
(2011) 11 KL CK 0034
In the High Court Of Kerala
Case No : Ins. App. No. 74 of 2011

The Regional Director, E.S.I. Corporation	APPELLANT
Vs	
MRF Ltd.	RESPONDENT

Date of Decision : 19-11-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 141, 15, 16, 17
Constitution of India, 1950 — Article 226, 371D
Contract Act, 1872 — Section 28
Criminal Procedure Code, 1973 (CrPC) — Section 195
Employees State Insurance Act, 1948 — Section 74, 75, 76(1), 78

Citation : (2012) 1 KLJ 224

Hon'ble Judges : M.L. Joseph Francis, J; K.M. Joseph, J

Bench : Division Bench

Advocate : T.V. Ajayakumar, for the Appellant; K.P. Sreekumar (AC), for the Respondent

Final Decision : Dismissed

Judgement

K.M. Joseph, J.—The Appeal is filed by the Regional Director of E.S.I. Corporation challenging an order passed by the Employees Insurance Court, Palakkad. By the impugned order, the application filed by the appellant seeking transfer of the case to the Employees' Insurance Court, Idukki has been dismissed. The E.I. Court, Palakkad finds that the appellant cannot contend that the court at Palakkad had no jurisdiction, as that point has been decided by the preliminary order dated 23.11.2009. It is stated that the appellant had not challenged that order of the court by filing any appeal and the same has become final. It is further reasoned that the court cannot review the above order on the basis of the subsequent judgments of the High Court and the Supreme Court in some of the cases. Apparently, the court has drawn sustenance from the Explanation to Order 47 Rule 1 of the Code of Civil Procedure. It is further found that the Judgment of a learned Single Judge of this Court dated 7.10.2010 has no application or relevance. It is found that the Corporation has no case either in its preliminary

objection or in the present I.A. that Section 76 is applicable and in fact, accepting the preliminary order, the Corporation has filed written objection on the merit of the case. We heard Shri T. V. Ajayakumar, learned counsel for the appellant and Shri Saji Varghese, learned counsel appearing for the respondent. We also heard Advocate Shri K. P. Sreekumar as Amicus Curiae, in view of the issues which were projected by the counsel for the appellant.

2. It is necessary to advert to certain provisions contained in the Employees' State Insurance Act, 1948 (hereinafter referred to as the Act). Section 76 of the Act reads as follows:

76. Institution of proceedings, etc.- (1) Subject to the provisions of this Act and any rules made by the State Government, all proceedings before the Employees' Insurance Court shall be instituted in the Court appointed for the local area in which the insured person was working at the time the question or dispute arose.

(2) If the Court is satisfied that any matter arising out of any proceeding pending before it can be more conveniently dealt with by any other Employees' Insurance Court in the same State, it may, subject to any rules made by the State Government in this behalf, order such matter to be transferred to such other Court for disposal and shall forthwith transmit to such other court the records connected with that matter.

(3) The State Government may transfer any matter pending before any Employees' Insurance Court in the State to any such Court in another State with the consent of the State Government of that State.

(4) The court to which any matter is transferred under sub-section (2) or sub-section (3) shall continue the proceedings as if they had been originally instituted in it.

Section 78 reads as follows:

78. Powers of Employees' Insurance Court.- (1) The Employees' Insurance Court shall have all the powers of a Civil Court for the purposes of summoning and enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects, administering oath and recording evidence and such court shall be deemed to be a Civil Court within the meaning of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2) of 1974).

(2) The Employees' Insurance Court shall follow such procedure as may be prescribed by rules made by the State Government.

(3) All costs incidental to any proceeding before an Employees' Insurance Court shall, subject to such rules as may be made in this behalf by the State Government, be in the discretion of the court.

(4) An order of the Employees' Insurance Court shall be enforceable as if it were a decree passed in a suit by a Civil Court.

Rule 16 of the Rules reads as follows:

16. Place of Suing.- In cases not falling under sub-section (1) of Section 76, a proceeding against any person shall be instituted in the Court within the local limits of whose jurisdiction: -

(a) the opposite party or each of the opposite parties where there are more than one, at the time of commencement of the proceedings, actually and voluntarily resides, or carries on business, or personally works for gain, or

(b) any of the opposite parties, where there are more than one, at the time of the commencement of the proceeding, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the opposite parties who do not reside, or carry on business or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arose.

3. A learned Single Judge of this Court in the decision in *E.S.I. Corporation v. Panickaveetil Sir Sebastian Public School*, 2010 (4) KLT 976 has upheld the objection of the Corporation in another case that the court at Palakkad has no jurisdiction. Apparently, the reasoning employed was on the basis of the Judgment of the Apex Court in *Fertilisers & Chemicals Travancore Ltd. v. E.S.I. Corporation*, 2009 (3) KLT 946. The Apex Court took the view that some workers have to be impleaded. Therefore, this Court took the view that it is Section 76 which will come into play, in that, it is the court within whose jurisdiction the worker works which alone can decide the matter. This Judgment has in fact been affirmed by the Division Bench also. The Judgment of the learned Single Judge is dated 7.10.2010. It is prior to 7.10.2010 that in this case, however, the Insurance Court on being invited by the appellant to rule on its jurisdiction, passed an order dated 23.11.2009 that the Insurance Court at Palakkad had jurisdiction. The case of the appellant would appear to be that in the light of the subsequent Judgment of the learned Single Judge, holding that the Court at Palakkad had no jurisdiction, the Insurance Court at Palakkad should have accepted the request of the appellant to transfer the case to the Court at Idukki. It is pointed out that the workers involved in this case reside at Kottayam and the Court which has jurisdiction in respect of those workers, is the Court at Idukki. Hence, request was made by the appellant that in view of the subsequent Judgment of this Court, the Court does not have jurisdiction to proceed further in the matter and hence prayed that the matter may be transferred to the Court at Idukki. It is this request, as already noted, which has been dismissed.

