IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-7282-2010 (O&M)
Date of decision:-28.05.2014

Paramjit Kumar Saroya

...Petitioner

Versus

The Union of India and another

...Respondents

CWP-12340-2010 (O&M)

Amanpreet and another

...Petitioners

Versus

The Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KISHAN KAUL, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

Present: None for the petitioners.

Mr. Puneet Bali, Senior Advocate,
with Ms. Divya Sharma, Advocate (Amicus Curiae).

Mr. O.S. Batalvi, Central Government Standing Counsel,
for respondent No. 1 – Union of India.

Mr. Alok Jain, Additional Advocate General, Punjab,
for respondent No. 2.

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SANJAY KISHAN KAUL, C.J. (ORAL)

The changing norms of a society raise various problems. Our society, possibly more in the urban areas, is today faced with the ground reality of a unitary family, rather than a joint family where different generations live together. There are various causes for this – easier movement for employment, requirement of greater privacy of the younger generation, the ability and the need to lead their lives etc. Simultaneously, the kind of welfare measures and support system

required for the parents and aged persons have not kept pace with it as may be in the western countries. There is absence of social security system to take care of the older generation. And this is coupled with longevity as a consequence of better medical assistance.

One of the steps taken by the Legislature in support of the parents and senior citizens is the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the said Act). However, in the urgent need for the said enactment, we do feel that possibly the fine tuning of certain provisions has escaped attention as is being elucidated by us hereinafter.

The very statement of objects and reasons of the said Act has referred to the traditional norms and values of the Indian society which laid stress on providing care for the elderly, but due to the withering of the joint family system, a large number of elderly are not being looked after by their family. It is observed that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. It is perceived that the procedure for claiming maintenance under the Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr.P.C.) is time consuming as well as expensive and, thus, the need to have a simple, inexpensive and speedy provisions to claim maintenance for the parents.

However, while framing the provisions of the said Act, the Legislature has gone much beyond the aspect of maintenance as rights in property have become involved with that aspect not only affecting

the senior citizens' and their progenies' inter se rights, but even capable of affecting third party rights. Thus, the matter is not so simple as the statement of objects and reasons states, but on the other hand, there are certain provisions which are bound to give rise to more complex legal issues where rights in immovable properties are sought to be negated on pleas such as fraud, coercion and undue influence. In fact, even presumptions are sought to be drawn by introducing a deeming provision in certain situation.

PROVISIONS OF THE ACT NEEDING A RELOOK:

We would like to delve in a little more detail qua the over all scheme of the said Act to appreciate the controversy at hand. Section 2(a) while dealing with the definition of children includes son, daughter, grandson and grand-daughter, but excludes a minor. The definition is, thus, expansive and puts the obligation not only on the next generation, but even on a generation thereafter even if the next generation is present. Similarly, the definition of property in Section 2(f) is also expansive to include movable or immovable, ancestral or self-acquired, tangible or intangible including rights and interests in such property. Thus, all aspects of property are sought to be roped in. The definition clauses contained in Section 2 of the said Act are followed by Section 3 which gives the provisions of the Act an over-riding effect notwithstanding anything contained inconsistent therewith in any other enactment.

Maintenance of parents and senior citizens is contained in Chapter II starting from Section 4. The obligation of the children or relative to maintain a senior citizen extends to the needs of a senior

citizen to lead a normal life. The provisions have also taken into consideration that the next generation inherits the properties from their parents and yet are unwilling during the life time of their parents to maintain them. The hard reality is that the longevity has given an extended ownership and some times the next generation is not even willing to wait to inherit the property at an appropriate stage, but would like to take it during the life time of their parents without the corresponding obligation. It is in this context that sub section (4) of Section 4 of the said Act casts an obligation on any person who is in possession of a property of a senior citizen or which he would inherit to maintain the senior citizen and where there are more than one relatives entitled to inherit the property the maintenance is to be shared in the proportion of the inheritance.

The appropriate application is to be filed before a Maintenance Tribunal duly constituted under Section 7 of the said Act which can follow a summary procedure as envisaged under Section 8 of the said Act. Simultaneously, under sub section (2) of Section 8 of the said Act, the Tribunal has all the powers of a Civil Court for purposes of taking evidence on oath and of enforcing the attendance of witnesses, discovery and production of documents and has to be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Cr.P.C. In order to give an option to the senior citizen, Section 12 of the said Act observes as under:-

> *"**12**. **Option regarding maintenance in certain cases**:- Notwithstanding anything contained in Chapter IX of the code of Criminal Procedure, 1973 (2 of 1974),*

> *where a senior citizen or a parent is entitled for maintenance under the said Chapter and also entitled for maintenance under this Act may, without prejudice to the provisions of Chapter IX of the said Code, claim such maintenance under either of those Acts but not under both."*

A reading of the aforesaid provision shows that though the option is available to obtain maintenance under the said Act or under Chapter IX of the Cr.P.C., there is a clear prohibition not to claim maintenance under both the aforesaid provisions. The wordings of the section do not suggest that if maintenance is obtained under one Act that is taken into account for purposes of the other Act, but rather that the recourse to remedy is only under one provision. However, Section 9 of the said Act limits the maintenance which can be granted upto ₹ 10,000/- per month. This puts a dilemma before a senior citizen. If he seeks to avail of what is perceived to be a simple and a less expensive remedy under the provisions of the said Act (as the object and reasons state), then he is constrained by the amount of ₹ 10,000/-. He is not only constrained, but is also precluded from moving for maintenance under Chapter IX of the Cr.P.C. which does not put any such limit. On the other hand, if he is desirous of a larger maintenance and moves under Chapter IX of the Cr.P.C., the more expeditious remedy, albeit of smaller amount of maintenance is no more available to him. Thus, the benefit of the Act itself would stand precluded.

The aforesaid is not a mere interpretation of the provisions which we seek to make as normally in such beneficial legislations a liberal construction should always be the rule. The problem is

compounded by the fact that Section 14 of the said Act dealing with the award of interest where any claim is allowed has the proviso to the effect that application for maintenance under Chapter IX of the Cr.P.C. pending before the commencement of the said Act is to be withdrawn before there is entitlement to file an application for maintenance under the said Act.

We do believe that the intent of the Legislature ultimately could not be to cast such restrictions on the beneficiaries, but that is how provisions of the Act read. We are mentioning this as only the first example of why we believe that a re-look is necessary qua the provisions of the said Act to fine tune them with the ground reality and with the experience of having worked the Act.

In fact the Appellate Tribunal, which is constituted under Section 15 of the said Act, refers to an order of the Tribunal and not to any particular side preferring the appeal. In this context, it may be noticed that in respect of certain matters, both powers under the Cr.P.C. and C.P.C. have been conferred on the Tribunal especially taking into consideration the provisions of Section 6 of the said Act which deals with jurisdiction and procedure including power to issue summons to secure their presence and thereafter pass ex-parte orders as also Section 8.

