24.11.2015. In this backdrop, reference to *Mohd. Idris and ors. Vs. Sat Narain and ors., AIR 1966 SCC 1499***,** would be misplaced. The "discretion" exercised by the Chief Justice in formulating a policy for purposes of enforcing the legislation mandated in Section 4 of the amending Act of 2015 may be "administrative" in nature, as observed in *Delhi High Court Bar Association* (supra), but that cannot be the description of the "power" conferred upon her by Section 4. As also observed in the said case, the words "may transfer" have been used in the statutory provision more out of deference to the

high office of the Chief Justice. The provision otherwise is part of the overall scheme of the enactment and reflects legislative intent and public policy. Therefore, the word "may" is to be read as "shall". At any rate, after the issuance of the order on 24.11.2015 by the Chief Justice, it becomes a mandate.

112. Without doubt, by virtue of the amendment Act 2015 there would not have been automatic transfer of the pending suits. The reference to *Allahabad Bank Vs. Canara Bank and Anr., (2000) 4 SCC 406; Hara Parbati Cold Storage Pvt. Ltd. and Anr. Vs. UCO Bank and Ors., (2000) 9 SCC 716* and *Konda Lakshmana Bapuji Vs. Govt. of A.P. and Ors., (2002) 3 SCC 258* in this regard, is also not correct.

113. The controversy in the first two above mentioned cases had arisen out of the jurisdiction vested in Debts Recovery Tribunal by Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The Supreme Court took the view that upon a Debts Recovery Tribunal being constituted, transfer of a civil suit covered by the said law from the original side of the High Court where it was pending to the new forum was "*automatic*" and steps to be undertaken for transferring the papers to such tribunal were only "*ministerial act(s)*". Similar is the view taken in the third above mentioned case *vis-a-vis* Section 8 of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 whereby Special Courts were constituted. The view thus taken by the Supreme Court militates against the approach accepted by the majority opinion. After coming into force of the 2015 amendment and upon promulgation of the order by the Chief Justice under Section 4, wherein the direction

was that the transfer of cases in its terms to the subordinate courts "shall commence" from the date of its issuance only "ministerial act of transferring the papers" by the registry remains to be done subject, of course, to judicial overview for satisfaction that a case indeed falls within the enhanced pecuniary jurisdiction of the district courts and is not excluded from transfer under other relevant provisions of law – for example, Commercial Courts Act.

114. In my considered view, the decision in *Subhash Chand Goel vs. Union of India 1997 SCC Online HP 38* has no relevance for addressing the present controversy. Unlike Himachal Pradesh Courts Act, 1976 whereby the pecuniary jurisdiction of Himachal Pradesh High Court and District Courts in original civil suits was demarcated, the provisions contained in Delhi High Court Act, 1966 as originally enacted, and as amended from time to time, do provide for transfer of the pending business.

115. The Delhi High Courts Act, 1966 was sought to be amended by Delhi High Court (Amendment) Act, 2001 passed by the legislative assembly of National Capital Territory of Delhi. The validity of the said enactment came up for challenge, primarily on the ground of legislative competence, before a full bench of this court leading to the decision reported as *Geetika Panwar vs. Govt. of NCT of Delhi 99 (2002) DLT 840 (FB)* whereby the amendment to Section 5(2) of the parent Act was held to be *ultra vires*. While the said challenge was pending, certain civil suits had been filed before the district court invoking its enhanced pecuniary jurisdiction in terms of the said amendment. The amending

Act having been held to be *ultra vires*, with the objective of ensuring that such suits were not rendered invalid, the Court directed that the same "*will be deemed to have validly been instituted and the orders, if any, passed thereon will be deemed to have been validly passed*", with further direction that all such suits filed before the subordinate courts pursuant to the impugned legislation "*shall stand transferred to this Court ... to be tried, heard and determined, as if the same had been filed in this Court and have been pending in this Court*". The Civil suit which was subject matter of the petition in *Jagdish Prasad Sharma vs. Standard Brands Limited 135 (2006) DLT 698* was one of such suits as fell in the above category. Notwithstanding the judgment in *Geetika Panwar* (supra), the suit had remained on the file of the subordinate court by virtue of an interim order passed by the Supreme Court on 06.09.2002 staying the transfer of the cases from district courts to this Court consequent to the above mentioned directions. The validity of certain orders passed in the said proceedings were challenged on the ground the same were beyond the pecuniary jurisdiction of the district court. The said contention was rejected primarily on the reasoning that the district court was well within its jurisdiction to pass the said order.

116. The above mentioned decisions in *Geetika Panwar* (supra), and *Jagdish Prasaid Sharma (supra)* are referred to in the majority opinion to highlight that decree passed in a suit beyond the maximum pecuniary jurisdiction of the district court was not interfered with. My reading of the two judgments is that the Court was striking a balance. Any other view in the peculiar situation that prevailed would have prejudiced and

unduly harassed a large number of litigants for no fault of theirs. In the full bench decision, the Court was exercising its writ jurisdiction bearing the responsibility to ensure that no injustice was caused. These decisions cannot be availed as precedents to support the view that the Court may exercise jurisdiction where it does not vest.

117. As indicated earlier, Section 15 of CPC enjoins that every suit shall be instituted in the Court of the lowest grade competent to try it. If this principle is applied, and read with the amended provisions of Delhi High Court Act, 1966, after promulgation of the order under Section 4 by Hon'ble the Chief Justice, the civil suits which now fall within the pecuniary jurisdiction of district courts are bound to be transferred from this Court to the district courts. The majority view refers to *V. Ramamirtham* (supra), *Kesavarapu Venkateswarlu* (supra) and *Taran Jeet Kaur* (supra) to observe that while a court is said to be not having jurisdiction to try the suit above its maximum pecuniary jurisdiction, the converse is not true. As observed in *V. Ramamirtham* (supra), the object of Section 15 CPC is to prevent the superior courts from being flooded or over-crowded with suits triable by courts of inferior grade. The amendment of 2015 enhanced the pecuniary jurisdiction of the district courts and also made provision for transfer of the pending cases pertaining to such pecuniary limits from this court to the district courts. This being the public policy, and the legislative intent, the view suggested in the majority opinion might have the effect of defeating the object of the law, which approach, to my mind, would not be proper. The decision in *Taran Jeet Kaur* (supra), in fact, was rendered by one

of us, while dealing with a civil suit on the original side, upholding the objection to its maintainability on the ground of lack of pecuniary jurisdiction observing against whimsical or arbitrary valuation and relying upon *Nandita Bose Vs. Ratanlal Nahata*, *1987 (3) SCC 705*, directing return of the plaint, holding, *inter alia*, that "*once the legislature has mandated that the suit shall be instituted in the court of the lowest grade competent to try, the same has to be adhered"*.

