

(2015) 07 AHC CK 0145

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 2793 of 2000

Madhusudan Das Agarwal and Others

APPELLANT

Vs

Banaras Hindu University and Others

RESPONDENT

Date of Decision : 22-07-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 1, Order 7 Rule 10, Order 7 Rule 10(1)(2), Order 7 Rule 10A, Order 7 Rule 10A
Constitution of India, 1950 — Article 226, 227
Urban Land (Ceiling and Regulation) Act, 1976 — Section 6(1)(b)

Citation : (2015) 7 ADJ 361 : (2015) 112 ALR 307 : (2015) 129 RD 317

Hon'ble Judges : Devendra Kumar Arora, J

Bench : Single Bench

Advocate : Shakeel and Brijesh Kumar Saxena, for the Appellant; Devendra Mohan Shukla and S.M. Royekwar, Advocates for the Respondent

Final Decision : Allowed

Judgement

Dr. Devendra Kumar Arora, J—Heard Mr. Brijesh Kumar Saxena, learned counsel for the petitioners, learned Standing Counsel and Mr. V.K. Singh, Senior Advocate, assisted by Mr. S.M. Royekwar, appearing on behalf of the contesting opposite party No. 1-Banaras Hindu University and perused the record. Through the instant writ petition under Article 226/227 of the Constitution of India, petitioners have challenged the order dated 28.8.2000 contained in Annexure No. 11 to the writ petition and the order dated 28.10.1999 contained in Annexure No. 8 to the writ petition, passed by the District Judge, Civil Courts, Lucknow. Petitioners have also inter alia prayed for issuance of writ in the nature of mandamus directing the District Judge, Civil Courts, Lucknow to proceed with the case from the stage it had been transferred to it and not to hold a de novo trial.

2. Shorn of unnecessary details the facts of the case are as under :

"One Shri D.C. Agrawal and Shri Harish Chandra Agarwal filed a suit under

Section 92 of the Code of Civil Procedure [hereafter referred to as "C.P.C."] against Banaras Hindu University, Varanasi (hereinafter referred to as "BHU") in the Court of Civil Judge (Senior Division), Mohanlalganj, Lucknow on 17.2.1972, which was registered as Regular Suit No. 25 of 1972, for removal of BHU from the office of trustee of Waqf Shah Banarasi Das and for appointment of new trustee in his place. In the aforesaid suit, notice was issued and in response thereof, defendant-BHU appeared and filed its written statement in the month of December, 1972. The Civil Judge, Mohanlalganj, Lucknow, wide judgment and decree dated 9.12.1978, decided the aforesaid suit ex parte and directed for removal of the defendant-BHU from office of trusteeship of the waqf Shah Banarasi Das. The defendant-BHU was further directed to deliver possession to the newly appointed trustee. However, it was provided that the scheme of management of the trust properties would be settled in final decree. Lastly, the Court directed for preparation of preliminary decree accordingly."

3. According to petitioners, on 29.5.1979, the decree-holder/petitioners had preferred an application for preparation of the final decree by annexing a scheme for management of the trust property, to which objection was filed by the judgment debtor/B.H.U. alongwith their own scheme for the management of the trust property. Subsequently, one of the plaintiff, namely, D.C. Agarwal died and as such, the name of his legal heir, namely, Shri Madhusudan Das Agarwal (petitioner No. 1 herein) was substituted in the aforesaid proceeding. Thereafter, Shri Madhusudan Das Agarwal preferred an application under Section 24(5) C.P.C., which was registered as Misc. Case No. 367-C/1995, for transfer of Regular Suit No. 25 of 1972 from the Court of Civil Judge, Mohanlalganj (Senior Division), Lucknow to the Court of District Judge, Lucknow. The learned District Judge, vide order dated 7.3.1996, while observing that the Court has power to transfer a case, which had no jurisdiction to entertain or decide a case, rejected the objection raised by the defendant-B.H.U. However, it was observed that the power to transfer the suit is discretionary and should be exercised after considering the entire facts and circumstances. Accordingly, hearing of the case was adjourned to decide whether this discretion should be exercised in the present case. Ultimately, the aforesaid application i.e. Misc. Case No. 367-C/1995 was dismissed for want of prosecution on 25.1.1997.