4. Shri T. V. Ajayakumar, learned counsel for the appellant would contend that what Section 76 prescribes, does not relate to territorial jurisdiction, but on the other hand, it goes to the inherent lack of jurisdiction. In other words, it is his argument that Section 76 of the Act provides for jurisdiction in respect of the subject matter and, therefore, the earlier order passed by the Insurance Court

should have been ignored in the light of the exposition of the law by this Court that it has no jurisdiction. In this connection, counsel drew our attention to the following decisions:

- 1) Harshad Chiman Lal Modi Vs. DLF Universal and Another, .
- 2) Sri Ramnik Vallabhdas Madhvani and Others Vs. Taraben Pravinlal Madhvani, .
- 3) Ashok Leyland Ltd. Vs. State of Tamil Nadu and Another, .
- 4) Modi Entertainment Network and Another Vs. W.S.G. Cricket PTE. Ltd., .
5. Per contra, learned counsel appearing on behalf of the respondent Company would contend that having courted an order by the Court specifically on the issue of jurisdiction and not having challenged the said order, it is not open to the appellant to unsettle the order by filing a fresh application seeking transfer and challenging the order thereon. According to the counsel, the matter is clearly barred by res judicata. He drew our attention to the following decisions:

- 1) Vishwas Anna Sawant and others Vs. Municipal Corporation of Greater Bombay and others, .
- 2) Hasham Abbas Sayyad v. Usman Abbas Sayyad & ORs. , AIR 2007 SC 1077.
- 3) J. Kodanda Rami Reddy Vs. State of A.P. and Others, .

He also points out that even on facts, the decision of this Court may not apply as the case related to the workers of the contractors of the appellant and, therefore, the Court at Palakkad has jurisdiction.

6. Shri K. P. Sreekumar, learned Amicus Curiae would make the following submissions:

He would submit that Section 76 of the Act deals with territorial jurisdiction. There is an order passed by the Insurance Court finding that it has jurisdiction. The said order has not been challenged. He would also point out that it appears that on the basis of the order passed by the Insurance Court finding that it has jurisdiction, further proceedings were in fact taken. Having not impugned the order finding it has jurisdiction, it is not open to the appellant, he contends, to challenge the impugned order in this case. He relied on the following case law:

- 1) Hasham Abbas Sayyad v. Usman Abbas Sayyad & ORs. AIR 2007 SC 1077.
- 2) Ajaib Singh Vs. Baldev Singh, .
- 3) Herbert Broom"s Legal Maximis.
- 4) Mantoo Sarkar Vs. Oriental Insurance Co. Ltd. and Others, .
- 5) Seth Hiralal Patni Vs. Sri Kali Nath, .
- 6) Satyadhyan Ghosal and Others Vs. Sm. Deorajin Debi and Another, .

7. In *Harshad Chiman Lal Modi Vs. DLF Universal and Another*, relied on by the learned counsel for the appellant, it is necessary to notice the facts. A Suit for specific performance of an agreement was filed on the original side of the High Court of Delhi, A common written statement was filed on behalf of the defendants wherein it was clearly admitted that "jurisdiction of the Court is admitted". Thereafter, the matter was transferred to the District Court, Delhi. Thereafter, an application to amend the written statement was filed by raising an objection in regard to the jurisdiction of the Delhi Court to entertain the Suit. Relying on Section 16 of the Code of Civil Procedure, it was sought to be contended that the jurisdiction was only with the local limits of the Court within which the property was situated, and that tile property was at Gurgaon and that the Court at Delhi had no jurisdiction. The Court found that it had no jurisdiction and returned the Suit for presentation in the proper Court. It was this order that was challenged ultimately before the Apex Court. The Apex Court adverted to the scheme of Sections 16 to 20 of the Code and thereafter, the Court referred to Section 16 and held as follows:

16. Section 16 thus recognises a well-established principle that actions against res or property should be brought in the forum where such res is situate. A court within whose territorial jurisdiction the property is not situate has no power to deal with and decide the rights or interests in such property. In other words, a court has no jurisdiction over a dispute in which it cannot give an effective judgment. The proviso to Section 16, no doubt, states that though the court cannot, in case of immovable property situate beyond jurisdiction, grant a relief in rem still it can entertain a suit where relief sought can be obtained through the personal obedience of the defendant. The proviso is based on a well-known maxim "equity acts in personam" recognised by the Chancery Courts in England. The Equity Courts had jurisdiction to entertain certain suits respecting immovable properties situated abroad through personal obedience of the defendant. The principle on which the maxim was based was that the courts could grant relief in suits respecting immovable property situate abroad by enforcing their judgments by process in personam i.e. by arrest of the defendant or by attachment of his property."

