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Analysis of Constructive Res Judicata with reference to Writ Jurisdiction

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ABSTRACT

The application of Res Judicata cannot be ignored in the garb of giving protection to fundamental rights. People cannot keep filing as many writ petition as they like and take one or two points every time. That is clearly opposed to the public policy on which the very idea of Res Judicata is based and would amount to harassment of opposing litigating parties and wastage of court's precious time. It would dilute the doctrine of finality of judgements and would bring the legal system to a haul. This paper would analyse the intricacies of Res Judicata and the principles on which the doctrine is based. For the purpose of determination of application of the same doctrine in case of writ jurisdiction under Article 226 and Article 32 of the Constitution of India in High Courts and the Supreme Court of India respectively, the author has relied on the case of Devilal Modi vs. Sales Tax Officer.

I. SUITS IN GENERAL: JURISDICTION OF THE COURTS AND RES JUDICATA

Part I of Code of Civil Procedure, 1973 deals with suits in general, place of suing, institution of suits, summons and discovery, judgment and decree, interests and costs.

The chapter that is concerned with the application of Res Judicata is the jurisdiction of the courts and Res Judicata. In brief the chapter consists of six sections which govern the suits in general and their jurisdiction.

Section 9 of the CPC speaks of the power of the courts to hear all the matters of civil nature unless their cognizance is expressly or impliedly barred.

Section 10 of the CPC bars the courts to entertain matter which are with same litigating parties and cause of action are pending in other judicial bodies. Nevertheless, for the purpose of this section any suit being tried in any foreign court is not barred to be tried by any civil court with same cause of action.

Section 11 of the CPC conceptualises the element of Res Judicata which is the baseline of this paper and it says that any suit or issue having been received finally decided by any court is

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barred to be heard again with the same cause of action and litigating parties.

Section 12 of the CPC talks about bar to further suit wherein a litigating party is precluded by the rules under CPC to institute a further suit in regard to any cause of action, that suit shall not be allowed.

Section 13 of the CPC talks about situations wherein the foreign judgments would not be considered conclusive and lays down a variety of factors for the same.

Section 14 of the CPC talks about presumption of legitimacy given to any foreign judgment unless existence of contradiction on record is projected.

II. RES JUDICATA: SECTION 11, THE CODE OF CIVIL PROCEDURE, 1973

Res Judicata as a principle enumerated under section 11 of the Code of Civil Procedure is as follows;

No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court².

In simple words it means a final judicial decision pronounced by a judicial body having competent jurisdiction over the cause of action and relief claimed in litigation and over the parties thereto.”

As explained Justice Das Gupta J. in the leading case of *Satyadhyan Ghosal v. Deorjin Debi*³ as:

The principles of res judicata are based on the need for a final judgment. When res judicata is applied it means that the case or the matter it is no longer subject to review. This applies primarily between past and future litigations. Whether the question of whether it is a matter of fact or a matter of law is the final decision, because it is settled by both parties in the same dispute or in the same case and the decision has been finalized, and the appeal has been referred has been dismissed. In such a case, both parties have no right to review this matter in a future trial or trial between the same parties.

² “CPC Section 11. Res Judicata.” (*Latest Laws*) <<https://www.latestlaws.com/bare-acts/central-acts-rules/cpc-section-11-res-judicata/>> accessed October 2, 2020

³ 1960 SCR (3) 590

(A) Res Judicata is a Rule of Law

In the case of *Daryao v. The State of UP*⁴, the Supreme Court made it clear that the binding force of judgments made by competent courts is itself an important part of the rule of law, and, as stated, it is the basis for the application of justice. Therefore, the court ruled that the rules of jurisdiction also apply to the petition filed under Article 32 of the Constitution, and if the petition filed with the High Court under Article 226 of the Constitution was dismissed on merits then the rule of res judicata would prohibit the submission of similar case to the Supreme Court under Article 32.

(B) Constructive Res Judicata

Rule of constructive res judicata is based under Explanation IV of Section 11 of the Code. It works on this premise that if a suit is tried by a litigant against his opponent in a subsequent proceeding under the banner of same cause of action then that clearly is opposed to considerations of public policy on which the doctrine of res judicata is based and therefore it would eventually amount to harassment to the opposing litigant. Foremost, if such a proposition is allowed then the aspect of finality of judgments would also be materially affected.

Therefore it helps in upholding the explanations and principals of res judicata and not let a cantankerous litigant waste the time of the court and harass the opposing litigant. Due to which it is regarded aspect or amplification of the general principle of res judicata.

In the leading case of *State of U.P. V. Nawab Hussain*⁵, service of a sub-inspector of police was dismissed by Director General of Police. Subsequently, He challenged the decree of dismissal by filing a writ in the High Court on a simple ground that he was not given ample opportunity of recognition and representation. The contention was, however, negated by the Court of law and the petition was dismissed. Subsequently, he filed a suit and raised an additional contention that since he was appointed by the Inspector General, the D.I.G. being subordinate to him had no power or authority to dismiss him. The state through its representation advocated for the fact that the suit was barred under constructive res judicata. The trial court, Appellate Court and the High Court eventually held that suit was not barred under constructive res judicata, nevertheless the Supreme Court held that the suit was barred as the it was well within the knowledge of the litigating party and could have been taken up in the original petition or the subsequent writ petition in the High Court.