4. According to the petitioner, on 25.9.1990, an objection under Section 47 C.P.C. was filed by BHU, which was registered as Misc. Case No. 90-C of 1990. This objection was rejected by the Civil Judge (Mohanlalganj), Lucknow vide order dated 24.11.1990. Thereafter, the petitioner No. 1-Madhusudan Das Agarwal had preferred second application under Section 24(5) C.P.C. for transferring further proceedings of Regular Suit No. 25 of 1972 to the District Judge, Lucknow or any other Court, empowered to hear the case, which was registered as Misc. Case No. 201-C of 1999. This application was allowed vide order dated 6.10.1999 by the learned District Judge, Lucknow and the Court directed to transfer further proceedings of Regular Suit No. 25 of 1972 to the Court of learned District Judge, Lucknow. Thereafter, defendant-BHU had

preferred an application, bearing No. C-196, for reviewing the aforesaid order dated 6.10.1999. On 28.10.1999, learned District Judge, after hearing the parties on this application (C-196), postponed the matter and directed the parties to prepare themselves on the next date of listing on the following point:

"Question for determination would be what is the legal effect of the preliminary decree dated 9.12.1978. If the said decree is void on account of inherent lack of jurisdiction in the Court, at what stage and in what manner the Court of District Judge, Lucknow may proceed with the matter."

5. Thereafter, the matter was taken up on 6.12.1999, 7.1.2000, 3.2.2000 and 19.2.2000 by the learned District Judge. Finally, the learned District Judge had taken up the matter on 28.8.2000 and after hearing the parties, learned District Judge, vide order dated 28.8.2000, while invoking the powers conferred under Section 151 C.P.C. and taking aid of the provisions under Section 24(2) C.P.C., set aside the ex parte preliminary decree dated 9.12.1978.

6. Hence the instant writ petition.

7. Submission of learned counsel for the petitioners is that the provisions contained in Section 24(5) C.P.C. were incorporated by the Amending Act No. 104 of 1976 and by the said Amending Act, Order VII Rule 10 C.P.C. was also amended and Section 99-A C.P.C. was added. He further submits that Order VII Rule 10 C.P.C. provides that at any stage of the suit, if the Court is of the opinion that the suit was wrongfully filed, the same will be returned for its presentation before the proper Court. However, on return of the plaint, the procedure specifically provided for de-novo trial.

8. Elaborating his submission, learned Counsel for the petitioners submits that once the powers under Section 24(5) C.P.C. have been exercised by the District Judge, Lucknow, then, the same Court, subsequently, did not possess jurisdiction by acting as a Court of appeal so as to set-aside the preliminary decree dated 9.10.1978 by passing the impugned order dated 28.8.2000 so as to try the suit by holding the trial as de novo from the stage of evidence and while doing so, the learned District Judge, Lucknow has also committed apparent legal error in relying upon the provisions contained under Section 24(2) C.P.C. His submission is that Section 24(2) C.P.C. could become applicable only in those cases where application is filed for transfer of a suit or proceedings under Section 24(1) C.P.C. only and not in those cases where an application is filed under Section 24(5) C.P.C. Thus, Section 151 C.P.C. had no applicability, especially when the legislature provided the power under Section 24(5) CPC for transfer of the suit or proceedings for curing the defect in jurisdiction and the power under Section 97 CPC for setting aside the preliminary decree through an appeal.

9. Finally, learned counsel for the petitioners has contended that Section 151 has vested power to the Court where specific provisions do not exit. These inherent power of the Court could not be used by the District Judge, Lucknow so as to act as a Court of Appeal in the same suit or proceeding and set-aside the preliminary

decree against which an appeal was already provided for but the same was not availed by the defendant-BHU Thus, the impugned order deserves to be set-aside.