It is found that the proviso to Section 16 has no application. It was further held as follows:

21. A plain reading of Section 20 of the Code leaves no room for doubt that it is a residuary provision and covers those cases not falling within the limitations of Sections 15 to 19. The opening words of the section, "subject to the limitations aforesaid" are significant and make it abundantly clear that the section takes within its sweep all personal actions. A suit falling u/s 20 thus may be instituted in a court within whose jurisdiction the defendant resides, or carries on business, or personally works for gain or cause of action wholly or partly arises."

The Court also, inter alia, held as follows:

24. Upholding the contention and considering the provisions of the code as also of the Contract Act, this Court stated: (SCC p.288, para 4):

By clause 13 of the agreement it was expressly stipulated between the parties that the contract shall be deemed to have been entered into by the parties concerned in the city of Bombay. In any event, the respondents have their principal office in Bombay and they were liable in respect of a cause of action arising under the terms of the tender to be sued in the courts at Bombay. It is not open to the parties by agreement to confer by their agreement jurisdiction on a court which it does not possess under the Code. But, where two courts or more have under the CPC jurisdiction to try a suit or proceeding an agreement between the parties that the dispute between them shall be tried in one of such courts is not contrary to public policy. Such an agreement does not contravene Section 28 of the Contract Act."

In paragraph 31, the Court quotes from Halsbury's Laws England as follows:

31. In Halsbury's Laws of England, (4th Edn.), Reissue, Vol. 10, para 317, it is stated:

317. Consent and waiver.- Where, by reason of any limitation imposed by a statute, charter or commission, a court is without jurisdiction to entertain any particular claim or matter, neither the acquiescence nor the express consent of the parties can confer jurisdiction upon the court, nor can consent give a court jurisdiction if a condition which goes to the root of the jurisdiction has not been performed or fulfilled. Where the court has jurisdiction over the particular subject-matter of the claim or the particular parties and the only objection is whether, in the circumstances of the case, the court ought to exercise jurisdiction, the parties may agree to give jurisdiction in their particular case; or a defendant by entering an appearance without protest, or by taking steps in the proceedings, may waive his right to object to the court taking cognizance of the proceedings. No appearance or answer, however, can give jurisdiction to a limited court, nor can a private individual impose on a judge the jurisdiction or duty to adjudicate on a matter. A statute limiting the jurisdiction of a court may contain provisions enabling the parties to extend the jurisdiction by consent."

It is also necessary to advert to paragraphs 34 and 35 which read as follows:

34. The case on hand relates to specific performance of a contract and possession of immovable property. Section 16 deals with such cases and jurisdiction of the competent court where such suits can be instituted. Under the said provision, a suit can be instituted where the property is situate. No court other than the court where the property is situate can entertain such suit. Hence, even if there is an agreement between the parties to the contract, it has no effect and cannot be enforced.

35. In *Setrucherlu Ramabhadraraju v. Maharaja of Jeypore* a suit was instituted in the subordinate court for possession of mortgage property partly situated in

Vishakhapatnam and partly in a scheduled district to which the provisions of the Code did not apply. No objection as to jurisdiction of the court was taken by the defendant and the decree was passed. In appeal, however, such objection was taken by the defendant Relying on Section 21 of the Code, the High Court overruled the objection. The defendant approached the Privy Council. Upholding the contention and partly reversing the decree, the Judicial Committee of the Privy Council stated: (IA p. 156)

The learned Judges of the High Court thought that the matter was met by Section 21 of the Code, which provides that no objection as to the place of suing shall be allowed by any appellate court unless the objection was taken in the court of first instance, which in this case had admittedly not been done. Their Lordships cannot agree with that view. This is not an objection as to the place of suing; it is an objection going to the nullity of the order on the ground of want of jurisdiction.

In Sri Ramnik Vallabhdas Madhvani and Others Vs. Taraben Pravinlal Madhvani, , which arose from a Suit for partition and accounts, the court passed a preliminary decree. The Court, inter alia, held as follows:

55. So far as the question of rate of interest is concerned, it may be noticed that the High Court itself found that the rate of interest should have been determined at 6%. The principles of res judicata which according to the High Court would operate in the case, in our opinion, is not applicable. Principles of res judicata is a procedural provision. The same has no application where there is inherent lack of jurisdiction.

It is, however, important to notice that the matter related to the clear illegality committed by the High Court in awarding interest on the decree for mesne profits at a rate much higher than what was claimed as admissible in the case and the Court took the view that to that extent it is a nullity and cannot be allowed to be enforced. In Ashok Leyland Ltd. Vs. State of Tamil Nadu and Another, , the matter arose under the Tamil Nadu General Sales Tax Act, 1959. Therein, no doubt, the counsel for the appellant seeks support from paragraph 118. Therein, the Court held as follows:

118. The principle of res judicata is a procedural provision. A jurisdiction question, if wrongly decided, would not attract the principle of res judicata. When an order is passed without jurisdiction, the same becomes a nullity. When an order is a nullity, it cannot be supported by invoking the procedural principles like estoppel, waiver or res judicata. This question has since been considered in Ramnik Vallabhdas Madhvani v. Taraben Provinlal Madhavani where this Court observed in the following terms: (SCC pp.518-19, paras 55-57)

55. So far as the question of rate of interest is concerned, it may be noticed that the High Court itself found that the rate of interest should have been determined at 6%. The principles of res judicata which according to the High Court would operate in the case; in our opinion, is not applicable. Principles of res judicata is

a procedural provision. The same has no application where there is inherent lack of jurisdiction.