The second anomaly which is one of the legal questions to be examined in the present case arises from Section 16 as it is the appeal provision. It, however, specifically incorporates an appeal by “any senior citizen or a parent”. Was the intention to shut out an appeal

by the other aggrieved party? If it is so, could there be a situation where there are two parties both aggrieved from the same order, one preferring an appeal and other taking recourse to the supervisory jurisdiction of the High Court. The proviso to sub section (1) of Section 16 of the said Act mandates that on appeal the children or relative has to pay the amount as determined by the Tribunal during the pendency of the appeal. This would naturally refer to a situation where appeal is by the children or the relative as there can be no question of an appeal filed by the senior citizen or parent qua stoppage of the amount. This also seems to lend credence possibly to an intent not being correctly reflected in the exact wordings. We are observing this here only for purposes of pointing out the requirement of fine tuning and will deal with the aspect of construction of this provision later on.

The other aspect arises from the right of legal representation which is the second main question to be examined in the present case. Section 17 of the said Act seeks to prohibit representation by a legal practitioner and this issue needs to be examined in the context of Section 30 of the Advocates Act, 1961 (hereinafter referred to as the Advocates Act) which remained un-notified for five decades, but was finally notified by the notification dated 09.06.2011.

The aforesaid restriction on the right of legal representation has also to be appreciated in the context of Chapter V of the said Act which deals with the protection of life and property of senior citizen. We would like to reproduce Section 23 as under:-

> *"**23. Transfer of property to be void in certain circumstances:-** (1) Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.*
>
> *(2) Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.*
>
> *(3) If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organization referred to in Explanation to sub-section (1) of section 5."*

The aforesaid provision is very wide in its connotation as it envisages a situation where a transferee is enjoying by way of gift or otherwise a property of the senior citizen. Of course, if it is for consideration, then such a situation would not arise where transfer by way of gift or otherwise is in fact observed to be "deemed to have been made by fraud or coercion or under undue influence" in the eventuality of the transferee refusing or failing to provide amenities and basic physical needs to the senior citizen. The transfer is to be made void as per Section 23 of the said Act encompassing situations of gift, family

settlements, memorandum of understanding etc. Not only that, there may be situations where the property is further transferred to third party who would also be roped in if the first transaction itself is declared void. The sequitur would be that even the second part of the transaction may get affected.

The jurisdiction of the Civil Courts under Section 27 of the said Act is barred.

One other aspect which has been pointed out to us in the context of Section 23 of the said Act is that the only Tribunal envisaged under the said Act is the Maintenance Tribunal as set out in Section 7 of the said Act. The constitution of the Appellate Tribunal is under Section 15, while the remedy of appeal is under Section 16 of the said Act. An order passed qua Section 23 will have to be in the context of the only Tribunal which can be for declaration whereby the transfer of the property is declared void under the deeming provision as having been made by fraud, coercion or undue influence. This is a sequitur to a failure to take care of the basic amenities and basic physical needs of the transferor by the transferee. Thus, it is also in consonance with a consequence of failure to maintain and would be encompassed within the ambit of Section 7 of the said Act. In such a situation, it can hardly be expected that while dealing with an appeal against such an order, the privilege is conferred only on the senior citizen under Section 16 of the said Act and not on the other affected party.

We may note that Section 30 of the said Act specifically conferred power on the Central Government to make periodic review

and monitor the progress of implementation of the provisions of the said Act by the State Government. The objective was not only to enforce the provisions of the said Act, but also to ensure that there was progress in the desired direction qua the implementation of the said Act.

The aforesaid is one more reason why we have been persuaded to look into what we perceive to be some elements which require ironing out and, thus, we would recommend to the Central Government to have a re-look qua the aforesaid provisions to fine tune the same to give effect to the provisions of the said Act.

Now coming to the two specific provisions which require our construction in the context of the challenge laid in the present two writ petitions.

THE RIGHT OF APPEAL OF AN AFFECTED PARTY OTHER THAN THE SENIOR CITIZEN OR PARENT:

The Maintenance Tribunal is constituted under Section 7 of the said Act. An appeal qua an order passed by the Tribunal lies to an Appellate Tribunal. The Appellate Tribunal is constituted under Section 15 of the said Act. Sections 15 and 16 of the said Act read as under:-

> *"15. Constitution of Appellate Tribunal – (1) The State Government may, by notification in the Official Gazette, constitute one Appellate Tribunal for each district to hear the appeal against the order of the Tribunal.*
>
> *(2) The Appellate Tribunal shall be presided over by an officer not below the rank of District Magistrate.*
>
> *16. Appeals – (1)* ***Any senior citizen or a parent, as the case may be, aggrieved by an***

order of a Tribunal may, within sixty days from the date of the order, prefer an appeal to the Appellate Tribunal.

Provided that on appeal, the children or relative who is required to pay any amount in terms of such maintenance order shall continue to pay to such parent the amount so ordered, in the manner directed by the Appellate Tribunal;

Provided further that the Appellate Tribunal may, entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) On receipt of an appeal, the Appellate Tribunal shall, cause a notice to be served upon the respondent.

(3) The Appellate Tribunal may call for the record of proceedings from the Tribunal against whose order the appeal is preferred.

(4) The Appellate Tribunal may, after examining the appeal and the records called for either allow or reject the appeal.

(5) The Appellate Tribunal shall, adjudicate and decide upon the appeal filed against the order of the Tribunal and the order of the Appellate Tribunal shall be final:

Provided that no appeal shall be rejected unless an opportunity has been given to both the parties of being heard in person or through a duly authorized representative.

(6) The Appellate Tribunal shall make an endeavour to pronounce its order in writing within one month of the receipt of an appeal.

(7) A copy of every order made under sub section (5) shall be sent to both the parties free of cost."

An appeal is envisaged "against the order of the Tribunal". This is how Section 15 reads. It does not say an appeal only by a senior citizen or parent. However, sub section (1) of Section 16 refers to any senior citizen or a parent "aggrieved by an order of the Tribunal". This seeks to give an impression on a plain reading as if only a senior citizen or parent can prefer an appeal and, thus, restricting the appeal to only one set of party, while denying the right of appeal to the opposite side who are liable to maintain. However, this is not followed by the first proviso which deals with the operation of the impugned order during the pendency of the appeal and clarifies that the pendency of the appeal will not come in any manner in the way of the children or relative who is required to pay any amount in terms of any such order to continue to pay the amount. Now it can hardly be envisaged that in an appeal filed by the senior citizen or parent, there could be a question of absence of stay. Such absence of stay was only envisaged where the appeal is preferred by a children or relative. It is that eventuality the proviso deals with. The proviso is, thus, consistent with what has been set out in Section 15 of the said Act.