10. To strengthen his arguments, learned counsel for the petitioners has placed reliance upon the case in *Miss Pushpa Kapal v. Shiv Kumar*, 1988 (2) CCC 135 ; *Chandrashekhar v. Rajesh Kumar Sahu and others*, 2010(5) ADJ 347 (LB) ; *ONGC Ltd. Vs. Modern Construction and Company*, (2013) 10 AD 517 : AIR 2014 SC 83 : (2014) 1 RCR(Civil) 217 : (2013) 12 SCALE 520 : (2014) 1 SCC 648 ; *U.P. State Electricity Board Vs. Pooran Chandra Pandey and Others*, (2008) 116 FLR 1172 : (2007) 12 JT 179 : (2008) 1 LLJ 1021 : (2007) 11 SCC 92 : (2008) 1 SCC(L&S) 736 : (2007) 11 SCR 920 : (2008) 1 SLJ 314 and unreported case rendered by this Court in Civil Revision Defective No. 131 of 2013, *Satyendra Kumar Gupta v. Additional District Judge, Court No. 10, Lucknow* and another (decided on 31.1.2014).

11. Per contra, learned counsel for the contesting respondent has contended that after passing the order on the application under Section 24(5) C.P.C., the matter was taken up by the competent Court i.e. the District Judge, Lucknow. The learned District Judge, Lucknow, after considering the facts and law laid down by the Apex Court touching the issue has held that ex parte decree dated 9.12.1978 passed by the Civil Judge (Senior Division), Mohanlalganj, Lucknow is null and void as the trial Court has lacked inherent jurisdiction to try the suit, therefore, any order including the preliminary decree is liable to be set-aside. His submission is that if the Court concerned has lacked of inherent jurisdiction, all the proceedings including judgment and orders passed in such proceedings are nullity in the eyes of law. Once every such proceedings is nullity in the eyes of law, then, after the matter has been transferred to a Court of competent jurisdiction, it is a legal obligation to start de novo. Therefore, learned District Judge has rightly exercised the inherent powers conferred under Section 151 CPC and has rightly passed the impugned order.

12. To strengthen his arguments, learned counsel for the contesting respondent has placed reliance upon the case in *Kiran Singh and Others Vs. Chaman Paswan and Others*, AIR 1954 SC 340 : (1955) 1 SCR 117 ; *Chandrika Misir and another v. Gobind Ram Bohra*, 1973 (2) SCC 474 ; *Sushil Kumar Mehta Vs. Gobind Ram Bohra (Dead) through his Lrs.*, (1989) JT 329 Supp : (1990) 97 PLR 182 : (1989) 2 SCALE 1104 : (1990) 1 SCC 193 : (1989) 2 SCR 149 Supp ; *State of Gujarat Vs. Rajesh Kumar Chimanlal Barot and another*, (1996) 6 AD 289 : AIR 1996 SC 2664 : (1996) 87 CompCas 919 : (1996) 6 SCALE 140 : (1996) 6 SCALE 14 : (1996) 5 SCC 477 : (1996) 4 SCR 279 Supp ; *Harshad Chiman Lal Modi Vs. DLF Universal and Another*, AIR 2005 SC 4446 : (2006) 101 CLT 5 : (2005) 5 CTC 133 : (2005) 8 JT 561 : (2005) 7 SCALE 533 : (2005) 7 SCC 791 : (2005) AIRSCW 5369 : (2005) 6 Supreme 634 ; *Subhash Mahadevasa Habib Vs. Nemasa Ambasa Dharmadas (D) by LR. and Others*, AIR 2007 SC 1828 : (2007) 4 CTC 232 : (2007) 5 JT 12 : (2007) 5 SCALE 34 : (2007) 13 SCC 650 : (2007) 5 SCR 150 : (2007) AIRSCW 3044 ; *ONGC Ltd. Vs. Modern Construction and*

Company, (2013) 10 AD 517 : AIR 2014 SC 83 : (2014) 1 RCR(Civil) 217 : (2013) 12 SCALE 520 : (2014) 1 SCC 648 ; South Eastern Coalfields Ltd. Vs. State of M.P. and Others, AIR 2003 SC 4482 : (2003) 2 JT 443 Supp : (2003) 8 SCALE 600 : (2003) 8 SCC 648 : (2003) 4 SCR 651 Supp : (2003) AIRSCW 5258 : (2003) 7 Supreme 539 ; Shipping Corporation of India Ltd. Vs. Machado Brothers and Others, AIR 2004 SC 2093 : (2004) 98 CLT 98 : (2004) 4 JT 25 : (2004) 1 JT 528 Supp : (2004) 138 PLR 301 : (2004) 4 SCALE 39 : (2004) 11 SCC 168 : (2004) 3 SCR 584 : (2004) AIRSCW 1842 : (2004) AIRSCW 7327 : (2004) 8 Supreme 290 ; K.K. Velusamy Vs. N. Palanisamy, (2011) 3 CTC 422 : (2011) 4 JT 38 : (2011) 2 RCR(Civil) 875 : (2011) 4 SCALE 61 : (2011) 11 SCC 275 : (2011) 4 SCR 31 ; Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills and another, AIR 1994 SC 2151 : (1994) 80 CompCas 140 : (1994) 1 JT 586 : (1994) 1 SCALE 565 : (1994) 2 SCC 647 : (1994) 1 SCR 857 : (1994) 1 UJ 351 : (1994) WritLR 497 and State of Maharashtra and Others Vs. Prabhu, (1995) 1 LLJ 622 : (1994) 2 SCC 481 .