118. It bears repetition to say that Delhi High Court (Amendment) Act, 2015, reflects the legislative mandate and public policy. The power conferred upon the Chief Justice of the High Court of Delhi by Section 4 respecting the pending suits or other proceedings, in light of the said legislative mandate and public policy, is also part of the legislative command. Such power cannot said to be ministerial or administrative in nature. It is analogous to delegation to legislate. Upon the Chief Justice taking a decision, and issuing an order, in exercise of the said power, the directions given are in the nature of subordinate legislation and have the force of law and, therefore, must be read as part of the enactment. The order issued by the Chief Justice on 24.11.2015 is clear and precise and admits no exception (save for cases where judgment has been reserved). Upon its issuance, the pending cases on the original side of this court stand transferred and the benches before which they were thus far pending ceasing to have any jurisdiction. It is what is left to be done which is ministerial or administrative exercise.

119. The case of *Hansraj Kalra* (supra) was taken note of earlier. The following observations in the said case are of import :

> *"29. No amendment can be allowed which may have the effect of bringing within jurisdiction a suit which is beyond a court's pecuniary jurisdiction. There can be no question of a transfer of proceedings unless the proceedings are filed and are pending in a Court of proper jurisdiction. An order of transfer could, unfortunately for the plaintiff, be made only if the plaint has been properly presented to a court of competent jurisdiction..."*

120. As would be seen from the following discussion, the above has been the consistent view of different benches of this court.

121. Against the backdrop of amendment of 1991 enhancing the pecuniary jurisdiction of the district courts in Delhi, move for amendment of the plaint in a civil suit instituted earlier on the original side of this Court so as to raise its valuation and thereby retain it here was dismissed by a learned Single Judge in decision reported as *Lok Kalyan Samiti (supra)* with observation that the proposed amendment smacked of "*malafides"* as the intent appeared to be "*only to circumvent"* the effect of change in pecuniary jurisdiction.

122. The civil suit in the case reported as *Anil Goel vs. Sardari Lal (supra)* had been presented in this Court on the original side seeking relief of injunction valued at Rs. 200 and the relief of damages valued at Rs. 75,000. The pecuniary jurisdiction on the original side of this court during the relevant period was for suits of the jurisdictional value of more than Rs. 5,00,000. The plaintiff moved an application under Order 6 Rule 17 CPC to increase the value of the suit for purposes of injunction to Rs. 5,05,000. This prayer was rejected by a learned

Single Judge with observation that "*The Court having no jurisdiction in the matter cannot pass orders so as to assume jurisdiction".*

123. A suit had been filed on the original side of this Court for declaration, permanent injunction and rendition of accounts respecting the property over which the plaintiff claimed to have the title. On account of change in the pecuniary jurisdiction (by amendment of 2003), the case fell in the category which was to be transferred to the district courts. The plaintiff moved an application under Section 24 read with Section 151 CPC praying that despite change in the pecuniary jurisdiction, the suit be retained and tried by this Court. In view of certain subsequent events, the plaintiff moved another application seeking to amend the plaint, which, if allowed, would have resulted in valuation of the suit for purposes of court fee and jurisdiction to stand increased and be such as would pertain to the revised pecuniary jurisdiction of this Court. The application was dismissed and the suit directed to be transferred to the court of competent jurisdiction by learned Single Judge in decision reported as *Sadhna Sharma (supra)* with observations that "*loss of pecuniary jurisdiction is by operation of law"* and that "*implementation and operation of such law cannot be hampered or rendered ineffective on the grounds of inconvenience of parties"* and further that *"the power of the court to direct transfer of a case necessarily may not include power to retain the suit when apparently the court has no pecuniary jurisdiction to entertain and decide the suit."*

124. Pertinent to observe here that the case of *Taran Jeet Kaur* (supra) follows the above reasoning and approach which is in *sync* with the ruling of two different benches of this court in the cases of *Delhi High Court Bar Association* (supra) and *Mahesh Gupta* (supra).

125. As noted earlier, the departure from the above line of precedents by the decisions in *Eicher Motors Ltd.* (supra), *Sanofi Aventis* (supra), *Metal Box India* (supra), *Kamal Sharma* (supra) and *Sharada Nayak* (supra), has been mainly out of the concern that should the pending cases where the plaintiffs intend to enhance the valuation of the relief by amendment of the plaint, be transferred to the District Courts, it would entail unnecessary delay and harassment that could be avoided. In the teeth of clear enunciation of law by binding precedents that this court ceases to have jurisdiction in such matters upon promulgation of the order by the Chief Justice under Section 4, adjudication upon any such applications (for amendment) would be *non-est* and improper usurpation of power. Pragmatism in such situation is a slippery slope and may set a precedent open to abuse. Pragmatism does not create jurisdiction where none exists. It is trite that inherent power to do justice (section 151 CPC) would come in aid only where the area is grey or there is vacuum in law.

126. The apprehension of delay or harassment agitated by the learned counsel for the plaintiff, in my view, is exaggerated. Even if the plaintiff were to press for amendment before the District Court and enhance the valuation rendering the suit beyond the pecuniary jurisdictional limits of such court, the plaint of the case need not

necessarily be returned. The general power of transfer and withdrawal, vested in this court by Section 24 CPC, provides the remedy and would ensure that the proceedings in the case do not get derailed and the progress made till the stage of amendment is not forfeited. The case mentioned in the following para reinforces this view.