56. In Chief Justice of A. P. v. L. V.A. Dixitulu the law is stated in the following terms: (SCC p.42, para 24)

23(24). As against the above, Shri Vepa Sarathi appearing for the respective first respondent in CA No. 2826 of 1977, and in CA No. 278 of 1978 submitted that when his client filed a writ petition (No. 58908 of 1976) under Article 226 of the Constitution in the High Court for impugning the order of his compulsory retirement passed by the Chief Justice, he had served, in accordance with Rule 5 of the Andhra Pradesh High Court (Original Side) Rules, notice on the Chief Justice and the Government Pleader, and, in consequence, at the preliminary hearing of the writ petition before the Division Bench, the Government Pleader appeared on behalf of all the respondents including the Chief Justice, and raised a preliminary objection that the writ petition was not maintainable in view of clause 6 of the Andhra Pradesh Administrative Tribunal Order made by the President under Article 371-D which had taken away that jurisdiction of the High Court and vested the same in Administrative Tribunal. This Objection was accepted by the High Court, and as a result, the writ petition was dismissed in limine. In these circumstances - proceeds the argument - the appellant is now precluded on principles of res judicata and estoppel from taking up the position, that the Tribunal's order is without jurisdiction. But, when Shri Sarathi's attention was invited to the fact that no notice was actually served on the Chief Justice and that the Government Pleader who had raised this objection had not been instructed by the Chief Justice or the High Court to put in appearance on their behalf, the counsel did not pursue this contention further. Moreover, this is a pure question of law depending upon the interpretation of Article 371-D. If the argument holds good, it will make the decision of the Tribunal as having been given by an authority suffering from inherent lack of jurisdiction. Such a decision cannot be sustained merely by the doctrine of res judicata or estoppel as urged in the case.

57. In Dwarka Prasad Agarwal v. B. D. Agarwal, it is stated: (SCC p. 245, para 37)

37. It is now well settled that an order passed by a court without jurisdiction is a nullity. Any order passed or action taken pursuant thereto or in furtherance thereof would also be nullities. In the instant case, as the High Court did not have any jurisdiction to record the compromise for the reasons stated hereinbefore and in particular as no writ was required to be issued having regard to the fact that public law remedy could not have been resorted to, the impugned orders must be held to be illegal and without jurisdiction and are liable to be set aside. All orders and actions taken pursuant to or in furtherance thereof must also be declared wholly illegal and without jurisdiction and consequently are liable to be set aside. They are declared as such".

We do not think that on the facts, it has any similarity to the facts of the present case as such. In *Modi Entertainment Network and Another Vs. W.S.G. Cricket PTE. Ltd.*, relied on by the appellant, the Apex Court, inter alia, had occasion to hold as follows:

10. In regard to jurisdiction of Courts under the CPC (CPC) over a subject-matter, one or more Courts may have jurisdiction to deal with it having regard to the location of immovable property, place of residence or work of a defendant or place where cause of action has arisen. Where only one Court has jurisdiction, it is said to have exclusive jurisdiction: where more Courts than one have jurisdiction over a subject-matter, they are called Courts of available or natural jurisdiction. The growing global commercial activities gave rise to the practice of the parties to a contract agreeing before hand to approach for resolution of their disputes thereunder, to either any of the available Courts of natural jurisdiction and thereby create an exclusive or non-exclusive jurisdiction in one of the available forum or to have the disputes resolved by a foreign Court of their choice as a neutral forum according to the law applicable to that Court. It is a well settled principle that by agreement, the parties cannot confer jurisdiction, where none exists, on a Court to which CPC applies, but this principle does not apply when the parties agree to submit to the exclusive or nonexclusive jurisdiction of a foreign Court; indeed in such cases", the English Courts do permit invoking their jurisdiction. Thus, it is clear that the parties to a contract may agree to have their disputes resolved by a foreign Court termed as a neutral "Court" or "Court of choice" creating exclusive or non-exclusive jurisdiction in it.

Next, we would refer to the decisions relied on by the counsel for the respondent. In *J. Kodanda Rami Reddy Vs. State of A.P. and Others*, , the Court was dealing with proceedings under the Arbitration Act. The respondent/State had not challenged the order appointing an Arbitrator. The Court held, inter alia, as follows:

The respondent State could not challenge the order appointing the arbitrator, which had attained finality and was made a rule of the court, belatedly after two years by contending that there was no arbitration agreement between the parties.....In the present case, the order appointing an arbitrator was also not a nullity, even though it may be erroneous. It is well settled that a decree will be a nullity only if it is passed by a court usurping a jurisdiction it did not have. But, a mere wrong exercise of jurisdiction or an erroneous decision by a court having jurisdiction, will not result in a nullity. An order by a competent court, even if erroneous, is binding, unless it is challenged and set aside by a higher forum.