13. I have heard learned counsel for the parties and perused the record.

14. The dispute in the instant writ petition is the competence of the District Judge in exercising inherent jurisdiction under Section 151 of CPC for setting aside the preliminary decree dated 9.12.1978 and further direction to try the suit de novo.

15. In order to appreciate the rival submissions of the learned counsel for the parties, I think it appropriate to deal with the provisions of Section 24 of the CPC, which are reproduce hereunder :

"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 desired 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 subsection (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 purposes 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."

16. Section 24 C.P.C has two parts. One part of this provision is Sub-sections (1) and (2) and the second part is Sub-section (5). In first part, the application for transfer of any suit, appeal, or proceedings can be made by any of the parties to such litigation seeking to transfer from a Court subordinate to it and such Court was competent to try or dispose of the same. Upon such application, the District Court or the High Court, as the case may be, before whom the application under Section 24(1) of C.P.C. for transfer is filed, may try or dispose of the same by itself or transfer the same for trial or disposal to the Court subordinate to it or competent to try or dispose of the same or re-transfer the same for trial or disposal to the Court from which it was withdrawn. Sub-section (2) of Section 24 CPC further provides that where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court where the suit or proceeding has been transferred, may, subject to any special direction in the case of an order of transfer either re-try it or proceed from the point at which it was transferred or withdrawn. Thus, where the suit or proceeding are transferred under Section 24(1) CPC, the transferee Court is empowered to either re-try it or proceed from the point at which it was transferred or withdrawn. Such discretion vests with such transferee Court for re-trial or proceed from the stage it was transferred.

17. The second part of Section 24 is sub-section (5). Sub-section (5) of this provision was inserted by Civil Procedure Code (Amendment) Act, 1976 for the first time and its insertion was necessitated for the reason that some of the High Courts in India were of the view that suit/appeal/proceeding pending before a Court must be understood in the sense that the same was duly pending meaning thereby that it was pending in a Court of competent jurisdiction, and if it was pending in a Court without jurisdiction, the same could not be transferred from that Court to another Court. In order to do away with the mischief caused by the time consumed in recording the evidence etc., Sub-section (5) was inserted in Section 24 as a result of which a suit or proceeding can be transferred under this Section from a Court which has no jurisdiction to try it and the application of this

provision of law is most suitable in the circumstances of the case like the suit in hand where as already pointed out above, a fresh exercise of recording the entire evidence would have to be gone through unnecessarily by the Court of the District Judge. Thus, sub-section (5) appears to have been inserted in Section 24 to do away with this mischief and is a very just provision meant for application in such like cases.

18. At this stage, it is relevant to take note of the provisions of Rule 10 and 10A of the Order VII of the CPC which are to the following effect:

"10. Return of plaint.--(1) (Subject to the provisions of rule 10-A, the plaint shall) at any stage of the suit be returned to be presented to the Court in which the suit should have" been instituted.

(Explanation.--For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint, under this sub-rule.)

(2) Procedure on returning plaint-On returning a plaint the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.

10-A. Power of Court to fix a date of appearance in the Court where plaint is to be filed after its return.--(1) Where, in any suit, after the defendant has appeared, the Court is of opinion that the plaint should be returned, it shall, before doing so, intimate its decision to the plaintiff.

(2) Where an intimation is given to the plaintiff under sub-rule (1), the plaintiff may make an application to the Court-

(a) specifying the Court in which he proposes to present the plaint after its return,

(b) praying that the Court may fix a date for the appearance of the parties in the said Court, and

(c) requesting that the notice of the date so fixed may be given to him and to the defendant.