127. In a suit filed for permanent injunction and damages, the plaintiff was allowed by the trial court to incorporate amendment in the plaint so as to seek higher amount of damages and consequently increase the valuation for purposes of court fees and jurisdiction. As a result of such amendments, the suit was rendered beyond the pecuniary jurisdiction of the civil court where it had been instituted. The plaintiff moved this Court invoking its jurisdiction under Section 24 CPC seeking transfer of the suit to its original side. The defendant objected on the ground that the provision contained in Order 7 Rule 10 CPC would apply and the plaint was bound to be returned so as to be presented before the court of competent jurisdiction. This contention was rejected by a learned Single Judge in case reported as *Aviat Chemicals Pvt. Ltd. & Anr. vs. Magna Laboratories (Gujarat) Pvt. Ltd. & Anr. AIR 2006 Delhi 115* observing that :

> "*16. ...The Legislature in its wisdom has worded the language of Section 24 in wide terms by empowering the High Court to transfer any suit or appeal or other proceedings pending before it for trial or disposal to any Court subordinate to it. In other words, the meaning of the word "such or other proceedings pending in any other court" cannot be restricted or construed so as to exclude the proceedings as contemplated under Order 7 Rule 10, 10(A) of the Act".*

128. Reliance is placed in the majority opinion on the decision of the Supreme Court in *Lakha Ram Sharma* (supra) to hold that the view taken by the division bench of this court in *Mahesh Gupta* (supra) is not a good law. Reference is also made to another decision of the Supreme Court in *Mount Mary Enterprises* (supra).

129. In *Lakha Ram Sharma* (supra), the plaintiff had sought reliefs including in the nature of permanent injunction and rendition of accounts. He moved an application, *inter alia*, seeking to raise the valuation of the suit from Rs.1 Lakh to Rs.10 Lakhs. The High Court held the move to be arbitrary, not based on any cogent material and, not *bonafide* since it was done with the purpose of taking the suit out of the jurisdiction of the court where it was pending. The Supreme Court, in appeal, set aside the order of the High Court observing that it should not have gone into the merits of the matter holding further that "*merely because an amendment may take the suit out of the jurisdiction of that court is no ground for refusing that amendment*".

130. In *Mount Mary Enterprises* (supra), the suit for specific performance had been filed stating that the property was valued at Rs.13,50,000/-. The plaintiff moved an application under Order 6 Rule 17 CPC to enhance the valuation of the suit pleading that the market value of the property was actually Rs.1,20,00,000/-. The trial court rejected the prayer taking a view, amongst others, that the amendment would result in the suit being rendered beyond its pecuniary jurisdiction and liable to be transferred to the High Court on its original side. The order was unsuccessfully challenged before the High Court. On appeal, the Supreme Court held that the amendment application ought to have been

granted and observed that the consequent transfer of the suit from the file of the trial court to the High Court on its original side could not have been a reason for which the amendment application should have been rejected.

131. Noticeably, the amendment applications in *Lakha Ram Sharma* (supra) and *Mount Mary Enterprises* (supra) were presented before the court of competent jurisdiction where the civil suits had been properly instituted (in accordance with the valuation pleaded). The amendment applications had, *inter alia*, been rejected by the jurisdictional court on the ground that the valuation of the relief if enhanced would result in the case being rendered out of the jurisdiction of such court. The Supreme Court found this reasoning only to be incorrect. These rulings cannot be taken as precedents for the proposition that a court which does not have the jurisdiction may entertain or allow amendment of the pleadings so as to assume jurisdiction.

132. Having perused the separate opinion penned by Sanjiv Khanna J, I deem it necessary to add a few more lines. Reference to the 8th explanation appended to Section 11 CPC (*res judicata)* or to "*bootstrap doctrine*", would not be correct for the reason, in my opinion, post issuance of order by the Chief Justice, the limited inquiry to be conducted by the learned single judge on the original side of this court concerns only the issue as to whether or not the case is covered in the category of those which have been transferred. The key words (for present discussion) in the 8th explanation referred to above are "*competent to decide such issue*". Once it is concluded that the order issued by the Chief Justice in exercise of power conferred upon her by

Section 4 of the amendment Act is analogous to subordinate legislation, the first or foremost issue over which the exercise of jurisdiction has to be restricted concerns as to the continued maintainability of the case before this Court. Indeed, every court has the inherent jurisdiction to decide if the jurisdiction to adjudicate upon the *lis* before it vests in it or not. But, if the answer to this question is found in the negative, it is beyond its competence to create jurisdiction (which does not exist) under the cover of exercising "*jurisdiction to determine the scope of its own jurisdiction*" – not the least where it has the effect of defeating the legislative intent. It is trite that what cannot be lawfully done directly cannot legitimately be done indirectly.

CONCLUSIONS

133. For the foregoing reasons, I conclude that though the plaintiff is the *dominus litis* and has the prerogative to choose the remedy, and the forum, as also put appropriate valuation to the relief (if so permitted in law as in the case of declaration and injunction), the discretion to be exercised cannot be arbitrary or capricious and the same is open to objections by the opposite party and, therefore, subject to judicial scrutiny. The continuation in, or retention before, the forum whose jurisdiction initially may have been properly invoked, is not a vested right and the same is subject to the requirements of justice, amenable to the jurisdiction of the competent courts to order the transfer of such *lis*, as indeed subject to legislative mandate by amendment of law reflecting public policy.

134. The right of a party to the proceedings in a civil suit to amend the pleadings is qualified by the consideration of its necessity for just determination of the real question in controversy. The discretion given by the law to put an appropriate valuation to the reliefs in the nature of declaration and injunction at the threshold may generally be not open to question but the move to make amendments in such valuation would have to pass the same test as is applied in the case of amendments of pleadings and, thus, must be *bonafide* and not arbitrary or capricious or irreparably prejudicial to the defendant.

135. Permissibility of amendment to the pleadings as proposed by a party to the civil suit is an issue to be determined by the court which has the requisite jurisdiction to deal with the matter in which such issues arise. There is no "inherent jurisdiction" to deal with the matter concerning which the law confers no jurisdiction.

136. The amendment of Delhi High Court Act 1966, and the Punjab Courts Act, 1918, bringing about change in the pecuniary jurisdiction of the two forums (High Court and District Courts) for purposes of dealing with original civil suits would not result in automatic transfer of previously instituted cases (resultantly rendered beyond pecuniary jurisdiction) from one forum to the other. But, once the power given by law (Section 4) to the Chief Justice of the High Court to take a decision with regard to the pending litigation is exercised and an order issued in such regard, the same being analogous to delegated legislation and permitting no exception (except one where trial had concluded and judgment had been reserved), the original civil jurisdiction of this court

ceases in matters which, under the amended law, and the order of the Chief Justice, now pertain to the pecuniary jurisdiction of the district court. So long as the order of the Chief Justice subsists, it has to be adhered to.

137. The bench on the original side of this court before which such case may have been pending is rendered *functus officio* and no inherent jurisdiction subsists to deal with any pending application unless, and except in the event, the case, after being made over to the District Court, is withdrawn from there and transferred to this court in exercise of power under Section 24 CPC.