The petitioners assailed the provisions of sub section (1) of Section 16 of the said Act on the ground that there cannot be a right to appeal only to one of the affected parties, as anomalous situation would be created against the same order with which both the parties may be aggrieved i.e. where a greater or lesser claim is made in relation to any property or maintenance, as one party being the senior citizen or parent would prefer an appeal before the Appellate Tribunal, while the party which is liable to

give maintenance would have to take recourse to the supervisory jurisdiction of the High Court. Thus, two parallel proceedings in the different forums qua the same order would arise. The submission, thus, is that these provisions should be struck down as ultra-vires, the intent of the other provisions of the said Act or the constitutional scheme. In the alternative the provision should be read down to make it consistent with the other provisions and, thus, confer a right of appeal even to the other affected party.

We may add at this stage that in order to have assistance to this Court in view of the complexity in the matter involved, we considered it appropriate not only for the counsels to assist us, but to appoint Amicus Curiae to have dispassionate view of the matter. We, thus, appointed Mr. Puneet Bali, Senior Advocate as the Amicus Curiae to be assisted by Ms. Divya Sharma, Advocate. They have done a comprehensive research on various aspects of the matter and this includes the Parliamentary debates when the Bill for enactment of the said Act was introduced. A perusal of these debates reflect that there has been no debate qua Section 16(1) of the said Act, nor has any intent been reflected to exclude the right of appeal to persons other than the senior citizens or parents, unlike the debate on Section 17 of the said Act where the right of legal representation has been excluded.

It has been submitted by learned Amicus Curiae that the subject matter of a right of appeal is not merely confined to the issue of maintenance upto the amount of ₹ 10,000/-, but of seriously affecting the rights of parties even qua immovable properties as set out in

Section 23 of the said Act. Thus, transfers of immovable properties can be declared void. This power is vested not only qua family members or children of senior citizens, but qua "every person". Not only that, as stated aforesaid, the provisions of Sections 15 and 16(1) have to be read harmoniously. Section 15 nowhere mentions that the appeal against the order of the Tribunal be confined to a senior citizen or parent. Similar is the proposition qua the first proviso to sub section (1) of Section 16 which would only have been in case of an appeal by the party liable to be maintained. The right to file an appeal is not excluded specifically by the provisions of Section 16(1) of the said Act, but it fails/omits to mention. We may also usefully refer to sub section (5) of Section 16 which provides finality to the order of the Tribunal. Such finality can only be achieved after hearing grievances of both the sides. If the appeal is confined to only one party, then the finality can only be qua the rights of that party which has preferred the appeal and cannot be envisaged qua the opposite party which would have to take recourse to Article 227 of the Constitution of India. Thus, another sub section of the same Section gives credence to the plea that Section 16(1) of the said Act should be read in a manner as to provide for appeal to both the parties. The proviso to sub section (5) further stipulates that an appeal cannot be rejected unless an opportunity has been given to both the parties of being heard. The reference of right to both the parties has to be in the context of an appeal by either of the parties as otherwise it would have envisaged that no order could be passed without hearing the child or the other party.

Sub section (2) of Section 16 once again refers to causing a notice to be served upon the "respondent" and not the child or the other party which would be the situation if the right of appeal was only to a parent or a senior citizen.

Learned Amicus Curiae have referred to certain judicial pronouncements to us which we now proceed to discuss hereunder:-

(a) **Board of Muslim Wakfs, Rajasthan** Vs **Radha Kishan and others**, 1979(2) SCC 468. The role of the Court including meaning and intent to the Act has been discussed. A judicial interpretation cannot supplant or deviate from the will of the Parliament. The Courts cannot supply casus omissus, but must attempt to reconcile the provisions to advance the intention of the Legislature. In fact, the expression used in another Act also cannot be used as an aid to interpret a different statute from the one where they are used. We may usefully extract the observations made in para 29 as under:-

> *"While it is true that under the guise of judicial interpretation the court cannot supply casus omissus, it is equally true that the courts in construing an Act of Parliament must always try to give effect to the intention of the legislature. In Crawford v. Spooner[8] the Judicial Committee said:*
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> *We cannot aid the legislature's defective phrasing of an Act, we cannot add and mend, and, by construction, make up deficiencies which are left there.*
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> *To do so would be to usurp the function of the legislation. At the same time, it is well settled that in construing the provisions of a statute the course should be slow to adopt a construction which tends to make any part of the statute meaningless or ineffective. Thus, an attempt must always be made to*

> *reconcile the relevant provisions so as to advance the remedy intended by the statute."*

(b) **Unique Butyle Tube Industries (P) Ltd.** Vs **U.P. Financial Corporation and others**, 2003(2) SCC 455. The Hon'ble Supreme Court was in seisin of the dispute relating to the maintainability of the proceedings for recovery initiated under Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972 in view of Section 34(2) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The answer to this question was in the negative. In this context, while dealing with the aspect of interpretation of statutes and the principle of casus omissus, it was observed as under:-

> *"11. It is a well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the Legislation must be found in the words used by the Legislature itself. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed not as theorems of Euclid". Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See Lenigh Valley Coal Co. v. Yensavage[3]). This view was re-iterated in Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama[4] (SCC p. 284, para 16).*
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> *12. In D.R Venkatachalam v. Dy. Transport Commr.[5] it was observed that Courts must avoid the danger of a priori determination of the meaning of a provision based on their*

own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

13. While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. [See Rishabh Agro Industries Ltd. vs. P.N.B. Capital Services Ltd.[6]]. The legislative casus omissus cannot be supplied by judicial interpretative process. Language of Section 6(1) is plain and unambiguous. There is no scope for reading something into it, as was done in N.Narasimhaiah and Ors. v. State of Karnataka[7]. In State of Karnataka v. D.C. Nanjudaiah[8] the period was further stretched to have the time period run from date of service of High Court's order. Such a view cannot be reconciled with the language of Section 6(1). If the view is accepted it would mean that a case can be covered by not only clauses (i) and/or (ii) of the proviso to Section 6(1), but also by a non-prescribed period. The same can never be the legislative intent.