(3) Where an application is made by the plaintiff under sub-rule (2), the Court shall, before returning the plaint and notwithstanding that the order for return of plaint was made by it on the ground that it has no jurisdiction to try the suit,-

(a) fix a date for the appearance of the parties in the Court in which the plaint is proposed to be presented, and

(b) give to the plaintiff and to the defendant notice of such date for appearance.

(4) Where the notice of the date for appearance is given under sub-rule (3),-

(a) it shall not necessary for the Court in which the plaint is presented after its

return, to serve the defendant with a summons for appearance in the suit, unless that Court, for reasons to be recorded, otherwise directs, and

(b) the said notice shall be deemed to be a summons for the appearance of the defendant in the Court in which the plaint is presented on the date so fixed by the Court by which the plaint was returned.

(5) Where the application made by the plaintiff under sub-rule (2) is allowed by the Court, the plaintiff shall not be entitled to appeal against the order returning the plaint."

19. The provisions of Rule 10 are subject to the provisions of Rule 10A which has been inserted by the Amendment Act, 1976. The Rule has been inserted so as to obviate the requirement for effecting the service of the summons again on the defendants who had appeared in the previous Court.

20. On combined reading of the aforesaid provisions of Section 24(5) C.P.C. and Order VII Rule 10 of C.P.C., it comes out that Section 24(5) is absolutely independent of the provision contained in Order VII Rule 10 C.P.C., which was also added by the same Amendment Act No. 104 of 1976. In Order VII Rule 10(1) (2), 10-A, 10-B C.P.C., the legislature specifically provided a procedure for the Court to follow in case the plaint is to be returned to be presented to the Court in which the suit should have been instituted. It relates to the suits which are instituted before a Court which has no jurisdiction to try the same. In order to cure the defect in jurisdiction, the legislature in these provisions empowered the Court where the plaint is instituted, to pass orders for returning the plaint and its institution and trial. In such cases, the trial is always de novo. However, the legislature while incorporating the provision under Order VII Rule 10 C.P.C., incorporated a separate and independent provision in the shape of sub-section (5) of Section 24 C.P.C. conferring power upon the District Judge and the High Court to exercise the same for transfer of a suit or proceedings, from a Court which has no jurisdiction to try. This applies to the case where the suit or proceedings has been instituted in a Court which has no jurisdiction. In other words, the initial lack of jurisdiction or inherent lack of jurisdiction to entertain the suit or proceedings is being allowed to be cured by an order which can be passed only by the District Judge or the High Court under this provision. This provision does not carry any qualification or restriction. The legislature has not provided any conditions on the District Court or the High Court for such transfer under Section 24(5) C.P.C., while in a transfer of a suit under Order VII Rule 10 C.P.C., the legislature has provided specific conditions, procedure and the manner in which the power can be exercised.

21. At the cost of repetition, it is relevant to mention here that the conditions contained in sub-section (2) of Section 24 C.P.C. shall apply only in respect of those cases or situation where a suit or proceeding is being transferred on an application filed by any of the parties under Section 24(1) C.P.C. In other words, the re-trial of a suit or proceeding could only be made when a case is transferred

under Section 24(1) C.P.C. and not otherwise.

22. The facts pleaded in this writ petition are not disputed by the defendant-respondent to the extent that plaintiff/petitioners had filed a suit under Section 92 C.P.C. in the Court of Civil Judge (Senior Division), Mohanlalganj. Before filing the suit, permission of the Advocate General was obtained on 29.11.1971. The defendant/respondent-BHU, in response to the notice, filed written statement for contesting the suit. In the written statement, the defendant/respondent-BHU did not raise any question with regard to jurisdiction or competency of the Civil Judge (Senior Division), Mohanlalganj to sue on the said suit. In such suit, two decrees are passed; one is preliminary and other is final but suit continues until final decree is passed. In the case in hand, preliminary decree was passed on 9.12.1978 whereby the defendant-BHU was removed from the office of the trust and was directed to render the account and deliver back the trust-property to the newly appointed trustee and a direction was also given for settling a scheme for management of the trust-property by preparing final decree. The defendant/respondent/BHU acted upon the preliminary decree and in the final decree proceedings of Regular Suit No. 25 of 1972, submitted a scheme of management of Trust and the names of the new trustees for appointment through an application dated 31.8.1981. In the year 1983, the defendant/respondent/BHU submitted the statement of accounts and fixed deposit receipt of Rs. 54,000/- in the final decree proceedings in compliance and in furtherance of the preliminary decree. It was only thereafter the defendant-respondent-BHU filed objections under Section 47 CPC, which was registered as Misc. Case No. 90-C of 1990, stating therein that suit under Order 92 C.P.C. could have been instituted in the Principal Civil Court empowered in that behalf by the State Government and, therefore, the preliminary decree dated 9.12.1978 is nullity and not executable and the proceedings of the final decree are pending in the Court which is without jurisdiction. These objections under Section 47 C.P.C. were rejected on 24.11.1990 by the same Court of Civil Judge, Mohanlalganj at Lucknow.