In *Hasham Abbas Syryad v. Usman Abbas Sayyad & ORs.* , AIR 2007 SC 1077, the Apex Court was dealing with a case where a preliminary decree for partition was passed. The property was put up for auction sale, but without initiating a formal final decree proceeding and the question arose whether it could be so done. The Court, inter alia, held as follows:

21. The core question is as to whether an order passed by a person lacking inherent jurisdiction would be a nullity. It will be so. The principles of estoppel, waiver and acquiescence or even *res judicata* which are procedural in nature would have no application in a case where an order has been passed by the Tribunal/Court which has no authority in that behalf. Any order passed by a court without jurisdiction would be *co-ram non iudice* being a nullity, the same ordinarily should not be given effect to (See *Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others, & MD Army Welfare Housing Organisation v. Sumangal Services (P) Ltd.*, (2004) 8 SCC 619).

22. This aspect of the matter has recently been considered by this Court in *Harshad Chiman Lal Modi Vs. DLF Universal and Another*, , in the following terms:

We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are (i) Territorial or local jurisdiction; (ii) Pecuniary jurisdiction; and (iii) jurisdiction over the subject matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is nullity."

23. We may, however, hasten to add that a distinction must be made between a decree passed by a court which has no territorial or pecuniary jurisdiction in the light of Section 21 of the Code of Civil Procedure; and a decree passed by a court having no jurisdiction in regard to the subject matter of the suit. Whereas in the former case, the appellate court may not interfere with the decree unless prejudice is shown, ordinarily the second category of the cases would be interfered with."

In *Vallapally Plantations Pvt. Ltd. Vs. State of Kerala*, , no doubt, the Apex Court referred to the earlier order passed by itself which reads as follows:

The order passed by the High Court directing the Authorised Officer to examine the dispute in the light of the judgment of the High Court in the case of *Naganatha Ayyar v. Authorised Officer* became final although the judgment on which the grievance had to be examined itself was reversed later by this Court. We find no fault with the reasoning of the High Court. It is well settled that even orders which may not be strictly legal become final and are binding between the parties if they are not challenged before the superior courts. In the result, the appeal fails and it is dismissed.

8. Next, we must indeed advert to the decisions referred to by Shri K. P. Sreekumar, learned Amicus Curiae. He relied on the decision in *Hasham Abbas*

Sayyad v. Usman Abbas Sayyad & ORs. , AIR 2007 SC 1077 which has already been referred to by us. He also relied on the decision in Ajaib Singh Vs. Baldev Singh, . The learned Single Judge of the said Court took the view that amendment seeking to raise objection to territorial jurisdiction could not be allowed at a stage when the issues had been settled and the evidence of the parties are recorded and Suit fixed for arguments. He also referred to Broom's Legal maxims (tenth edition). The learned Commentator, under the maxim "consensus tollit errorem" which means "the acquiescence of a party who might take advantage of an error obviate its effect", states as follows:

Where, however, an irregularity has been committed, and where the opposite party knows of the irregularity, it is a fixed rule observed by all the Courts in this country, that he should come in the first instance to avail himself of it, and not allow the other party to proceed to incur expense and, therefore, if a party, after any such irregularity has taken place, consents to a proceeding which, by insisting on the irregularity, he might have prevented, he waives all exceptions to the irregularity." (See pages 83, 84 & 85).

He then relied on the decision of the Apex Court in Mantoo Sarkar Vs. Oriental Insurance Co. Ltd. and Others, . That was a case where a claim was raised before the MACT, Nainital by the claimant who was a migrant labourer. He was working in Nainital during the period of accident which was not denied or disputed. The tribunal awarded compensation. In appeal, the High Court came to the conclusion that the Nainital Court had no territorial jurisdiction and giving liberty to file a fresh claim before the competent court, the matter was disposed of. The Apex Court allowed the Appeal filed by the claimant and, inter alia, held as follows:

18. We, however, while taking that factor into consideration must place on record that we are not oblivious of the fact that a decision rendered without jurisdiction would be coram non juris. Objection in regard to jurisdiction may be taken at any stage. (See Chief Engineer, Hydel Project and Others Vs. Ravinder Nath and Others, wherein inter alia the decision of this Court in Kiran Singh and Others Vs. Chaman Paswan and Others, was followed, stating:

26. The Court also relied upon the decision in Kiran Singh and Others Vs. Chaman Paswan and Others, and quoted (in Harshad Chiman Lal Modi Vs. DLF Universal and Another,) therefrom: (Kiran Singh case (supra), AIR p. 342, para 6:

"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, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties."

Though in the aforementioned decision, these observations were made, since the

defendants before raising the objection to the territorial jurisdiction had admitted that the court had the jurisdiction, the force of this decision cannot be ignored and it has to be held that such a decree would continue to be a nullity."

19. A distinction, however, must be made between a jurisdiction with regard to subject-matter of the suit and that of territorial and pecuniary jurisdiction. Whereas in the case falling within the former category, the judgment would be a nullity, in the latter it would not be. It is not a case where the Tribunal had no jurisdiction in relation to the subject-matter of claim. As a matter of fact, the civil court had no jurisdiction in relation to the subject-matter of claim. As a matter of fact, the civil court had no jurisdiction to entertain the suit. If the Tribunal had the jurisdiction to entertain, a claim petition under the , in our opinion, the Court should not have, in absence of any finding of sufferance of any prejudice on the part of the first respondent, entertained the appeal."

