A F R

Reserved on 02.04.2019

Delivered on 17.10.2019

Court No. - 34

Case :- SPECIAL APPEAL No. - 1481 of 2007
Appellant :- M/S Universal Insulator And Ceramics Ltd

Respondent :- Official Liquidator High Court, Allahabad
Counsel for Appellant :- Amit Saxena, Navin Sinha (Senior Advocate)
Counsel for Respondent :- Anurag Khanna, A.K. Mishra, Arvind Srivastava, M. Ali, Om Prakash Misra, P. K. Singhal, R. K. Gupta, Rajnath N. Shukla, Satish Chaturvedi, Usha Kiran

Hon'ble Sudhir Agarwal,J.
Hon'ble Rajendra Kumar-IV,J.

(Delivered by Hon'ble Sudhir Agarwal, J)

1. This intra Court appeal has been filed under Section 483 of Companies Act, 1956 (hereinafter referred to as “Act, 1956”) read with Chapter VIII, Rule 5 of Allahabad High Court Rules, 1952 (hereinafter referred to as "Rules, 1952") assailing judgment dated 19.09.2007 passed by a learned Single Judge, (Hon'ble Sunil Ambwani, J, as His Lordship then was) in Misc. Company Application No.3 of 1999 in Re. M/S Universal Insulator and Ceramics Ltd (hereinafter referred to as “Defaulting Company/Appellant”) rejecting objection with regard to jurisdiction of entertaining winding up petition at Allahabad and holding that Defaulting Company/Appellant is unable to pay its debts, hence it is just and equitable to wind up the same and consequently directing for winding up of Company and appointing Official Liquidator as Liquidator of Company. The jurisdictional issue raised is that winding up petition was within the jurisdiction of Judges sitting at Lucknow and not at Allahabad, therefore, there is an inherent lack of jurisdiction in respect of subject matter of winding up, hence, order of winding up is illegal and void, but this objection has been rejected by learned Single Judge. Learned Single Judge has also restrained Defaulting Company/Appellant from transferring, alienating and encumbering any assets of Company and Official Liquidator has been directed to take over possession of

assets of Company.

2. Facts in brief giving rise to present appeal are, that, Defaulting Company/Appellant, a Public Limited Company, was incorporated in October 1978 under the provisions of Act, 1956. Certificate of registration was issued by Registrar of Companies, Kanpur. Its Registered Office is at A/2, Site No.2, Industrial Area, Rai Bareilly. Company could not run its business effectively and became sick. It made a Reference to Board for Industrial and Financial Reconstruction (hereinafter referred to as "BIFR") for declaration as a "Sick Industry" under Section 15 (1) of Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as "Act, 1985"). BIFR registered Reference as Case no.243 of 1987. BIFR appointed Industrial Investment Bank of India Limited (hereinafter referred to as "IIBI"), (now IFCI Limited and is suitably substituted as respondent 4, initially impleaded as "IIBI") as Operating Agency (hereinafter referred to as "O.A."). O.A. submitted report and BIFR sanctioned the same on 25.10.1990. It was modified on 15.03.1993. Rehabilitation Scheme could not operate. Notice was issued to Defaulting Company/Appellant for winding up by BIFR and objections were heard on 12.03.1998. O.A. informed BIFR on 05.11.1998 and 08.12.1998 that Defaulting Company/Appellant had failed to comply with directions of BIFR and even personal loan of Rs.1 lakh was not paid.

3. Ultimately, BIFR formed an opinion that Company was not likely to make its net worth exceed its accumulated losses within reasonable time and it is also not likely to become viable in future and to meet its financial obligations, hence it was just, equitable and in public interest that it should be wound up under Section 20 (1) of Act, 1985. BIFR's opinion was forwarded to this Court (Company Judge) at Allahabad by Registrar of BIFR vide letter dated 23.04.1999, which was received by Court on 03.05.1999.

4. Defaulting Company/Appellant represented through counsel,made a

statement before Company Judge on 14.10.1999 that it shall pay entire debts and desired to revive itself. Company Judge, on 07.08.2000, after considering objections filed by respective parties, sanctioned schedule of repayment (One Time Settlement). Thereafter on various dates matter came up before Company Judge. Parties made correspondence, held meetings, got various orders of this Court from time to time but nothing concrete could come.