23. It is not in dispute that the said order dated 24.11.1990 has not been challenged by the defendant-respondent-BHU before the higher Court and as such, the same had attained finality. Further, defendant-respondent-BHU did not file any appeal against the preliminary decree dated 9.12.1978 before the Court of Appeal though a specific Section for filing an appeal i.e. Section 97 has been provided in C.P.C.

24. From the records, it comes out that the learned District Judge, Lucknow, vide order dated 6.10.1999, exercised the power and jurisdiction conferred upon it under Section 24(5) C.P.C. by allowing the application of the petitioner, namely, Misc. Case No. 201-C of 1999 and transferred the proceedings of Regular Suit No. 25 of 1972 from the Court of Civil Judge, Mohanlalganj, Lucknow to the Court of District Judge, Lucknow to try the same for further hearing in the suit. Therefore, in my considered view once the powers under Section 24(5) C.P.C. have been exercised by the District Judge, Lucknow, then, the same Court, i.e.

the Court of District Judge, subsequently, did not possess jurisdiction by acting as a Court of appeal so as to set-aside the preliminary decree dated 9.10.1978 by passing order dated 28.8.2000 so as to try the suit by holding the trial as de novo from the stage of evidence and while doing so, the District Judge, Lucknow also committed apparent legal error in relying upon the provisions contained under sub-section (2) of Section 24 C.P.C.

25. It is correct that in contrast to the statute dealing with substantive rights, statutes dealing with merely matters of procedure are to be construed in a liberal manner. Therefore, the provisions contained in the Code should be considered liberally, as far as possible technical objections should not be allowed to defeat substantial justice. However, it is equally true that the provisions of the Code are meant to be observed and not to be flouted at the will, whims and fancy of a party. When a particular procedure has been prescribed by the Code, parties and the Courts have no option except to follow the same.

26. The conclusions of the District Judge are not only cryptic but also without indication of any basis. As rightly contended by learned Counsel for the plaintiffs/petitioners that the defendants-BHU has not filed any appeal as provided under Section 97 of the C.P.C.

27. From the reading of Section 151 CPC, it comes out as under :

"(1) The inherent powers of the Court are very wide and are not in any way controlled by the provisions of the Code.

(2) They are in addition to the powers specially conferred on the Court by the Code and they Courts are free to exercise them.

(3) The only limitation put on the exercise of the inherent powers is that when exercised, they are not in conflict with what has been expressly provided for, or those exhaustively covering a particular topic or against the intention of the legislature. These limitations are not due to the fact that the inherent power is controlled by the Code, but because it should be presumed that the procedure specifically provided for orders in certain circumstances is dictated by the interest of justice.

(4) Inherent powers are to be exercised where specific provision does not meet the necessities of the case."

28. In *Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal*, AIR 1962 SC 527 : (1962) 1 SCR 450 Supp , the Apex Court has held that the Code of Civil Procedure is undoubtedly not exhaustive : it does not lay down rules for guidance in respect of all situations nor does it seek to provide rules for decision of all conceivable cases which may arise. The civil Courts are authorized to pass such orders as may be necessary for the ends of justice, or to prevent abuse of the process of Court, but where an express provision is made to meet a particular situation the code must be observed and departure therefrom is not permissible.