In Seth Hiralal Patni Vs. Sri Kali Nath, , a Constitution Bench of the Apex Court held, inter alia, as follows:

It is well settled that the objection as to local jurisdiction of a court does not stand on the same footing as an objection to the competence of a court to try a case. Competence of a court to try a case goes to the very root of the jurisdiction, and where it is lacking, it is a case of inherent lack of jurisdiction. On the other hand, an objection as to the local jurisdiction of a court can be waived and this principle has been given a statutory recognition by enactment like S. 21 of the Code of Civil Procedure.....The validity of a decree can be challenged in execution proceedings only on the ground that the court which passed the decree was lacking in inherent jurisdiction in the sense that it could not have seizin of the case because the subject matter was wholly foreign to its jurisdiction or that the defendant was dead at the time the suit had been instituted or decree passed, or some such other ground which could have the effect of rendering the court entirely lacking in jurisdiction in respect of the subject matter of the suit or over the parties to it."

In Pathumma and Others Vs. Kuntalan Kutty Dead by Lrs. and Others, , a Bench of three Judges of the Supreme Court was dealing with the following facts:

2. The suit was filed in the Court of Munsiff at Parappanangadi in the year 1938, That Court passed a preliminary decree for partition in the 18th February, 1940 and thereafter the parties took no further interest in the matter for more than two decades. In the meantime, the High Court passed an order dated December 22, 1956 redefining the territorial limits of the Courts of Munsiffs functioning in district Calicut, of which the Court of Munsiff at parappanangadi was one. According to that order, the territory in which the property disputed in the suit was situated, came under the territorial jurisdiction of the Munsiffs Court at Manjeri and it was in that Court that the plaintiff filed, on the 18th January, 1966 an application (LA. No.of 1966) praying that a final decree in the suit be passed. Defendant No. 12 (who is now dead and is represented in this appeal

by respondents No. 1 and others) immediately took an objection that the Manjeri Court had no territorial jurisdiction to hear the application and that the matter should have been agitated in the Court of Munsiff at Parappanangadi. The objection was overruled by the Manjeri Court which proceeded to partition the property by metes and bounds and ultimately passed a final decree in that behalf on 9th July, 1968. An appeal was filed against final decree by defendant No. 12 in the Court of District Judge before whom the objection to the jurisdiction assumed by the Manjeri Court was again taken but was repelled with the result that the final decree was confirmed.

The third round of litigation in regard to question of jurisdiction took place in the High Court wherein a learned single Judge upheld the objection and ruled that it was only the Parappanangadi Court that had the territorial jurisdiction to entertain the application praying for final decree and that the assumption of such jurisdiction by the Manjeri Court was not justified. The objection being upheld, the final decree was set aside and there was thus no occasion for the High Court to decide the other points arising in this appeal."

Thereafter, the Court held as follows:

We have heard learned counsel for the parties on the question of jurisdiction. An unfortunate aspect of this litigation has been that although that question has been agitated already in three courts and has been bone of contention between that parties for more than a decade, the real provision of law which clinches it was never put forward on behalf of the appellant before us, nor was adverted to by the learned District Judge or the High Court. That provision is contained in sub-section (1) of Section 21 of the Civil P. C. which runs thus;

21. (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."

In order that an objection to the place of suing may be entertained by an appellate or revisional court, the fulfilment of the following three conditions is essential:

- (1) The objection was taken in the Court of first instance.
- (2) It was taken at the earliest possible opportunity and in cases where issues are settled, at or before such settlement.
- (3) There has been a consequent failure of justice.

All these three conditions must co-exist.

Now in the present case, conditions Nos. 1 and 2 are no doubtfully satisfied; but then, before the two appellate Courts below could allow the objection to be taken, it was further necessary that a case of failure of justice on account of the

place of suing having been wrongly selected was made out. Not only was no attention paid to this aspect of the matter, but no material exists on the record from which such failure of justice may be inferred. We called upon learned counsel for the contesting respondents to point out to us even at this stage any reason why we should hold that a failure of justice had occurred by reason of Manjeri having been chosen as the place of suing but he was unable to put forward any. In this view of the matter, we must hold that the provisions of the sub-section above extracted made it imperative for the District Court and the High Court not to entertain the objection whether or not it was otherwise well founded. We, therefore, refrain from going into the question of the correctness of the finding arrived at by the High Court that the Manjeri Court had no territorial jurisdiction to take cognizance of the application praying for final decree."