138. The decisions particularly of the division benches of this court in the cases reported as *Delhi High Court Bar Association* (supra) and *Mahesh Gupta* (supra) laid down the appropriate legal principles and, being binding precedents, could not have been ignored, without being referred for reconsideration to a larger bench.

ANSWER TO THE REFERENCE

139. In view of the above conclusions, I answer the reference as under :

(a). The rulings of division benches of this court in *Delhi High Court Bar Association Vs. GNCTD, (2002) 99 DLT 840*, *Mahesh Gupta Vs. Ranjit Singh and Ors., AIR 2010 Delhi 4,* as indeed of learned single judges in *Hansraj Kalra Vs. Kishan Raj Kalra & Ors, (1976) ILR Delhi 745*, *Lok Kalyan Samiti vs. Jagdish Prakash Saini & Ors. 1995 (33) DRJ 290, Anil Goel vs. Sardari Lal 75*

(1998) DLT 641, *Sadhna Sharma & Ors. vs. Prem Lata Gautam & Ors. Manu/DE/2937/2005* and *Taran Jeet Kaur Vs. G.S. Bhatia, 2009 (108) DRJ 89* lay down the correct law and, therefore, continue to be binding precedents.

(b). For reasons set out above, the view taken in *Eicher Motors Ltd. Vs. Saurabh Katar and Ors., [2016 I AD (Delhi) 83]*, *Sanofi Aventis* vs. *Intas Pharmaceuticals Ltd. and Anr., [227 (2016) DLT 296]*, *Metal Box India and Anr. Vs. T.K. Sehgal and Sons (HUF) and Ors., [order dated 28.03.2016 in CS (OS) 3213/2011]*, *Kamal Sharma and Ors. Vs. Blue Coast Infrastructure Development Pvt. Ltd. and Ors. [2016 (229) DLT 438] and Mrs. Sharada Nayak Vs. Mr. V.K. Shunglu & Ors., [order dated 28.04.2016 in CS (OS) 2829/2015]*, being out of accord with precedents of higher authority, cannot be followed.

(c). Upon issuance of the order by Hon'ble the Chief Justice as per notification no.27187/DHC/Orgl. dated 24.11.2015, in exercise of the power vested in her by Section 4 of Delhi High Court (Amendment) Act, 2015, the suits or proceedings falling in the categories specified therein, pending on the specified date on the original side of this court, are required to be transferred forthwith to the subordinate jurisdictional courts and this court, its pecuniary jurisdiction over such cases having ceased, cannot entertain, or adjudicate upon, any application, including for amendment of the plaint, except in the event of such case, after having been made over to the District Court, being withdrawn and transferred to this

court, *inter alia*, in exercise of power under Section 24 of the Code of Civil Procedure, 1908.

140. The file of the civil suit in which the reference was made shall be placed before the appropriate forum for further proceedings in accordance with the law on the date specified in the separate order passed by the majority.

-sd-
(R.K. GAUBA)
JUDGE

SANJIV KHANNA, J.

141. The question raised in the present reference is legalistic. It relates to the jurisdiction or power of the judge on the Original Side of the High Court to examine and decide an application for amendment of the plaint for enhancement of pecuniary jurisdiction to more than Rs.2 crores, for as per the administrative order passed by the Hon'ble the Chief Justice on 24th November, 2015 all suits and other proceedings pending in the High Court on the Original Side where the value does not exceed Rs.2 crores (Rs.1 crore in cases relating to commercial disputes) stand transferred to the jurisdiction of the subordinate courts.

142. My opinion being the last in point of time, I have had the occasion and privilege to read the judgments of Rajiv Sahai Endlaw, J. and R.K. Gauba, J. As recorded by R.K. Gauba, J., in our meetings and discussions, I had expressed my concurrence with the final finding as

recorded by Rajiv Sahai Endlaw, J. I proceed to record and give my reasons.

143. As the reference Court, we are required to answer the following question:-

> "Whether a court, which does not have pecuniary jurisdiction to entertain the plaint/suit, can entertain an application to amend the plaint to bring the plaint within the pecuniary jurisdiction of the court?"

144. As the question raised pertains to law and not facts, I would refrain from commenting on the facts and would not like to expound and exposit on merits on whether the amendment application seeking enhancement of the pecuniary jurisdiction should be allowed or dismissed. Indeed, if we accept that the Delhi High Court does not have jurisdiction, then as a sequitur, it must follow that we should not comment on the merits of the prayer for amendment. Conversely, the amendment application would be decided by the Single judge on the Original Side on merits. The amendment application is thus either to be decided by the single Judge on the Original Side of this Court or by the Judge presiding over the transferee court. Any opinion on the merits would create difficulty and, therefore, I have avoided any comments touching on merits. Some reference has been made in the judgments of my brothers to principles of amendment, which I believe are of general nature.

145. The expression want or lack of jurisdiction means usurpation of power, unwarranted in law. Jurisdiction as a concept is incapable of strict conceptualisation as it has varied shades and hues.

146. Jurisdiction of Court to decide its own jurisdiction is somewhat paradoxical, yet as a first principle, it is accepted that each court, including a court or forum of limited jurisdiction, in the absence of a specific statutory mandate to the contrary, has the power to decide whether or not it can try and decide the matter. It is also difficult to conceive of a civil court or a tribunal which has omnibus and unlimited jurisdiction, unrelated and not circumscribed with reference to the subject matter, person, territory or the amount involved. This principle of legal self-reference has been dealt with subsequently also.

147. Explanation VIII to Section 11 relating to *res judicata*, incorporated by the Code of Civil Procedure (Amendment) Act, 1976, reads:-

> "Explanation VIII.-An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in as subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised."

The purport of the said Explanation is to incorporate and affirm the 'bootstrap doctrine', which in Black's Law Dictionary, Eighth Edition, has been defined as:-

> "If the court which rendered the judgment has, with the parties before it, expressly passed upon the jurisdictional question in the case, or had opportunity to do so because the parties could have raised the question, that question is res judicata, and is therefore not subject to collateral attack in the state in which the judgment issued on. This has been called the 'bootstrap doctrine', the idea being that a court which initially had no jurisdiction can when the issue is

litigated lift itself into jurisdiction by its own incorrect but conclusive finding that it does have jurisdiction."