14. Two principles of construction - one relating to casus omissus and the other in regard to reading the statute as a whole - appear to be well settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when the reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd

> *or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J., in Artemiou v. Procopiou (1966 1 QB 878), "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in Luke v. I.R.C. (1966 AC 557) where at p. 577 he also observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges".] Therefore, the High Court's conclusions holding proceedings under the U.P. Act to be in order are indefensible."*

While cautioning the Courts that the primary rule of construction is that the intention of the legislation must be found in the words used by the Legislature itself, it was observed that statutes should be construed not as theorems of Euclid and that words are required to be construed with some imagination of the purposes which lie behind them. A casus omissus cannot be supplied by the Court except in the case of clear necessity and when the reason for it is found in the four corners of the statute itself. The objective is to put a construction on a particular provision so that it makes consistent enactment of the whole statute. A literal construction should not be adopted if it leads to a manifestly absurd or anomalous result which could not have been intended by the Legislature. It cannot be "an intention to produce an un-reasonable result". It is this very result, in our opinion, which would flow if we adopt an interpretation restricting right of appeal to only one of the parties under Section 16(1)

of the said Act. We would in fact have to strike down the provision and there is no reason to do so keeping in mind the intent of the Act if a casus omissus can save the provision.

(c) **Gujarat Urja Vikas Nigam Ltd.** Vs **Essar Power Ltd.** 2008(4), SCC 755. The Hon'ble Supreme Court in aid of interpreting a statute pressed into service the traditional Mimansa system. These principles are the traditional principles of interpretation laid down by Jaimini and are stated to have been used regularly by great jurists who authored the Mitakshara and Dayabhaga laws. The principles were created for religious purpose, but they are stated to be so rational and logical that they began to be used in law, grammar, logic, philosophy and, thus, became of universal application. The three ways of dealing with the conflicts under the Mimansa system have been crystallized as under:-

> *"(1) Where two texts which are apparently conflicting are capable of being reconciled, then by the principle of harmonious construction (which is called the samanjasya principle in Mimansa) they should be reconciled.*
>
> *(2) The second situation is a conflict where it is impossible to reconcile the two conflicting texts despite all efforts. In this situation the Vikalpa principle applies, which says that whichever law is more in consonance with reason and justice should be preferred. However, conflict should not be readily assumed and every effort should be made to reconcile conflicting texts. It is only when all efforts of reconciliation fail that the Vikalpa principle is to be resorted to.*
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> *(3) There is a third situation of a conflict and this is where there are two conflicting*

> *irreconcilable texts but one overrides the other because of its greater force. This is called a Badha in the Mimansa system (similar to the doctrine of ultra vires).”*

It is in the aforesaid context that the Hon’ble Supreme Court observed as under:-

> *“52. No doubt ordinarily the literal rule of interpretation should be followed, and hence the Court should neither add nor delete words in a statute. However, in exceptional cases this can be done where not doing so would deprive certain existing words in a statute of all meaning, or some part of the statute may become absurd.*
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> *53. In the chapter on `Exceptional Construction' in his book on `Interpretation of Statutes' Maxwell writes :*
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> *"Where the language of a statute, in its ordinary meaning and grammatical construction leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, by altering their collocation, by rejecting them altogether, or by interpolating other words, under the influence, no doubt, of an irresistible conviction that the legislature could not possibly have intended what its words signify, and that the modifications thus made are mere corrections of careless language and really give the true meaning."*
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> *54. Thus, in Surjit Singh Kalra vs. Union of India 1991(2) SCC 87, this Court has observed that sometimes courts can supply words which have been accidentally omitted.*
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> *55. In G.P. Singh's Principles of Statutory Interpretatio' Ninth Edition, 2004 at pages 71-74 several decisions of this Court and*

> *foreign Courts have been referred to where the Court has added words to a statute (though cautioning that normally this should not be done).”*

In a nutshell, any absurdity, hardship or injustice which is bound to be un-intended has to be avoided and where there is accidental omission of words the Courts can fill in the gap.

(d) **N. Kannadasan** Vs **Ajoy Khose and others**, 2009(7) SCC 1. In the course of interpretation of the constitutional provisions in regard to the status of an Additional Judge, it was observed as under:-

> *“Interpretative tools of constitutional provisions and the statutory provisions may be different. Whatever interpretative tool is applied, the Court must not forget that its job is to find out the intention of the legislature. It can be gathered from the words used. However, if plain meaning assigned to the section results in absurdity or anomaly, literal meaning indisputably would not be applied. It is also well settled that the Court may have to change the interpretative tool in the event it is necessary to give effective contextual meaning to the Act.”*

In the same judgement, the principles of purposive interpretation have been discussed. In discussing the issue of eligibility for appointment to the post of the President of a State Commission, the qualities i.e. integrity, suitability and reputation of the candidate were held to be the integral part as they would form basis for the pre-qualification “has been a judge of the High Court”. Hence, Additional Judge found by Collegium of the Supreme Court to be ineligible for appointment as a permanent Judge or reappointment as Additional Judge was held not eligible to be recommended by Chief

Justice of High Court for appointment as President of the State Commission.

Hon'ble Justice S.B. Sinha speaking for the Bench elucidated the matter summarizing the views expressed on this aspect:-

> *"**Purposive Interpretation***
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> *54. A case of this nature is a matter of moment. It concerns public interest. Public information about independence and impartiality of a judiciary would be in question. The duty of all organs of the State is that the public trust and confidence in the judiciary may not go in vain. Construction of a statute would not necessarily depend upon application of any known formalism. It must be done having regard to the text and context thereof. For the aforementioned purpose, it is necessary to take into consideration the statutory scheme and the purpose and object it seeks to achieve.*
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> *55. Construction of a statute, as is well known, must subserve the tests of justice and reason. It is a well-settled principle of law that in a given case with a view to give complete and effective meaning to a statutory provision, some words can be read into; some words can be subtracted. Provisions of a statute can be read down (although sparingly and rarely).*
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> *56. In Carew and Co. Ltd. v Union of India[8] Krishna Iyer, J. opined: (SCC p. 802, para 21)*
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> *"21. The law is not "a brooding omnipotence in the sky" but a pragmatic instrument of social order. It is an operational art controlling economic life, and interpretative effort must be imbued with the statutory purpose. No doubt, grammar is a good guide to meaning but a bad master to dictate. Notwithstanding the traditional view that grammatical construction is the golden rule, Justice*

Frankfurter used words of practical wisdom when he observed#: (US p. 138):

"There is no surer way to misread a document than to read it literally.""

57. Yet Again in K.P. Verghese vs. ITO[9], the strict literal reading of a statute was 36 avoided as by reason thereof several vital considerations, which must always be borne in mind, would be ignored, stating: (SCC p. 180, para 5)

"5. ...The task of interpretation of a statutory enactment is not a mechanical task. It is more than a mere reading of mathematical formulae because few words possess the precision of mathematical symbols. It is an attempt to discover the intent of the legislature from the language used by it and it must always be remembered that language is at best an imperfect instrument for the expression of human thought and as pointed out by Lord Denning, it would be idle to expect every statutory provision to be "drafted with divine prescience and perfect clarity". We can do no better than repeat the famous words of Judge Learned Hand when he said:

"... it is true that the words used, even in their literal sense, are the primary and ordinarily the most reliable, source of interpreting the meaning of any writing: be it a statute, a contract or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning."