9. The question which will ultimately fall for our consideration is whether Section 76 of the Act deals with territorial jurisdiction or whether it provides for jurisdiction over subject matter. If it deals with territorial jurisdiction, then the appellant would stand confronted with the earlier order passed by the Insurance Court which, as it stands today, has attained finality. If on the other hand, it deals with the subject matter and hence if it is a matter relating to inherent lack of jurisdiction, then certainly the mere fact that there is a decision rendered by the Insurance Court would not stand in the way of the appellant virtually impugning the legality of the said decision, even by way of a collateral proceeding. A decision by a body which does not have inherent jurisdiction can be challenged in any proceedings, be it collateral or in executing the said order. Consent cannot confer jurisdiction where there is none. As held by the Apex Court, essentially jurisdiction can be broadly classified into three categories. This is apparently the pattern which is discernible from the Code of Civil Procedure. Firstly, there is jurisdiction in the pecuniary sense, that is pecuniary jurisdiction. Section 15 of the CPC deals with pecuniary jurisdiction. Sections 16 to 19 deal with specific cases and provide for jurisdiction as contemplated therein. Section 20 is a residuary Section. Section 21 of the CPC undoubtedly insists that a party taking objection to the place of suing must do so at the earliest. If it is the appellate court which is invited to rule on jurisdiction based on place of suing, it need not interfere unless there is a consequent failure of justice. No doubt, the pertinent question to be considered is whether Section 76 of the Act deals with the subject matter or territorial jurisdiction. In fact, we notice that in the Judgment rendered by the learned Single Judge relied on by the appellant themselves, the learned Single Judge has stated as follows:

2. When the matter came up for consideration, the Corporation raised an objection regarding the territorial jurisdiction of the court to deal with the matter. It was contended that by virtue of the provisions u/s 76(1) of the ESI Act, the proceedings can be instituted only before the court appointed for the local area in which the insured person was working at the time the question or dispute arose. That was seriously challenged by the applicants before the EI Court and after elaborate consideration of the arguments of both sides, the court

held that action can be initiated for the reason that the Regional Director representing the Corporation is having his office at Thrissur which comes within the jurisdiction of the Palakkad EI Court. It is aggrieved by that decision, the Corporation has come up in appeal."

10. But, even without the aid of the said observation, we are of the view that Section 76 deals with territorial jurisdiction and does not deal with the subject matter as such. Section 74 of the Act provides that a State Government shall by notification constitute an Employees' Insurance Court for such local area as may be specified. The composition of the court is next dealt with. It is further provided that the Government may appoint the same court for two or more areas or two or more courts for the same local area. Section 75 deals with the matters to be decided by the court. It is thereafter that Section 76 comes under the heading "institution of proceedings". It clearly provides that subject to the provisions of the Rules made by the State Government, it shall be instituted in the court for the local area in which the insured person was working. Government of Kerala has framed Rules within the meaning of Section 76. Rule 16 is the Rule which deals with the question of jurisdiction. It is virtually on the lines of Section 20 of the CPC. The place where the insured person was working is referred to in Section 76 in connection with the words "local area" for the purpose of determining the place of institution of the proceedings. The Insurance court at Palakkad is manned by a Judicial Officer in terms of Section 75 of the Act. It is a court constituted u/s 74 of the Act. It is otherwise competent to deal with the matters specified in Section 75 of the Act. It is thereafter that Section 76 deals with place of institution. No doubt, it deals with the jurisdiction of the court to entertain the matter. But, we are of the opinion that the said jurisdiction is territorial jurisdiction. It is that court which has jurisdiction, if the Rules do not apply otherwise in which the insured person was working. Therefore, the place where the insured person works, is indicated for determining the territorial limits with reference to the place of work of the insured person, so that the Insurance Court which is otherwise validly constituted u/s 74 may exercise its jurisdiction. We are of the clear view that Section 76 does not deal with the subject matter as such as contended by the learned counsel for the appellant, but only deals with territorial jurisdiction. In fact, Section 20 of the CPC which is para materia with Rule 16 deals clearly with territorial jurisdiction. However, the concept of the local area where the insured person works found in Section 76 also deals with territorial jurisdiction.

11. Learned counsel for the appellant would contend that the learned Single Judge has stated in paragraph 7 that "certainly the aspect concerned will affect the jurisdiction of the court fundamentally." As already noted, the Court really was dealing with the objection which was stated to be in regard to the territorial jurisdiction of the court, as already noted by us, with reference to paragraph 2 of the Judgment. Obviously, the learned Single Judge was only dealing with the impact of the argument on the territorial jurisdiction. Certainly, we cannot understand the words used by the learned Single Judge to mean that the Court

has intended to lay down that Section 76 deals with subject matter or inherent jurisdiction.

12. It is true that the learned counsel for the appellant seeks to derive considerable support from the Judgment of the Apex Court in *Harshad Chiman Lal Modi Vs. DLF Universal and Another*, . The Apex Court has referred to the decision of the *Raja Setrucharlu Ramabhadra Raju Bahadur and Others v. Maharaja of Jeypore and Others*, AIR 1919 PC 150. Actually, it is true that the Privy Council has, inter alia, held that it is not an objection as to the place of suing, but it is an objection going to the nullity of the order on the ground of want of jurisdiction. Shri K. P. Sreekumar, learned Amicus Curiae drew our attention to the facts in the said case. The matter arose from a Suit seeking to enforce the mortgage. Among the aspects considered by the Privy Council, one of the issues was whether the sale ordered under the CPC was valid. The Suit had been raised in terms of the CPC, 1908. The order of sale was made under Sections of the Code which were not applicable to the area and it was in that context that the Court held that it is not a matter to be dealt with u/s 21 of the Code. No doubt, the Apex Court has also proceeded to hold in *Harshad Chiman Lal Modi Vs. DLF Universal and Another*, that neither consent, nor waiver may confer jurisdiction. We must, however, not overlook the fact that it was a case where the court on facts dealt with an order passed by the court directing return of the plaint on the basis of the objection taken regarding lack of jurisdiction. It was an objection taken by way of an amendment to the written statement. None the less, it was a case where the objection was taken to the jurisdiction and the trial court ordered return of the plaint and the court found that the Delhi Court did not have jurisdiction and it was in the context of it that the Court proceeded to hold that it is the court of the area where the property is situated which would have jurisdiction. At any rate, as far as Section 76 of the Act is concerned, we are not called upon to deal with a situation analogous to the provisions contained in Section 16 of the CPC. As already held by us, Section 76 deals with determination of the place where the proceedings must be instituted with reference subject to the Rules, no doubt, where the insured person works.