This doctrine has its limitations especially when the enactment itself states that the judgment of the court of the limited jurisdiction can be challenged in collateral proceedings, or is not finally determinative, or when the defendant has not appeared. In the first situation, the question would arise whether the Legislature had granted power to the Court or forum of limited jurisdiction, the authority to decide its own jurisdiction. Indeed the Explanation VIII quoted above uses the expression "competent to decide such issue". Pertinently in the present case, the Judges on the Original side of this Court exercising jurisdiction and power under Section 9 of the Code are not regarded as Courts of limited jurisdiction.

148. Secondly, a distinction must be drawn between subject-matter jurisdiction and pecuniary or territorial jurisdiction. In each situation, the question relates to the jurisdiction of the court, but in the case of territorial or pecuniary jurisdiction, the want of jurisdiction of this kind may be remedied by waiver, consent or acquiescence. These are treated as jurisdictional defects which can be cured. Thus, in spite of lack of jurisdiction, a party can be precluded from raising an objection even at the stage of appellate proceedings. There is case law which suggests that the Bootstrap Doctrine, without statutory backing, cannot give binding effect to a judgment by a Court that had no subject matter jurisdiction.

149. Section 21 of the Code of Civil Procedure, 1908 (CPC or Code for short) reads as under:-

> "**21. Objections to jurisdiction.-** (1) No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the court of first instance at earliest possible opportunity and in all cases were issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.
>
> (2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the court of first instance at the earliest possible opportunity, and in all cases where sues are settled, at or before such settlement, and unless there has been a consequent failure of justice.
>
> (3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been consequent failure of justice."

150. Section 11 of the Suit Valuation Act, 1887 reads:-

> "11. Procedure where objection is taken on appeal on revision that a suit or appeal was not properly valued for jurisdictional purposes. -
>
> (1) Notwithstanding anything [1][in section 578 of the Code of Civil Procedure (14 of 1882)] and objection that by reason of the over-valuation or under- valuation of quit or appeal a Court of first instance or lower Appellate Court which had no jurisdiction with respect to the suit or appeal exercise jurisdiction with respect thereto shall not be entertained by an Appellate Court unless. -

(a) The objection was taken in the Court of first instance at or before the hearing at which issues were first framed and recorded, or in the lower Appellate Court in memorandum of appeal to that Court, or

(b) The Appellate Court is satisfied, for reasons to be recorded by it in writing, that the suit or appeal was over-valued or under-valued, and that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits.

(2) If the objection was taken in the manner mentioned in clause (a) of sub-section (1), but the Appellate Court is not satisfied as to both the matters mentioned in clause (b) of that sub-section and has before it the materials necessary for the determination of the other grounds of appeal to itself, it shall dispose of the appeals as if there had been no defect of jurisdiction in the Court of first instance or lower Appellate Court.

(3) If the objection was taken in that manner and the Appellate Court is satisfied as to both those matters and has not those materials before it, it shall proceed to deal with the appeal under the rules applicable to the Court with respect to the hearing of appeals; but if it remands the suits or appeal, or frames and refers issues for trial, or requires additional evidence to be taken, it shall direct its order to a Court competent to entertain the suit or appeal.

(4) The provisions of the section with respect to an Appellate Court shall, so far as they can be made applicable, apply to a Court exercising revisional jurisdiction under [Section 622 of the 'Code of Civil Procedure (14 of 1882)] or other enactment for the time being in force.

(5) This section shall come into force on the first day of July 1887."

151. In ***Kiran Singh and Others versus Chaman Paswan and Others,*** AIR 1954 SC 340, it was observed as under:-

"**6.** The answer to these contentions must depend on what the position in law is when a court entertains a suit or an appeal over which it has no jurisdiction, and what the effect of Section 11 of the Suits Valuation Act is on that position. It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was *coram non judice,* and that its judgment and decree would be nullities. The question is what is the effect of Section 11 of the Suits Valuation Act on this position.

7. Section 11 enacts that notwithstanding anything in Section 578 of the Code of Civil Procedure an objection that a court which had no jurisdiction over a suit or appeal had exercised it by reason of overvaluation or undervaluation, should not be entertained by an appellate court, except as provided in the section. Then follow provisions as to when the objections could be entertained, and how they are to be dealt with. The drafting of the section has come in — and deservedly — for considerable criticism; but amidst much that is obscure and confused, there is

one principle which stands out clear and conspicuous. It is that a decree passed by a court, which would have had no jurisdiction to hear a suit or appeal but for overvaluation or undervaluation, is not to be treated as, what it would be but for the section, null and void, and that an objection to jurisdiction based on overvaluation or undervaluation, should be dealt with under that section and not otherwise. The reference to Section 578, now Section 99 CPC, in the opening words of the section is significant. That section, while providing that no decree shall be reversed or varied in appeal on account of the defects mentioned therein when they do not affect the merits of the case, excepts from its operation defects of jurisdiction. Section 99 therefore gives no protection to decrees passed on merits, when the courts which passed them lacked jurisdiction as a result of overvaluation or undervaluation. It is with a view to avoid this result that Section 11 was enacted. It provides that objections to the jurisdiction of a court based on overvaluation or undervaluation shall not be entertained by an appellate court except in the manner and to the extent mentioned in the section. It is a self-contained provision complete in itself, and no objection to jurisdiction based on overvaluation or undervaluation can be raised otherwise than in accordance with it. With reference to objections relating to territorial jurisdiction, Section 21 of the Civil Procedure Code enacts that no objection to the place of suing should be allowed by an appellate or Revisional Court, unless there was a consequent failure of justice. It is the same principle that has been adopted in Section 11 of the Suits Valuation Act with reference to pecuniary jurisdiction. The policy underlying Sections 21 and 99 of the Civil Procedure Code and Section 11 of the Suits Valuation Act is the same, namely, that when a case had been tried by a court on the merits and judgment rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice, and the policy of the legislature has been to treat

> objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate court, unless there has been a prejudice on the merits. The contention of the appellants, therefore, that the decree and judgment of the District Court, Monghyr, should be treated as a nullity cannot be sustained under Section 11 of the Suits Valuation Act."