5. In the meantime Pradeshik Investment Corporation of Uttar Pradesh (hereinafter referred to as "PICUP") initiated coercive steps against Defaulting Company/Appellant by invoking personal guarantee of Promoter and Chairman/Managing Director in the light of decision taken in the meeting of PICUP on 14.05.2002.

6. Another Financial Institution i.e. Syndicate Bank, respondent 5, initiated recovery proceedings before Debt Recovery Tribunal (hereinafter referred to as "DRT") in T.A.No.165 of 2002 and 261 of 2002.

7. Respondent 4 i.e. IIBI also initiated recovery proceedings, filed Original Application No.05 of 2003 in DRT, Lucknow for recovery of Rs.58469876/-.

8. Learned Company Judge, in modification of earlier order dated 07.08.2000, whereby schedule of repayment was sanctioned, passed order dated 15.10.2003, but nothing could proceed further since factory premises was attached by District Magistrate, Rae Bareilly for effecting recovery of tax dues under recovery certificate issued by Trade Tax Authorities against Defaulting Company/Appellant.

9. Company Judge on an application of Defaulting Company/Appellant, passed an order on 11.11.2003 and clarified its order dated 15.10.2003 whereupon Company approached State Government who decided to withdraw Recovery Certificate issued by Tax Authorities. Consequently, District Magistrate revoked attachment of factory premises on 21.01.2004.

10. Defaulting Company/Appellant giving an impression that it wants to comply Company Judge's order dated 15.10.2003, requested IIBI and Syndicate Bank as also Uttar Pradesh State Industrial Development Corporation Limited (hereinafter referred to as “UPSIDC”) to withdraw their Recovery Certificates/Court Cases. Syndicate Bank vide letter dated 14.01.2006 required Defaulting Company/Appellant to make fixed deposit of Rs.5 lacs in a no lien Escrow account to enable bank to settle One Time Settlement and file compromise petition with DRT.

11. While all these were pending, a Miscellaneous Application dated 17.02.2007 was filed by Defaulting Company/Appellant before Company Judge stating that Registered Office of Company is at A/2, Site No.2, Industrial Area, Rai Bareilly, which falls within jurisdiction of Lucknow Bench of this Court, hence winding up matter was cognizable at Lucknow, in view of Section 10 of Act, 1956; it was wrongly referred by BIFR to this Court at Allahabad, hence Company Application No.3 of 1999 be transferred to Lucknow. Appellant placed reliance on a Division Bench Judgment in **Registrar of Companies, U.P. and Uttranchal, Kanpur Vs. M/s Kamal Infosys Ltd. And others, Company Petition No.57 of 2001, 2005 (59) ALR 492.** This application was opposed by Financial Institutions and in particular, by Syndicate Bank.

12. Vide judgment under this appeal, Company Judge has rejected aforesaid application and directed for winding up of Company with further direction to Official Liquidator to take possession of assets of Company and proceed further.

13. Principally, judgment of Company Judge has been assailed on the ground of lack of jurisdiction, but simultaneously, though with hesitation, it has been argued on behalf of Defaulting Company/Appellant that there was no justification for learned Company Judge to pass order of winding up. Instead, opportunity should have been given to Defaulting Company/Appellant to clear outstanding dues.

14. Appeal has been contested by respondents. As we have already said that respondent 4, IIBI had granted financial assistance to Defaulting Company/Appellant and its dues are secured as charge has been created along with other Secured Creditors on movable and immovable properties of Company. Civil Misc. Application No.252663 of 2011 was filed stating that IIBI had transferred and assigned its debt to M/s IFCI Ltd, which is also a Public Company registered under Act, 1956 and also a "Public Financial Institution", as defined under Section 4-A of Act, 1956. Under Assignment Deed dated 28.04.2011, IIBI assigned and transferred the deeds and documents guaranteed together with all underlying securities, interest thereto and all its rights, title and interest in all agreements, deeds, documents and benefits etc. to M/s IFCI Ltd. Therefore, vide order dated 02.04.2012 substitution was allowed and M/s IIBI stood substituted by M/s IFCI Ltd. i.e. respondent 4.