"... the meaning of a sentence may be more than that of the separate words, as a melody is more than the notes, and no degree of particularity can ever obviate recourse to the setting in which all appear, and which all collectively create."

> *In the aforementioned case, therefore, some words were read into and the plain and natural construction was not given."*

We cannot express them in better words or summarize them further, but at the pain of a lengthy extraction still consider it appropriate to do so as under:-

> *"58. In Bhudan Singh v. Nabi Bux[10], this Court held : (SCC p. 485, para 9)*
>
> *"9. ...The object of every legislation is to advance public welfare. In other words as observed by Crawford in his book on "Statutory Constructions" that the entire legislative process is influenced by considerations of justice and reason. Justice and reason constitute the great general legislative intent in every peace of legislation. Consequently where the suggested construction operates harshly, ridiculously or in any other manner contrary to prevailing conceptions of justice and reason, in most instance, it would seem that the apparent or suggested meaning of the statute, was not the one intended by the law makers. In the absence of some other indication that the harsh or ridiculous effect was actually intended by the legislature, there is little reason to believe that it represents the legislative intent."*
>
> *59. This court in Atma Ram Mittal v. Ishwar Singh Punia[11] held (SCC p. 289, para 9)*
>
> *"9. Judicial time and energy is more often than not consumed in finding what is the intention of Parliament or in other words, the will of the people. Blackstone tells us that the fairest and most rational method to interpret the will of the legislator is by exploring his intentions at the time when the law was made, by signs most natural and probable. And these signs are either the words, the context, the subject-matter, the effects and consequence, or the spirit and reason of the law. See Commentaries*

on the Laws of England (facsimile of 1st Edn. of 1765, University of Chicago Press, 1979, Vol. 1, p. 59)."

(emphasis in original)

60. In High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat[12], this Court noticed : (SCC pp. 733-34, paras 33 & 38)

"33. In United Bank of India v. Abhijit Tea Co. (P) Ltd. this Court noticed: (SCC p. 366, para 25)

"25. In regard to purposive interpretation, Justice Frankfurter observed as follows:

`Legislation has an aim, it seeks to obviate some mischief, to supply an inadequacy, to effect a change of policy, to formulate a plan of Government. That aim, that policy is not drawn, like nitrogen, out of the air; it is evidenced in the language of the statute, as read in the light of other external manifestations of purpose [Some Reflections on the Reading of Statutes, 47 Columbia LR 527, at p. 538 (1947)].'"

(emphasis in original)

38. In The Interpretation and Application of Statutes by Reed Dickerson, the author at p. 135 has discussed the subject while dealing with the importance of context of the statute in the following terms:

"... The essence of the language is to reflect, express, and perhaps even affect the conceptual matrix of established ideas and values that identifies the culture to which it belongs. For this reason, language has been called `conceptual map of human experience'."

61. In New India Assurance Co. Ltd. v. Nusli Neville Wadia[14], this Court held: (SCC p. 297, para 52)

"52. Barak in his exhaustive work on "Purposive Construction" explains various meanings attributed to the term "purpose". It would be in the fitness of discussion to

refer to Purposive Construction in Barak's words:

"Hart and Sachs also appear to treat `purpose' as a subjective concept. I say `appear' because, although Hart and Sachs claim that the interpreter should imagine himself or herself in thelegislator's shoes, they introduce two elements of objectivity: First, the interpreter should assume that the legislature is composed of reasonable people seeking to achieve reasonable goals in a reasonable manner; and second, the interpreter should accept the non-rebuttable presumption that members of the legislative body sought to fulfil their constitutional duties in good faith. This formulation allows the interpreter to inquire not into the subjective intent of the author, but rather the intent the author would have had, had he or she acted reasonably."

(Aharon Barak, Purposive Interpretation in Law, (2007) at p.87.)"

62. In Union of India v. Ranbaxy Laboratories Ltd.[15], this Court held that the principles of purposive construction may be employed for making an exemption notification a workable one.

63. We may notice that in R. (Quintavalle) v. Secy. of State for Health[16], the House of Lords stated the law as under: (WLR pp. 697 & 702, paras 8 & 21)

"8. The basic task of the court is to ascertain and give effect to the true meaning of what Parliament has said in the enactment to be construed. But that is not to say that attention should be confined and a literal interpretation given to the particular provisions which give rise to difficulty. Such an approach not only encourages immense prolixity in drafting, since the draftsman will feel obliged to provide expressly for every contingency which may possibly arise. It may also (under the banner of loyalty to the will of Parliament) lead to the frustration of that

will, because undue concentration on the minutiae of the enactment may lead the court to neglect the purpose which Parliament intended to achieve when it enacted the statute. Every statute other than a pure consolidating statute is, after all, enacted to make some change, or address some problem, or remove some blemish, or effect some improvement in the national life. The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment.

21. ...The pendulum has swung towards purposive

methods of construction. This change was not initiated by the teleological approach of European Community jurisprudence, and the influence of European legal culture generally, but it has been accelerated by European ideas: see, however, a classic early statement of the purposive approach by Lord Blackburn in River Wear Commrs v William Adamson[17], AC at p. 763.. In any event, nowadays the shift towards purposive interpretation is not in doubt."

64. Yet again, the Australian High Court in Australian Finance Direct Limited v. Director of Consumer Affairs Victoria[18], held:

"40. This explanation of the approach to be taken to a problem of construction has been cited, restated and applied in this Court so many times that it should be uncontroversial. Some judges have not been sympathetic to the purposive approach [39]. Some have clearly yearned for a return to the perceived simplicities of literalism, either generally or in particular fields of law. On the whole, however, this Court has adhered to the doctrinal shift

> *with a fair degree of consistency. In my view, there is a need for such consistency. We should avoid opportunistic reversions to the old approach of literalism which the legal mind sometimes finds congenial.*
>
> *41. Obviously, a balance must be struck between, on the one hand, an exclusive focus on the text of legislation and, on the other, reference to extrinsic information that assists to explain its purpose. Those bound by the law will often have no access to such information. Cases do arise where the legal prescription is relatively clear on the face of the written law. To the extent that external inquiries are necessary, they obviously add to marginal costs and can sometimes occasion disputes and uncertainty which the words of the law alone would not have produced."*

What is crucial is that the task of interpretation of a statutory enactment cannot be a mechanical task, nor can it be the own thoughts and words of the Judge. However, there is no perfect solution as in the words of Lord Denning it would be idle to expect every statutory provision to be drafted with divine prescience and perfect clarity. It is here that the role of the Court comes in.