A reading of the aforesaid paragraphs would show that the Supreme Court had accepted the general principle that a decree passed by the court without jurisdiction is a nullity and the plea of invalidity can be raised at the stage of execution or even in collateral proceedings. However, the Supreme Court did make a distinction between subject-matter and pecuniary/ territorial jurisdiction and observed that the question of over or undervaluation cannot be entertained by the appellate court, except when provided in Section 21 of Code. This principle stands out and is clear. The question of over-valuation or under- valuation has to be dealt with as per the terms of the said Section and not otherwise for when a judgment is rendered on merits, it should not be reversed purely on technical grounds, unless it has resulted in the failure of justice. Even on the question of subject-matter jurisdiction, some dent has been made by incorporation of Explanation VIII to Section 11 CPC, which pertains to *res judicata* and binding force on a judgment even of a court of limited jurisdiction, provided it is competent to decide the issue of jurisdiction. In that event, an unsuccessful party cannot initiate collateral proceedings notwithstanding that the court of limited jurisdiction was not competent to try such proceeding or issues. It is difficult to accept and approve that a contesting losing side/defendant can file a suit to declare a decree

as a nullity for want of pecuniary jurisdiction. Collateral separate proceedings would not lie and would be rejected.

152. Section 15 of the Code reads as under:-

> ***"S.15. Court in which suits to be instituted.-****Every suit shall be instituted in the Court of the lowest grade competent to try it."*

The aforesaid Section in simple and plain language states every suit has to be instituted in the court of the lowest grade competent to try it. When a suit is triable by a court of the lowest grade but is instituted in a court of higher grade, the latter court has jurisdiction to examine the question of its own jurisdiction and return the plaint if it does not have jurisdiction. It is the valuation in the plaint that determines jurisdiction, the averments made in the written statement generally being irrelevant to the question of jurisdiction. However, in view the provisions of Section 11 of the Suit Valuation Act, 1887 and the decisions of the Supreme Court in ***Tara Dev versus Thakur Radha Krishna Maharaj,*** AIR1987 SC 2085, ***Nandita Bose versus Ratanlal Nahata***, AIR 1987 SC 1947, it is settled principle that although the plaintiff's valuation of a suit determines the pecuniary jurisdiction of the Court, such valuation of claims cannot be arbitrary. In ***V. Ramamirtham, Sole Proprietor, Glorious Pictures versus Rama Film Service***, AIR 1951 Madras 93 (FB), Viswanatha Shastri, J. opined that the object of Section 15 of the Code is to prevent superior courts from being flooded or over-crowded with suits triable by the inferior courts. The Section primarily regulates the procedure and not "jurisdiction".

The Section recognises that courts or more than one court would have jurisdiction to try a suit and, therefore, uses the expression ' the court of the lowest grade'. Reference to this Full Bench decision is not with a view to undermine the salutary object of Section 15 of the Code, but to highlight the difference between subject matter and pecuniary jurisdiction, the latter being dependent on the valuation of the suit These are different and distinct facets of jurisdiction, all of which cannot be put in a straitjacket.

153. Lastly, a distinction must be drawn between institution of the suit in the court of competent jurisdiction at the start of the proceedings, and subsequent change resulting lack of jurisdiction. The court or tribunal may subsequently lose jurisdiction in certain circumstances, including when the jurisdiction is ousted by the statutory provisions. This is what has happened and transpired in the present case.

154. The suit in question was instituted in the Delhi High Court in accordance with Section 15 of the Code. However, there has been a subsequent change in the pecuniary jurisdiction of the Court. The High Court of Delhi then had jurisdiction to try all civil suits valued at Rs.20 lacs or more. With the enactment of the Delhi High Court (Amendment) Act, 2015 (the Amending Act, for short) with effect from 26th October, 2015, the words "rupees twenty lakhs" in sub-section (2) to Section 5 of the Delhi High Court Act, 1996 stand substituted for the words "rupees two crore". Section 5(2) of the Delhi High Court Act prior to and post the amendment dated 26th October, 2015 would read as under:-

"Pre-amendment

> 5(2) Notwithstanding anything contained in any law for the time being in force, the High Court of Delhi shall also have in respect of the said territories ordinary original civil jurisdiction in every suit the value of which exceeds rupees twenty lakhs.

Post-amendment

> 5(2) Notwithstanding anything contained in any law for the time being in force, the High Court of Delhi shall also have in respect of the said territories ordinary original civil jurisdiction in every suit the value of which exceeds rupees two crore".

The aforesaid Section deals with the institution of suits and not with the transfer of suits. It would therefore, not be correct to accept the proposition that on the amendment of Section 5 and substitution of the words "rupees twenty lacs" with "rupees two crores, the suits which were validly instituted in the Delhi High Court, would no longer be triable because the Delhi High Court has lost pecuniary jurisdiction with effect from 26th October, 2015. The difference between institution and transfer of jurisdiction, which happens post the institution, and the triability of the pending litigation was examined and elucidated by the Supreme Court in ***Ramesh Kumar Soni versus State of Madhya Pradesh***, (2013) 14 SCC 696. This decision though in a criminal matter, draws a distinction between jurisdiction at the time of institution of proceedings and an amendment applicable to pending cases, which were validly instituted and have to be transferred to another forum/court. In ***New India Insurance Company Limited versus Shanti Misra***, (1975) 2 SCC 840, the Supreme Court had held that change of forum by way of law can operate retrospectively and would be

applicable even if the cause of action or right of action had accrued prior to the change of forum. A plaintiff had a vested right of action but not a vested right of forum. Unless, by express words, the new forum is made available only to such cause of action as arises subsequent to the creation of the forum, the general rule is to give retrospective effect to the change, However, in ***Hitendra Vishnu Thakur and Others versus State of Maharashtra and Others***, (1994) 4 SCC 602 it has been held that a statute, which affects substantive rights, is presumed to be prospective in operation, unless made retrospective either expressly or by necessary intendment. Further, an amendment to a procedural statute, unless such construction is textually impossible, is presumed to be retrospective in application. A procedural statute should not generally be applied retrospectively where the result would be to create new disabilities or obligations or impose new duties in respect of transactions already accomplished.

155. It is this reasoning that possibly prevailed with the Division Bench of this Court when they had decided ***Delhi High Court Bar Association and Another versus Hon'ble the Chief Justice, High Court of Delhi and Others***, Writ Petition (C) No. 4520/1992 dated 23rd April, 1993. The said decision was with reference to the amendment of sub-section (2) to Section 5 of the Delhi High Court Act which came into force on 9th November, 1992, substituting the figure of Rs.1,00,000/- with Rs.5,00,000/-. The Delhi High Court (Amendment) Act, 1991 in Section 4 of the Amending Act had postulated as under:-

> "Power of Chief Justice to transfer pending suits and proceedings to subordinate Courts.- "The Chief Justice of the High Court of Delhi may transfer any suit or other proceedings which is or are pending in the High Court immediately before the commencement of this Act and in which no witnesses have been examined before such commencement to such subordinate court in the Union territory of Delhi as would have jurisdiction to entertain such suit or proceedings been instituted or filed for the first time after such commencement."