15. Respondent 2 i.e. PICUP has filed a short counter affidavit stating that Defaulting Company/Appellant has been lingering proceedings not only before BIFR, but even before this Court for more than one and half decade. PICUP and other respondents accepted OTS-cum-Rehabilitation Scheme in pursuance whereof Defaulting Company/Appellant was to pay Rs.82,15,000/- to PICUP, but it could pay only Rs.10,31,257/- and Rs.71,83,673/- remained unpaid, which became Rs.1,41,73,000/- with interest as on 31st October, 2007. This shows that Defaulting Company/Appellant committed default despite Creditors having agreed for OTS-cum-Rehabilitation Scheme. Defaulting Company/Appellant could not discharge its own part of duty towards payment. Defaulting Company/Appellant has filed application with malafide intention in 2007 agitating the issue of territorial jurisdiction for the first time though it has availed benefit of various orders passed by this Court at Allahabad and, therefore, at this stage, it cannot be allowed to raise such an issue which lacks bonafide.

16. Respondent 5 i.e. M/s Syndicate Bank, Aminabad, Lucknow had

also filed a counter affidavit pointing out that despite repeated indulgence granted by BIFR, making all efforts for rehabilitation, Defaulting Company/Appellant failed to take appropriate steps for its own rehabilitation and this has been noticed by BIFR in its order dated 13.04.1999 wherein it has said as under :

> *"A revival scheme earlier sanctioned by the Board had failed to rehabilitate the company. The inability expressed by the company/promoters to even insure the assets and make payment of the premium, clearly showed that promoters were not resourceful to bring in the funds of the required order."*

17. Consequently, BIFR had no option but to record its view that Defaulting Company/Appellant is not likely to make its worth exceed its cumulative losses within reasonable time by meeting all its financial obligations. Defaulting Company/Appellant, as a result thereof, was not likely to become viable in future and it is just, equitable and in public interest, that it is wound up under Section 20 (1) of Act, 1956. Consequently, BIFR forwarded the matter to this Court for necessary action according to law. Defaulting Company/Appellant preferred Appeal No.243 of 1999 before Appellate Authority for Industrial and Financial Reconstruction, New Delhi (hereinafter referred to as "AAIFR") but the same was also dismissed vide order dated 21.06.1999 passed by AAIFR observing that mere intention for rehabilitation on the part of Promoter is not sufficient and they have clearly failed to make any efforts to raise funds. It shows no possibility of rehabilitation of Defaulting Company/Appellant. Bank filed a suit for recovery before DRT only when Defaulting Company/Appellant failed to comply this Court's order dated 07.08.2000. Various applications were moved only as a pretext so as not to comply order dated 07.08.2000 by Defaulting Company/Appellant. All the proceedings initiated by Defaulting Company/Appellant were lacking bonafide on its part. This Court (Company Judge) modified order dated 07.08.2000 by order dated 15.10.2003, but even then it was not complied

with though Bank's suit i.e. T.A. no.261 of 2002 before DRT was disposed of in terms of this Court's order dated 15.10.2003, vide order dated 28.07.2005. Defaulting Company/Appellant having no intention to comply orders, in a mischievous way, filed Writ Petition No.2895 of 2006 (M/S) before Lucknow Bench in which an interim order was passed by learned Single Judge (Hon'ble Rakesh Sharma, J) on 12.06.2006 staying order of DRT passed in Case No.TA 261 of 2002 and also restraining all opposite parties therein from taking any coercive action against Defaulting Company/Appellant during pendency of that writ petition. Further, on an application moved by Bank for recall of order dated 15.10.2003, this Court (Hon'ble S. U. Khan, J) passed order on 05.04.2007 recalling order dated 15.10.2003, making a clear observation that perusal of different orders starting from 07.08.2000 to 09.02.2007 show that Defaulting Company/Appellant has got absolutely no intention of paying any amount. Application of Defaulting Company/Appellant of raising issue of jurisdiction lacks bonafide and even otherwise after eight years, there was no justification to permit Defaulting Company/Appellant to raise issue of territorial jurisdiction, which it has never raised for last more than eight years and infact submitted to the jurisdiction of this Court at Allahabad.

18. We have heard Sri Navin Sinha, Senior Advocate assisted by Sri Amit Saxena, learned counsel for appellant, Sri Rajnath N. Shukla, learned counsel for respondent-1 and Sri Arvind Srivastava, learned counsel for respondent 3.