Now coming to the conspectus of the discussion aforesaid, we have no doubt in our mind that we would be faced with the serious consequences of quashing such a provision which deprives the right of one party to the appeal remedy, while conferring it on the other especially in the context of the other provisions of the same Section as well as of the said Act. We have to avoid this. The only way to avoid it is to press into service both the principles of purposive interpretation and casus omissus. The Parliamentary discussions on the other provisions of the said Act do not convey any intent by which there is

any intent of the Parliament to create such a differentiation. There is no point in repeating what we have said, but suffice to say that if nothing else, at least to give a meaning to the first proviso of Section 16(1) of the said Act, the only interpretation can be that the right of appeal is conferred on both the sides. It is a case of an accidental omission and not of conscious exclusion. Thus, in order to give a complete effective meaning to the statutory provision, we have to read the words into it, the course of action even suggested in **N. Kannadasan's** case (supra) in para 55. How can otherwise the proviso to sub section (1) be reconciled with sub section itself. In fact, there would be no need of the proviso which would be made otiose and redundant. It is salutary role of construction of the statute that no provision should be made superfluous. There is no negative provision in the Act denying the right of appeal to the other parties. The other provisions of the Act and various sub sections discussed aforesaid would show that on the contrary an appeal from both sides is envisaged. Only exception to this course of action is the initial words of sub section (1) of Section 16 of the said Act which need to be supplanted to give a meaning to the intent of the Act, other provisions of the said Act as also other sub sections of the same Section of the said Act. In fact, in **Board of Muslim Wakfs Rajasthan's** case (supra), even while cautioning supply of casus omissus, it has been stressed in para 29 that the construction which tends to make any part of the statute meaningless or ineffective must always be avoided and the construction which

advances the remedy intended by the statute should be accepted. This is the only way we can have a consistent enactment in the form of whole statute.

We are thus of the view that Section 16(1) of the said Act is valid, but must be read to provide for the right of appeal to any of the affected parties.

RIGHT TO LEGAL REPRESENTATION:

The right to legal representation has been specifically denied under Section 17 of the said Act which reads as under:-

> *"17.* ***Right to legal representation-*** *Notwithstanding anything contained in any law, no party to a proceeding before a Tribunal or Appellate Tribunal shall be represented by a legal practitioner."*

We may note that by an interim order dated 09.08.2011, this in fact has been stayed.

The aforesaid Section did receive the attention of the Members of the Parliament during the course of debate as is apparent from perusal of the debates. The Hon'ble Minister while piloting the Bill referred to section 125 of the Cr.P.C. incorporating the provision for maintenance of parents and in that context it was observed that going to the Court and engaging lawyers would be a very cumbersome process as well as time consuming apart from costs. The emphasis was put on conciliation and, thus, it was observed there would be no advocates. The Tribunal would follow summary procedure and the claims would be disposed of in a time bound manner. In fact, some reservation was expressed in this behalf in Parliament as to how the application would be drafted, service effected etc. without any legal

assistance. One of the Members Sh. S.K. Kharventhan observed that since more Tribunals are being constituted, the powers of the Courts are shrinking. In that context, it was observed that Section 30 of the Advocates Act dealing with the right of advocates to practise, though forming a part of the original Act of 1961, had still not been implemented and, thus, was taking away the powers of the lawyers. He expressed concern that if the lawyers are not appearing, but NGOs appear in matters of conduct of cases and adducing evidence there would be a problem. There would be no accountability of such representatives contrary to the lawyers representing where there is the Bar Council.

We have referred to the aforesaid in the context of Section 30 of the Advocates Act having been brought into force as on the date of discussion or even the passing of the Bill and the said Act.

Learned Amicus Curiae submits that on a thorough examination of the judicial pronouncements in this behalf, the view which appears to prevail is that there can be such exclusion. He, however, hastens to add that in most legislations like the Industrial Disputes Act, 1947 or the Consumer Protection Act, 1986, the right to be represented through a legal representative has been left at the discretion of the concerned Tribunal, authority or the consent of the opposite party. He pointed out the significance of Section 30 of the Advocates Act which reads as under:-

> *"30.* ***Right of advocates to practise*** *– Subject to provisions of this Act, every advocate whose name is entered in the [State roll] shall be entitled as of right to*

> *practise throughout the territories to which this Act extends-*
>
> *(i) in all courts including the Supreme Court;*
>
> *(ii) before any tribunal or person legally authorized to take evidence; and*
>
> *(iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise."*

The aforesaid provision confers a right to practise on the advocate throughout the territories before Courts, Tribunals and any other authority before whom such advocate is entitled to practise. He laid emphasis on the aspect "legally authorized to take evidence" to submit that the role of a legal practitioner becomes crucial where evidence has to be adduced, as under the provisions of the said Act, they no more remain simple proceedings of just determining maintenance upto ₹ 10,000/-, but deal with rights in immovable properties and declarations to nullify transfers under a deeming provision of fraud or coercion or undue influence. These are ticklish legal issues for which any forum would require proper legal assistance. A Tribunal can enforce attendance of parties and issue bailable & non-bailable warrants. Powers under Civil and Criminal Procedure Codes have been conferred practically on the lines of a Court to a forum. In such complexities, it is obvious that there is a very high chance of either the person who claims or the opposite side seeking assistance from a legal practitioner at a stage prior to filing. If that be the position, should such assistance of legal practitioners be debarred at the crucial

stage of taking depositions and arguments thereafter as the prelims can always be done in chambers of legal practitioners.

The judicial pronouncements brought to our notice for discussion and relied upon are as under:-

(a) **Smt. Hemlata Kantilal Shah** Vs **State of Maharashtra and another**, 1981 (4) SCC 647. The issue related to legal representation before the Advisory Board under the COFEPOSA Act, 1974. There was no bar created on legal representation under Section 8(e), but it was left to the discretion of the Board. The Hon'ble Supreme Court negated the challenge on dual grounds that the Advisory Board was not a party and the decision would be academic. It was, however, observed that there may be certain cases which were complicated and assistance of lawyers may be necessary on behalf of parties to explain acts and laws involved in the case.