⁴ AIR 1961 SC 1457

⁵ AIR 1977 SC 1680

In *Devilal Modi V. STO*,⁶ Supreme Court finally clarified the standing of res judicata in case of writ petitions which is going to be dealt with in further part of the paper.

III. DEVILAL MODI V. SALES TAX OFFICER, RATLAM AND ORS

Coram:

P.B. Gajendragadkar, C.J., J.R. Mudholkar, K.N. Wanchoo, M. Hidayatullah and Raghubar Dayal, JJ.

Facts:

- In the said case, the Appellant Devilal Modi approached the Supreme Court through a special leave petition seeking to quash the order of the High court in two consecutive writs filed under Article 226 of the Constitution of India for the purpose of challenging the order of assessment of his sales as the proprietor of M/s. Daluram Pannalal Modi.
- It appeared that the Madhya Pradesh General Sales Tax Act, 1958 under which the order of assessment was issued to the appellant to pay sales-tax has been passed, was repealed by the Madhya Pradesh General Sales Tax, 1958 and that a notice was issued to the appellant by the Assistant Commissioner as he was satisfied that the Appellant had escaped sales-tax assessment and had rendered himself to be liable u/s. 19(1) of the Act. In respect of the same, he had to pay an additional tax of Rs. 31,250 with a penalty of Rs. 15,000.
- In opposition to this, the Appellant filed a Writ Petition in the High Court of Madhya Pradesh and it got dismissed. Adding a few more contentions, the Appellant filed a second Writ Petition in the same High Court for the consideration of the Court.
- Through the first W.P. the Appellant pointed out that u/s 30 of the Madhya Pradesh General Sales Tax Act, 1958, delegation of the duties of Commissioner is present, however the action of the Commissioner in this case is delegation of power not duties to the Assistant Commissioner, therefore, the said delegation deem to be invalid in the eyes of law. The second contention that there cannot be reassessment of same sales twice.
- In the second W.P., the Appellant tried to raise two more additional contentions which were neglected by the Court stating that it's not possible as the contentions should have come up in the original petition and at much earlier stage.

⁶ AIR 1965 SC 1153

Issue

1. Whether a citizen should be allowed to exercise the jurisdiction of Article 226 of High Courts to challenge the validity of same executive orders through consecutive petitions just in the light of importance of fundamental rights ? Therefore, will the application of constructive Res Judicata apply or not ?

Contention

1. It was contented by the side of the Appellant that where a citizen seek for redress from the HC by invoking its jurisdiction under Article 226, it would be inappropriate and invalid to invoke the principle of Res Judicata against him.
2. The State contented that fundamental rights are significant feature and Article 226 needs to protect the sanctity of the same, nevertheless, validity of same order cannot be challenged twice in the garb of importance of fundamental rights under Article 226.

Judgement

The Court while maintaining the order of the High Court in the writ petitions held that application of Res Judicata becomes inherently important for courts to come to finality in case of judgments. In order to challenge the validity of the same order twice under a different blanket, subsequent opportunities under Article 226 cannot be provided.

The court while dealing with the questions of the infringement of fundamental rights said that while Courts must strive to sustain the striking of unconstitutional invasion, it would not be particularly right to blatantly ignore the principle of Res Judicata altogether in such cases and the sanctity of the aspect of finality of judgments must receive due consideration. Therefore, the application of Res Judicata does not cease to exist in case of writ petition.

IV. COMPARATIVE ANALYSIS

(A) US & UK

In US the idea of constructive res judicata is as similar to that of India's. It is considered to be a subset of the doctrine of res judicata. It seeks to prevent any claims of the same kind being raised in a later or subsequent proceeding if it should have been raised and decided in an earlier proceeding. The doctrine tries to prevent the determination of claims which were failed to be brought at the appropriate time in earlier proceedings.

However for the purpose of terminology, in US, it is most commonly referred to as Claim Preclusion and is covered under Rule 13 of Federal Rules of Civil Procedure.

The rationale behind its incorporation is as same as India's and that is to promote efficiency and limit unnecessary repetitive adjudications.

Similarly, in UK, in the recent and leading case of *Virgin Atlantic Ltd v Zodiac Seats UK Limited*, the principle of constructive res judicata was upheld and six principles were laid down;

1. A party is prevented from bringing subsequent proceedings to challenge an outcome that has already been decided (cause of action estoppel)
2. If a claimant succeeds in the first action and does not appeal the outcome, he may not bring a subsequent action on the same cause of action (i.e. to recover further damages)
3. The doctrine of merger treats a cause of action as having been extinguished once judgment has been provided and accordingly the Claimant's only right is the judgment itself
4. A party may not bring subsequent proceedings on an issue that has already been determined (issue estoppel)
5. A party may not bring subsequent proceedings which should and could have been dealt with in earlier proceedings (the 'Henderson v Henderson' principle)
6. There is a general procedural rule against abusive proceedings.

V. CONCLUSION

The application of Res Judicata cannot be ignored in the garb of giving protection to fundamental rights. People cannot keep filing as many writ petition as they like and take one or two points every time. That is clearly opposed to the public policy on which the very idea of Res Judicata is based and would amount to harassment of opposing litigating parties and wastage of court's precious time. It would dilute the doctrine of finality of judgements and would bring the legal system to a haul.