29. The Apex Court in *State of West Bengal and Others Vs. Karan Singh Binayak and Others*, AIR 2002 SC 1543 : (2002) 3 JT 324 : (2002) 3 SCALE 108 : (2002) 4 SCC 188 : (2002) 2 SCR 620 : (2002) AIRSCW 1432 : (2002) 2 Supreme 537 , inter alia observed as follows:

"The period of 25 years under the lease expired in the year 1976. The notification under the Act was issued on 11th November, 1954. In 1957 record of rights was prepared under Section of the Act according to which the land was held retainable under Section 6(1)(b) of the Act. The possession was handed over to the original owners in 1981 on liquidation of the lessee on an order being passed by the High Court directing official liquidator to disclaim the property which was later transferred to the writ petitioners in terms of the agreements of sale entered in the year 1988 and sale deeds in 1992-93. Meanwhile, in the year 1991 on proceedings being taken under the ULC Act, 6145.90 square meter of the land was held to be excess under the said Act. In June 1993, the plans were sanctioned and construction commenced. It can, thus, be seen that after the preparation of record-of-rights, not only the appellants did not take any steps and slept over the matter but various steps as above were taken by the respondents in respect of the land in question. The argument that the proceedings under the ULC Act or the preparation of record-of-rights were ultra vires and the acts without jurisdiction and, therefore, those proceedings would not operate as a bar in appellants invoking inherent jurisdiction under Section 151 CPC by virtue of conferment of such power under Section of the Act is wholly misconceived and misplaced. The inherent powers cannot be used to reopen the settled matters. These powers cannot be resorted to when there are specific provisions of the Act to deal with the situation. It would be an abuse to allow the reopening of the settled matter after nearly four decades in the purported exercise of inherent powers. It has not even been suggested that there was any collusion or fraud on behalf of the writ petitioners or the erstwhile owners. There is no explanation much less satisfactory explanation for total inaction on the part of the appellants for all these years."

30. In *Arjun Singh Vs. Mohindra Kumar and Others*, AIR 1964 SC 993 : (1964) 5 SCR 946 , the Hon'ble Apex Court while examining Order IX Rule-7, inter alia, observed as follows:

"There is one other aspect from which the same question could be viewed. Order IX Rule 7 prescribes the conditions subject to which alone an application competent under the opening words of that rule ought to be dealt with. Now, the submission of Mr. Pathak if accepted, would mean to ignore the opening words and say that though specific power is conferred when a suit is adjourned for hearing, the Court has an inherent power even when (a) it is not adjourned for that purpose, and (b) and this is of some importance when the suit is not adjourned at all, having regard to the term of Order XX Rule 1. The main part of Order IX Rule 7 speaks "of good cause being shown for non-appearance" on a previous day. Now what are the criteria to be applied by the Court when the

supposed inherent jurisdiction of the Court is invoked? Non-constant it need not be identical with what is statutorily provided in Rule 7. All this only shows that there is really no scope for invoking the inherent powers of the Court. Lastly, that power is to be exercised to secure the ends of justice. If at the stage of Rule 7 power is vested in the Court and after the decree is passed Order IX Rule 13 becomes applicable and the party can avail himself of that remedy, it is very difficult to appreciate the ends of justice which are supposed to be served by the Courts being held to have the power which the learned Counsel says must inhere in it. In this view it is unnecessary to consider whether to sustain the present submission the respondent must establish that the Court was conscious that it lacked specific statutory power and intended to exercise an inherent power that it believed it possessed to make such orders as may be necessary for the ends of justice."

31. In K.K. Velusamy Vs. N. Palanisamy, (2011) 3 CTC 422 : (2011) 4 JT 38 : (2011) 2 RCR(Civil) 875 : (2011) 4 SCALE 61 : (2011) 11 SCC 275 : (2011) 4 SCR 31 , the Hon"ble Apex Court, after taking into consideration the provisions of Section 151 C.P.C. as well as various legal proposition, has held in para 12(c) as under:

"A Court has no power to do that which is prohibited by law or the Code, by purported exercise of its inherent powers. If the Code contains provisions dealing with a particular topic or aspect, and such provisions either expressly or by necessary implication exhaust the scope of the power of the Court or the jurisdiction that may be exercised in relation to that matter, the inherent power cannot be invoked in order to cut across the powers conferred by the Code or in a manner inconsistent with such provisions. In other words, the Court cannot make use of the special provisions of Section 151 of the Code, where the remedy or procedure is provided in the Code."