(b) **Lingappa Pochanna Appealwar** Vs **State of Maharashtra and another**, 1985 AIR (SC) 389. One of the questions raised was of the constitutional validity of Section 9 A of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1975, which was couched in similar terms as Section 17 of the said Act beginning with the "notwithstanding" clause depriving the pleader's right to appear on behalf of parties in any proceedings under the Act before the Collector, Commissioner or the Maharashtra Revenue Tribunal. The plea raised was that it affected the fundamental right of an advocate enrolled to carry on his profession under Article 19(1)(g) of the Constitution of India as well as rights of the non-tribals to be

represented by legal practitioners of their choice being terminated. In that context, it was observed in paras 34 and 35 as under:-

> *"34. That contention that an advocate enrolled under the Advocates Act, 1961 has an absolute right to practise before all Courts and Tribunals can hardly be accepted. Such a right is no doubt conferred by Section 30 of the Advocates Act. But unfortunately for legal profession, Section 30 has not been brought into force so far though the Act has been on the Statute Book for the last 22 years. There is very little that we can do in the matter and it is for the Bar to take it up elsewhere. A person enrolled as an advocate under the Advocates Act is not ipso facto entitled to a right of audience in all Courts unless Section 30 of that Act is first brought into force. That is a matter which is still regulated by different statutes and the extent of the right to practise must depend on the terms of those statutes. The right of an advocate brought on the rolls to practise is, therefore, just what is conferred on him by Section 14(1)(a), (b) and (c) of the Bar Councils Act, 1926. The relevant provisions reads as follows:*
>
> *"14(1) An advocate shall be entitled as of right to practise :*
>
> *(a) subject to the provisions of sub-section (4) of 9, in the High Court of which he is an advocate, and*
>
> *(b) save as otherwise provided by sub-section (2) or by or under any other law for the time being in force in any other Court and before any other Tribunal or person legally authorized to take evidence, and*
>
> *(c) before any another authority or person before whom such advocate is by or under the law for the time being in force entitled to practise."*
>
> *In view of the various authorities on the subject, we cannot but hold that Section 9*

A of the Act is not an unconstitutional restriction on advocates to practise their profession.

35. That brings us to the second aspect of the matter i.e. the so-called right of a litigant to be represented before the Collector in matters not covered by Section 3(1) and 4 of the Act. Now it is well-settled that apart from the provisions of Article 22(1) of the Constitution, no litigant has a fundamental right to be represented by a lawyer in any Court. The only fundamental right recognized by the Constitution is that under Article 22(1) by which an accused who is arrested and detained in custody is entitled to consult and be defended by a legal practitioner of his choice. In all other matters i.e. in suits or other proceedings in which the accused is not arrested and detained on a criminal charge, the litigant has no fundamental right to be represented by a legal practitioner. For aught we know, the legislature felt that for the implementation of the legislation, it would not subserve the public interest if lawyers were allowed to appear, plead or act on behalf of the non-tribal transferees. It cannot be denied that a tribal and a non-tribal are unequally placed and non-tribal transferee being a person belonging to the more affluent class, would unnecessarily protract the proceedings before the Collector under Sections 3(1) and 4 of the Act by raising all kinds of pleas calculated to delay or defeat the rights of the tribal for restoration of his lands. The proceedings before the Collector have to be completed within sufficient dispatch and the transferred lands restored to a tribal under sub-section (1) of Section 3 and 4 of the Act without any of the law's delays."

The aforesaid discussion, thus, shows that the basic reasoning is predicated on Section 30 of the Advocates Act not being brought into force. In this context, while referring to Section 14 of the Bar Council Act, 1926, an emphasis was laid on the expression

"persons legally authorized to take evidence" before any "tribunal" or "persons". This attains significance in view of Section 30 of the Advocates Act which had unfortunately not been brought into force till then.

(c) **Aeltemesh Rein, Advocate, Supreme Court of India** Vs **Union of India and others**, 1988 (4) SCC 54. An advocate of the Supreme Court approached the highest judicial forum for enforcement of Section 30 of the Advocates Act. The Hon'ble Supreme Court held that no writ of mandamus could be issued to bring a statute or a statutory provision into force when according to the said statute the date on which it should be brought into force is left to the discretion of the Central Government. This was in the context of the majority view of the Constitutional Bench of the Hon'ble Supreme Court in **A.K. Roy** Vs **Union of India and another**, 1982 AIR (SC) 710. However, this did not come in the way of the Hon'ble Supreme Court in issuing a writ in the nature of mandamus to the Central Government to consider whether the time to bring Section 30 of the Advocates Act into force had arrived or not, as the matter could not lie over without application of mind. Six months' time was fixed for the said purpose. Para 6 of this judgement reads as under:-

> *"6. The effect of the above observations of the Constitution Bench is that it is not open to this Court to issue a writ in the nature of mandamus to the Central Government to bring a statute or a statutory provision into force when according to the said statute the date on which it should be brought into force is left to the discretion of the Central government. As long as the majority view expressed in the above decision holds the*

field it is not open to the Court to issue a writ in the nature of mandamus directing the Central Government to bring Section 30 of the Act into force. But, we are of the view that this decision does not come in the way of this Court issuing a writ in the nature of mandamus to the Central Government to consider whether the time for bringing Section 30 of the Act into force has arrived or not. Every discretionary power vested in the executive should be exercised in a just, reasonable and fair way. That is the essence of the rule of law. The Act was passed in 1961 and nearly 27 years have elapsed since it received the assent of the President of India. In several conferences and meetings of lawyers resolutions have been passed in the past requesting the Central Government to bring into force Section 30 of the Act. It is not clear whether the Central Government has applied its mind at all to the question whether Section 30 of the Act should be brought into force. In these circumstances, we are of the view that the Central Government should be directed to consider within a reasonable time the question whether it should bring Section 30 of the Act into force or not. If on such consideration the Central Government feels that the prevailing circumstances are such that Section 30 of the Act should not be brought into force immediately it is a different matter. But it cannot be allowed to leave the matter to lie over without applying its mind to the said question. Even though the power under Section 30 [sic Section 1(3)] of the Act is discretionary, the Central Government should be called upon in this case to consider the question whether it should exercise the discretion one way or the other having regard to the fact that more than a quarter of century has elapsed from the date on which the Act received the assent of the President of India. The learned Attorney General of India did not seriously dispute the jurisdiction of this Court to issue the writ in the manner indicated above."

In the course of arguments on 26.05.2014, a question arose whether this mandate had been fulfilled.

Learned counsel for the Union of India took time and produced notification dated 09.06.2011 on 27.05.2014 in terms whereof this provision had been brought into force w.e.f. 15.06.2011. The question which arises is as to the effect of this in the context of Section 17 of the said Act.

It is no doubt true that Section 17 of the said Act begins with the "notwithstanding" clause. However, while determining the right of representation by a legal practitioner, a complete phrase used is "notwithstanding anything contained in any law". The reference in law can only be a law which is in force. On the date when the said Act came into force on 31.12.2007, Section 30 of the Advocates Act did not exist in the statute book. This is so as the Parliament in its wisdom had given the right to the Executive to notify from which date this provision would be applicable. Thus, Section 30 of the Advocates Act would be "any law" only if it was on the statute book. This provision came on to the statute book only w.e.f. 15.06.2011.