Section 4 had stipulated that the Chief Justice has the power to transfer pending suits and other proceedings pending in the High Court before the commencement of the Act and in which no witnesses had been examined before commencement, as if the same have been instituted and filed for the first time before such commencement.

156. Section 4 of the Amending Act of 2015 is slightly differently worded and reads as under:-

> "4. The Chief Justice of the High Court of Delhi may transfer any suit or other proceedings which is or are pending in the High Court immediately before the commencement of this Act to such subordinate court in the National Capital Territory of Delhi as would have jurisdiction to entertain such suit or proceedings had such suit or proceedings been instituted or filed for the first time after such commencement."

A reading of the aforesaid Section would show that it specifically dealt with transfer of pending cases pending in the High Court on the date when the Amending Act was enforced, i.e., on 26th October, 2015. When a specific provision is made in form of Section 4 of the Amending Act, then the said provision would override the general

assumption that all pending proceedings would also be transferred. Section 4 of the Amending Act mandates and requires the Chief Justice to pass a specific order to transfer suits or other proceedings and it is only in terms of the said order that the pending matters would be transferred. Intendment is to the contrary. In these circumstances, I do not think the decision in the case of ***Delhi High Court Bar Association*** (supra) correctly holds that all pending matters stood transferred in view of language of sub-section (2) to Section 5 of the Delhi High Court Act, post the amendment. The amendment made in sub-section (2) to Section 5 has to be read in the light of, and harmoniously with Section 4 of the Amending Act and not in isolation and *de hors* the said section. R.K. Gauba, J. in his conclusion has rightly observed that the transfer of pending cases under Section 4 of the Amendment Act of 2015 required the Chief Justice to take a decision and issue an order (See Paragraph 118). The same being analogous to delegated legislation would be the foundation and the basis of transfer of the cases. If we would accept the ratio of ***the Delhi High Court Bar Association*** as correct, then by operation of Section 5(2) of the Amending Act all orders post 26th October, 2015 till 24th November, 2015 in suits value of which was Rs.2 Crores or less would be questionable on the ground of lack of jurisdiction. The notification of the Chief Justice under Section 4 of the Amending Act quoted and examined below is dated 24th November, 2015.

157. This brings us to the core issue as to whether the High Court, while examining the question of transfer of a case to the District Court, can

also decide and adjudicate an application for amendment seeking enhancement of pecuniary jurisdiction to exceeding Rs.2 crores (Rs.1 crore in the case of commercial cases) which would if the application is allowed, have the effect of doing away with the requirement of a transfer order as the suit would the fall within the amended pecuniary jurisdiction of this Court. Before deciding and elucidating my reasons why the High Court would have power and retains jurisdiction and is not *functus officio* to decide the said application, I would like to first reproduce the office order dated 24th November, 2015 passed by Hon'ble the Chief Justice under Section 4 of the Amending Act of 2015. The same reads:-

"Notification No. 27187/DHC/Orgl.. Dated 24.11.2015

In exercise of powers conferred by Section 4 of the Delhi High Court (Amendment) Act, 2015 (Act 23 of 2015), which came into force with effect from 26.10.2015 vide notification No.F.No.L-19015/04/2012-Jus dated 26.10.2015 issued by the Government of India, Ministry of Law, Justice and Company Affairs, published in Gazette of India Extraordinary, Part II, Section 3 sub-section (ii), Hon'ble the Chief Justice has been pleased to order as under:-

(i) All suits or other proceedings pending in the Delhi High Court on the Original Side up to the value of rupees one crore, excepting those cases in which final judgments have been reserved, be transferred to the jurisdictional subordinate courts.

(ii) All suits or other proceedings the value of which exceeds rupees one crore but does not exceed rupees two crores, other than those relating to commercial disputes the specified value of which is not less than rupees one crore (as defined in the Commercial Courts, Commercial Division and commercial Appellate Division of High Courts Ordinance, 2015), pending in the Delhi High

> Court on the Original Side, excepting those cases in which final judgments have been reserved , be transferred to the jurisdictional subordinate courts.
>
> The transfer of cases to the subordinate courts shall commence from today, i.e. 24.11.2015."

The notification draws a distinction between cases where final judgment has been reserved and others and stipulates that all suits and proceedings pending in the Original Side of the Delhi High Court which are valued at exceeding Rs.2 crores (Rs. 1 crore in commercial cases) would be transferred to the jurisdictional subordinate court. If one strictly goes by the language, then cases in which orders on interim applications including applications for amendment have been reserved, would have to be transferred without pronouncement of the said orders. This, however, does not appear to be the intent and purpose of the notification. The cases in which orders on interim applications have been reserved, can be certainly pronounced, even though after pronouncement the said cases may have to be transferred to the subordinate court. This is for the reason that the Judges on the original side do not suffer from lack of jurisdiction and are not *funtus officio.*

158. The primary reason why I feel that the High Court would have the jurisdiction to decide the application for amendment enhancing the pecuniary jurisdiction is that the Original Side of the High Court is still in seisin of the matter till the suit or proceedings are actually ordered to be transferred to the subordinate court. On the question of transfer of a case from the Original Side of the High Court, it is for this Court to examine and determine the valuation of suit made by the plaintiff and

decide whether in terms of the said valuation, the suit should be transferred. Section 5(1) of the Delhi High Court Act, 1966 stipulates that the High Court of Delhi shall have all such original, appellate and other jurisdiction as under law in force immediately before the appointed day. Should the Original Side of the High Court in the said matrix not examine the question of valuation or is precluded from examining the question of valuation, is the moot question. My answer to the said question would be in affirmative in view of the discussion above on the general principles relating to jurisdiction. Amendment of a plaint normally, unless otherwise directed, relates back to the date of original filing. The doctrine of relation back stands accepted and recognized in ***Sampath Kumar versus Ayyakannu and Anr.,*** (2002) 7 SCC 559 and in ***Siddalingamma and Anr. versus Mamtha Shenoy,*** (2001) 8 SCC 561 [See also decision dated 26th August, 2015 in Civil Appeal No.6595/2015 ***L.C. Hanumanthappa @ since dead versus H.B. Shivakumar***.]. Therefore, when the pecuniary clause in the plaint is allowed to be amended, it could relate back to the date of original filing of the plaint.