13. In fact, we have already noticed elaborately the facts and the dictum of the Apex Court rendered by a Bench of three Judges in *Pathumma and Others Vs. Kuntalan Kutty Dead by Lrs. and Others*, . We would think that it clearly advances the case of the respondent and re-inforces us in our view that Section 76 indeed relates to territorial jurisdiction.

14. We must also deal with the contention of the learned counsel for the appellant that unlike a case falling under the CPC which is to be considered in the context of Section 21, in respect of Section 76, apart from Section 78, there is no indication that Section 21 is applicable. It may be true that Section 21 as such is not made applicable. We need not deal with the possibility of importing the provisions of CPC through the provisions of Section 141 of the CPC as it is possible to contend that the Insurance Court may not be a court of civil

jurisdiction. Even without Section 21, we are of the view that the appellant is not entitled to succeed. No doubt, Section 21 indicates that objection must be taken in respect of place of suing at the earliest opportunity and also the appellate court need not interfere unless there is a consequent failure of justice. Section 21 proceeds on the basis that the Court has inherent jurisdiction and it is otherwise competent to deal with the matter. But, it only lacks territorial jurisdiction. Therefore, the salutary principle of justice which stands incorporated in Section 21 is that if the objection be to the place of suing, it is capable of being waived. It will not divest the Court of the authority to deal with the matter as would have been the position had there been total lack of jurisdiction. Shri K. P. Sreekumar, learned Amicus Curiae would submit that in fact the principle of Section 21 is available even in proceedings under the Act and if the party does not raise the contention regarding jurisdiction, if it is territorial, it is not open to him, particularly having courted an unfavourable verdict from the court to seek to attack the matter collaterally. No doubt, the principle of res judicata is in the domain of procedure. The principles of res judicata is intended to arm a litigant and, therefore, the court with a principle with the aid of which a litigant will not be vexed twice. Undoubtedly, res judicata does not deprive the court of its jurisdiction unless, no doubt, it is raised by the party. If a party does not raise the plea of res judicata, it is the decision which is rendered disregarding the earlier decision which would become res judicata. But, once a person raises the plea of res judicata, then, unless the issue relates to jurisdiction in the sense it relates to total lack of jurisdiction, certainly, it is a principle which will fatally affect the appellant. In this case, admittedly, there is an elaborate order rendered by the Insurance Court to the effect that it has jurisdiction. We have already found that the jurisdiction u/s 76 is territorial. It does not relate to inherent absence of jurisdiction. Thus, in so far as a plea of lack of territorial jurisdiction, is a plea which can be waived and which does not totally rob the court of the very authority to deal with the matter, we would think that without challenging the order dated 17.10.2009, it may not be open to the appellant to challenge the impugned order.

15. Learned counsel for the appellant does not have a case that the present application is an application for review.

16. We notice that in *Sri Ramnik Vallabhadas Madhvani and Others Vs. Taraben Pravinlal Madhvani*, , the Apex Court has in fact held that the principles of res judicata will have no application, when there is inherent lack of jurisdiction (See paragraph 55). We would think that the decision of the Apex Court in *Ashok Leyland Ltd. Vs. State of Tamil Nadu and Another*, also appears to indicate that when the order is a nullity, principles of estoppel, waiver or res judicata cannot come to the rescue of such decision. But, we must notice that this would be applicable to a case where there is complete lack of jurisdiction, that is, when there is lack of inherent jurisdiction. We are also fortified in our view with reference to paragraph 23 of the Judgment in *Hasham Abbas Sayyad v. Usman Abbas Sayyad & ORs.* , AIR 2007 SC 1077 which we may repeat once again as

follows:

23. We may, however, hasten to add that a distinction must be made between a decree passed by a court which has no territorial or pecuniary jurisdiction in the light of Section 21 of the Code of Civil Procedure; and a decree passed by a court having no jurisdiction in regard to the subject matter of the suit. Whereas in the former case, the appellate court may not interfere with the decree unless prejudice is shown, ordinarily the second category of the cases would be interfered with.

18. The upshot of the above discussion is that we hold that the Appeal lacks merits and it is only to be dismissed and accordingly the Appeal is dismissed. We place on record our appreciation for the pains taken and the assistance we have derived from Shri K. P. Sreekumar, learned Amicus Curiae.