No doubt, Section 30 has been part of the Advocates Act as passed by the Parliament in 1961. The said Act is a subsequent statute of the year 2007. However, this provision was not part of the law on account of the conscious will of the Parliament to leave the aspect of its enforcement to the Executive and the Executive thereafter in its wisdom brought it into force only on 15.06.2011 i.e. much after the said Act came into force. It is in that sense a subsequent law which has

come into force. In fact, while enacting Section 17 of the said Act, as is also apparent from Parliamentary debates, the absence of enforcement of Section 30 of the Advocates Act was an aspect noticed. Thus, there was full consciousness in the debates in Parliament on Section 30 not existing as law on that date.

We have to also keep in mind that this provision is crucial specifically when we are dealing with the aspect of actual date. While dealing with any Tribunal or person who is legally authorized "to take evidence", the Tribunal under the said Act is authorized to take evidence. Such evidence is crucial while dealing with Section 30 of the Advocates Act.

Learned Amicus Curiae has referred to Section 5 of the General Clauses Act, 1987 which reads as under:-

> *"5.* ***Coming into operation of enactments*** *–*
>
> *[(1) Where any Central Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent-*
>
> *(a) in the case of a Central Act made before the commencement of the Constitution, of the Governor-General, and*
>
> *(b) in the case of an Act of Parliament, of the President]*
>
> *(3) Unless the contrary is expressed, a [1][Central Act] or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement."*

The reference aforesaid is in the context as to when a Central Act comes into force i.e. when it is not expressed to come into operation on a particular day, it is to be on the day when it receives the

assent of the President; and on the expiry of the day preceding its commencement under sub section (3) of Section 5 of the General Clauses Act. However, this has a caveat that "unless the contrary is expressed" by the Parliament itself in terms of sub section (3) of Section 1 of the Advocates Act authorizing the Central Government to appoint different dates for different provisions of the Act. Thus, it did not come into force in terms of clause (b) and sub section (3) of Section 5 of the General Clauses Act and came into force almost five decades later. Thus, it became law posterior to the said Act.

In the conspectus of the discussions aforesaid, we are thus of the view that the decision vide section 30 of the Advocates Act has become law on a posterior date to Section 17 of the said Act which is sufficient for us to come to the conclusion that there cannot be an absolute bar to the assistance by legal practitioners to a Tribunal or the Appellate Tribunal despite the "notwithstanding" clause. Both the enactments are Central enactments. While the said Act was being enacted, the absence of Section 30 of the Advocates Act was known. Not having conferred that right under Section 30 of the Advocates Act on the legal practitioner, the Parliament in its wisdom had found no reasons to give such rights under Section 17 of the said Act. However, the situation has subsequently changed on account of Section 30 of the Advocates Act having come into force. The right conferred under Section 30, subject to the provisions of the Advocates Act, is on every advocate so far his name is entered in the State roll to practise "throughout the territory to which this Act extends". Such right

is qua all Courts including the Supreme Court. Such right is also before any Tribunal or person "legally authorized to take evidence". Thus, if a Tribunal is legally authorized to take evidence, there is right in the advocate to practise before the Tribunal. The Tribunal has the right to take evidence. That being the status of the Tribunal, there has been intrinsic right in the advocate to practise before such a Tribunal in view of Section 30 of the Advocates Act which cannot be taken away. The position would be the same before the Appellate Tribunal in view of the powers conferred on a Tribunal constituted under Section 7 of the said Act. Sections 6, 8 and 11 of the said Act leave no manner of doubt about the vast powers including taking the evidence on oath, enforcing attendance of witnesses, compelling discovery of documents, it being a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Cr.P.C. etc.

The over-riding provisions of the said Act under Section 3 in the context of Section 17 of the said Act have to be appreciated in the context of the law prevalent when the said Act was enacted. The ground reality has changed on account of Section 30 of the Advocates Act having come into force on 15.06.2011, while all the judgements taking contrary view are based on Section 30 not being notified and the consequence thereof. Section 30 was not law when the said enactment was enacted and brought into force.

The aforesaid anomaly apart from our observations aforesaid itself would be requiring the Central Government to look into

the matter of Section 17 of the said Act formally still being on the statute book.

We, thus, conclude on the provisions of the Acts as under:-

(i) We would request the Central Government to have a re-look into the provisions of the said Act in view of our observations aforesaid, moreso in the context of Section 30 of the Advocates Act.

(ii) The right to appeal is conferred on a party aggrieved under Section 16 of the said Act.

(iii) Section 17 would not come in the way of legal representation on behalf of parties post 15.06.2011 in view of Section 30 of the Advocates Act having come into force.

IMPUGNED ORDER OF THE SUB DIVISIONAL MAGISTRATE IN CWP-12340-2010 (ANNEXURE P-4)

The particular order dated 01.09.2009 grants maintenance of ₹ 1,000/- to respondent No. 4 – grandfather from the grandson. The other surviving son – respondent No. 6 has also been asked to pay ₹ 1,000/- per month. There are more than one progenies of respondent No. 4, but he has claimed the amount from the grandson alleging that his son is living in Italy, while his daughter-in-law – petitioner No. 2 and the grandson – petitioner No. 1 have forcibly kicked him out from the house and locked his room. It is alleged that even the other sons out of whom two have passed away are not providing him food. The only plea advanced by learned counsel for petitioner No. 1 is that when there are more than one sons, why the claim is being made by the grandfather only against the grandson.

On examination of the matter, the finding reached is that the son was responsible who was abroad. The movable and immovable properties of his son were being looked after by his wife and son who had allegedly thrown out the grandfather – respondent No. 4 and, thus, they would pay the amount of ₹ 1,000/- per month on account of maintenance.

We are really shocked and surprised to see the approach of the petitioners. Respondent No. 4 was then 85 years old and would now be in the age of 90 years. He is even un-represented before us. Despite our directions, the petitioners have failed to appear in Court, but on the other hand, the counsel representing them seems to have disappeared. If respondent No. 4 had assailed the quantum, we would in fact have been inclined to increase the amount as the sum of ₹ 2,000/- is paltry. We, however, have no assistance in this behalf from either of the two sides and do not even know the current status of respondent No. 4. Thus, on facts, there is no cause for interference what-so-ever and, thus, the challenge to the impugned order is dismissed.

We put on record our appreciation for the assistance rendered by Mr. Puneet Bali, Senior Advocate alongwith Ms. Divya Sharma, Advocate (Amicus Curiae), Mr. O.S. Batalvi, learned counsel for the Union of India and Mr. Alok Jain, learned Additional Advocate General for the State of Punjab.

A copy of this judgement be forward to the Secretary, Ministry of Law, Government of India in view of our suggestions.

Whether to be referred to the reporter or not?	*Yes√*	*No*

(SANJAY KISHAN KAUL)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

28.05.2014
Amodh