(emphasis supplied)

32. From perusal of the aforesaid legal proposition, it is imminently clear that the inherent powers vested in the Court under Section 151 of the CPC could be invoked to do justice but without infringing and overreaching the specific provisions of law or provisions of the C.P.C. If exercise of such powers is likely to contravene the manner and the method for which specific provisions have been enacted in the C.P.C., the Court would have to refrain from passing such order in exercise of its inherent powers. Hence, the inherent powers cannot be permitted to be substituted for appellate Court powers to judge the merits and correctness of the judgment pronounced. Therefore, I am of the considered opinion that once the District Judge, Lucknow exhausted the power conferred upon it under sub-section 5 of Section 24 CPC by transferring the suit or the proceedings which included the final decree proceedings, the District Judge, thereafter, did not possess any jurisdiction or power to set-aside the preliminary decree by invoking power derived from Section 151 C.P.C. Section 151 C.P.C., in the present facts and circumstances of the case, had no applicability, especially, when the

legislature provided the power under Section 24(5) of C.P.C. for transfer of the suit or proceedings for curing the defect of jurisdiction and the power under Section 97 C.P.C. for setting aside the preliminary decree through an appeal. Suffice to say that Section 151 C.P.C. gives power to the Court where specific provisions do not exist. These inherent power of the Court could not be used by the Court below, so as to act as a Court of appeal in the same suit or proceeding and set-aside the preliminary decree against which an appeal is the proper remedy, but was not availed by defendant-respondent-BHU.

33. It is settled law that where the suit initially instituted in a Court having no territorial jurisdiction is transferred by the District Judge to a Court having such jurisdiction, the decree passed in the suit cannot be challenged for want of initial competence (vide Jagdish Vs. Smt. Premlata Rai, AIR 1990 Raj 87 : (1990) 1 WLN 184 .

34. In Chandrashekhar v. Rajesh Kumar Sahu and others, 2010(5) ADJ 347(LB) , this Court, on considering the fact that since on the date of application of transfer, proceedings of producing evidences have been concluded and it was at the stage of final arguments, has held that the learned District Judge felt it proper to transfer the suit to the Court of competent jurisdiction with the direction to proceed with the suit from the stage it is transferred to the Court concerned in the interest of justice.

35. The judgments relied by the learned counsel for the defendant-BHU are of no avail in the present circumstances of the case.

36. It is relevant to add here that from perusal of the record, it reflects that the defendant/BHU has not preferred any application either before the Civil Judge or District Judge to permit him to amend the written statement during the entire proceedings. He had filed the written statement without taking a plea of incompetency of Civil Judge to sue the suit. From the record, it further reveals that the defendant-respondent-BHU had not filed any application for recall of the preliminary decree as provided under Order IX Rule 13 C.P.C. Moreso, even till this proceeding, no effort was made on behalf of the respondent/BHU to challenge the preliminary decree as provided under Section 97 C.P.C. The record further reveals that it is the plaintiff/petitioners, who had preferred application for transfer of the suit to the Court of District Judge, Lucknow, though after passing the preliminary decree by the Civil Judge.

37. For the reasons aforesaid, I am of the considered opinion that since there is remedy for filing an appeal against the preliminary decree under Section 97 of C.P.C., hence, there was no occasion for the District Judge to exercise the power under Section 151 C.P.C. for setting aside the preliminary decree and direction for de novo trial. Therefore, the impugned orders suffer from legal infirmities and are liable to be set-aside.

38. Accordingly, the writ petition is allowed. The impugned orders dated 28.8.2000 and 28.10.1999 passed by the District Judge, Lucknow are hereby set-

aside. The District Judge, Lucknow is directed to proceed with Regular Suit No. 25 of 1972 from the stage it had been transferred to its Court. Since regular suit No. 25 of 1972 is quite old and pertains to the year 1972, the District Judge, Lucknow shall make an earnest endeavour to decide the suit, in accordance with law, expeditiously, say, within a period of one year from the date of production of a certified copy of this order. It is clarified that unnecessary adjournment shall not be allowed by the District Judge, Lucknow and if any of the parties seeks unnecessary adjournment heavy cost should be imposed so that the proceedings may reach to its logical conclusion within the time prescribed above.