159. I would, at this stage, like to refer to a decision of Division Bench of this Court in ***Mahesh Gupta versus Ranjit Singh and Others***, AIR 2010 Delhi 4, and make specific reference to paragraph 7 thereof, which reads:-

> "7. The issue therefore is, can this application for amendment be allowed. It is trite that the court which does not have jurisdiction to try the matter would have no jurisdiction to pass any orders which affect the rights of the parties. The orders which are passed by a court which has no jurisdiction to

> determine the matter, are without jurisdiction and, therefore, of no effect and purport. The Court therefore which does not have pecuniary jurisdiction cannot pass any orders allowing an application seeking amendment of a plaint to bring the suit plaint within the pecuniary jurisdiction of a Court."

I have reservations on the broad proposition as expounded in paragraph 7. Taken to its logical end, it would mean that even the subordinate court would not have jurisdiction to decide an application for amendment for enhancing the pecuniary value, for if the application for amendment is accepted, the subordinate court would not have pecuniary jurisdiction to pass any order. This would result in a situation of *circulus inextricabilis.* We should avoid *Renvoi.* The term has been defined in Black's Law Dictionary, Eighth Edition (Pg.1324) as the doctrine under which a Court in resorting to foreign law adopts as well the foreign law's conflict-of-laws principle which may in turn refer the Court back to the law of the forum. Logically, therefore, we should not follow an approach which leads to infinite regress as this would lead to absurdity. Pertinently, the Division Bench in ***Mukesh Gupta*** (supra) had exercised the power under Section 24 of the Code and had retained the suit. It was also observed that the ratio of the decision would not be applicable where the contention of the plaintiff-applicant was that there was a typographical or a clerical error while typing the valuation paragraphs in the plaint.

160. Almost identical question had arisen before the Supreme Court in ***Lakha Ram Sharma versus Balar Marketing Private Limited***, (2008) 17 SCC 671 and it was held that it is settled law that merely because an

amendment may take the suit out of jurisdiction of the court is no ground for refusing the amendment. In fact, a reading of the ratio would show that even the converse was upheld. In the said case, the High Court had rejected the amendment on the ground that the valuation of the suit was sought to be increased from Rs.1 lac to Rs.10 lacs so as to only take the suit out from the jurisdiction of that court. It was observed:-

> "4. It is settled law that while considering whether the amendment is to be granted or not, the Court does not go into the merits of the matter and decide whether or not the claim made therein is bonafide or not. That is a question which can only be decided at the trial of the Suit. It is also settled law that merely because an amendment may take the suit out of the jurisdiction of that Court is no ground for refusing that amendment. We, therefore, do not find any justifiable reason on which the High Court has refused this amendment. Accordingly, the impugned order is set aside and that of the trial court is restored. We, however, clarify that as the appellant has now raised the claim from Rs. 1 Lakh to Rs. 10 Lakh, the trial court will determine, whether or not Court Fees are correctly paid.
>
> 5. The appeal stands disposed of accordingly. No order as to costs"

161. It can be urged that for every power there should be prior or a higher law as a formalist may hold. But insistence of such a requirement may not be entirely desirable and necessary for it may lead to infinite regress and mandates validation for every action. To avoid this, the law acknowledges that power and authority could be bestowed *expropio vigore*, from its own strength. Such non-statutory power could be traced to custom, consent or contract or evolution of natural law as understood and developed by human reasoning. The principle that a

court has jurisdiction to determine the scope of its own jurisdiction has gained recognition by the process of evolution. In this manner, the general theory of jurisdiction equates the power to determine with the existence of jurisdiction, to resolve the paradox and dilemma referred to above. If we do not accept and apply this principle, and hold that the principle of legal self-reference is not inherent, and the question or challenge to jurisdiction can only be answered by another court, it would enable a determined party to push back and delay the litigation.

162. The view we have taken would not only cut short delays, but is a pragmatic view. It enables the Court where the suit is pending to determine and decide the application for amendment relating to pecuniary jurisdiction for if the amendment is allowed or dismissed, the suit will be retained or transferred and parties are not relegated to another court where the application for amendment would then be considered and depending upon the decision, the suit could be re-transferred or returned to be presented in the earlier court. If we follow the second procedure, it would cause delay and make the procedure more cumbersome and difficult. This would not be in the interest of the litigant wanting an expedited and quick disposal. The decision in ***Lakha Ram's*** case (Supra) adopts a pragmatic view to hold that he court is in seisin of the matter can decide the application for amendment even when an amendment, if allowed, would take the suit/proceedings beyond the pecuniary jurisdiction of that Court. As sequitor the High Court being in seisin of the suit, it would not be barred or prohibited from deciding the application for amendment, which if allowed, would have the effect of the suit being tried and decided in the High Court.

163. In view of the opinion expressed above, the Original Side of the High Court being in seisin of the matter, would have the jurisdiction to determine whether the suit should be transferred and the jurisdiction would include the power to decide an application for amendment, which if allowed, would mean that the suit is not to be transferred. When the jurisdiction is established, it would be not correct to hold that the procedural laws have been violated.

164. The question referred and answered is in the context in question i.e. the suit was validly instituted as per Section 15 of the Code read with the Delhi High Court Act, Sections 4 and 5 of the Amending Act of 2015, the notification dated 24th November, 2015 and the suit is pending in the High Court.

165. The question of law in the context and matrix in question has to be answered in the affirmative holding that the Original Side of the High Court can decide an application to amend the plaint and increase the pecuniary valuation of the suit, where if the application is allowed, it would result in the suit not being transferred.

(SANJIV KHANNA)
JUDGE

FINAL ORDER
06.09.2016

In view of the majority opinion, the question of law, in the context and matrix in question, is answered in the affirmative, holding that the Original

Side of the High Court can decide the application to amend the plaint and increase the pecuniary valuation of the suit, where if the application is allowed, it would result in the suit not being transferred.

The amendment application would be listed before Judge of the Original Side of the High Court on 21st September, 2016.

The amendment application would be decided on merits without being influenced by any observations in the opinions, which are made to opine on the question of law referred and answered. It is clarified that the observations made in the context of and relating to the principles of amendment are of general nature.

-sd-
(SANJIV KHANNA)
JUDGE

-sd-
(RAJIV SAHAI ENDLAW)
JUDGE

-sd-
(R.K. GAUBA)
JUDGE

SEPTEMBER 6, 2016
bs/yg/nk/VKR/ssn