19. Sri Navin Sinha, Senior Advocate appearing for Defaulting Company/Appellant stated that jurisdiction cannot be conferred even by consent of parties. He contended that, when new High Court was constituted by amalgamation of High Court at Allahabad and Chief Court of Oudh, vide Article/Clause (3) of United Provinces High Courts (Amalgamation) Order, 1948 (hereinafter referred to as “U. P. High Courts (Amalgamation) Order, 1948”), jurisdiction in respect of cases arising in

such areas in Oudh/Avadh, as Chief Justice may direct, was allowed to be exercised by Judges sitting at Lucknow. Admittedly, jurisdiction of cases arising in District-Rae Bareilly is within jurisdiction of Judges sitting at Lucknow, therefore, Reference of winding up of Defaulting Company/Appellant was within jurisdiction of this Court sitting at Lucknow and not at Allahabad. Learned Senior Counsel contended that a perusal of U. P. High Courts (Amalgamation) Order, 1948 shows that there existed two High Courts, one at Allahabad and another at Lucknow and both were amalgamated in a New High Court known as "High Court of Judicature at Allahabad". In respect of such areas as determined by Chief Justice, jurisdiction was conferred to Judges sitting at Lucknow and rest were left to the jurisdiction of Judges sitting at Allahabad. U.P. High Courts (Amalgamation) Order, 1948, did not recognize any "Principal Seat" of High Court at either place and it was in the context of mere sitting of Judges whether at Lucknow or at Allahabad, which was relevant for deciding the cases. To assume that the High Court of Judicature at Allahabad has its "Principal Seat" at Allahabad and, therefore, in all residuary matters or even otherwise if the Judges sitting at Allahabad have taken cognizance that would be valid, is not correct, particularly when territorial jurisdiction in the matter of High Court is governed by constitutional provisions and if there is any lack of territorial jurisdiction the order would be void. Placing reliance on Supreme Court's judgment in **Sri Nasiruddin vs. State Transport Appellate Tribunal, 1975(2) SCC 671, Manju Verma (Dr.) Vs State of U. P. and others, 2005 (1) SCC 73,** and Division Bench judgment of this Court in **Registrar of Companies, U. P. and Uttranchal, Kanpur vs. M/s Kamal Infosys Ltd. And others (supra)** and **Sumac International Services Limited vs. P.N.B. Capital Services Limited, AIR 1997 (Allahabad) 424,** he submitted that learned Company Judge has erred in law in rejecting application submitted by Defaulting Company/Appellant raising objection in regard of jurisdiction, therefore, judgment of learned Single Judge is erroneous, illegal and

without jurisdiction, hence, liable to be set aside. He further contended that even on merits, learned Single Judge has mechanically followed opinion of BIFR instead of applying its own mind, therefore, order of winding up is illegal and liable to be set aside. In support thereof, reliance is placed on Supreme Court's judgment in **V. R. Ramaraju Vs. Union of India and others, 1997 (3) C.L.J. 221 (SC)** and a Single Judge Judgment of this Court in **Cawnpore Chemical Works (P.) Limited Vs. Appellate Authority of Industrial and Financial Reconstruction and others, 2002 (3) AWC 2012.**

20. Learned counsel for respondents, on the contrary, submitted that jurisdiction of Company matters was/is within jurisdiction of this Court at Allahabad, hence, Reference has rightly been entertained hereat. It is contended on behalf of respondents that in **Sri Nasirrudin (supra),** Court considered the question of “Permanent Seat” of High Court of Judicature at Allahabad and not the question of “Principal Seat”. This aspect has been looked into in subsequent judgments i.e. in **S. P. Sampath Kumar and others vs. Union of India and others, 1987 (1) SCC 124** and **L. Chandra Kumar vs. Union of India and others, 1997 (3) SCC 261** and has to be looked into from that angle. The “administrative seat” of High Court of Judicature at Allahabad is at Allahabad. The cases, where the Hon'ble Chief Justice passes an order falling within territorial jurisdiction of Lucknow have to be heard at Allahabad or transferred to Allahabad but not vice versa. The provisions of High Court Rules etc. all show that there may not be any “Permanent Seat” of this Court at Lucknow or Allahabad but “Principal Seat” of High Court is at Allahabad and if a matter has been registered at Allahabad, in absence of any objection raised by concerned party with respect to territorial jurisdiction, the matter, if has proceeded for several years and many orders have been obtained by a party in its favour, subsequently it cannot raise issue of territorial jurisdiction. It is contended that in any case, the Judges sitting at Lucknow are only required to look into winding up and once winding up order is passed,

thereafter matter has to be transferred to Allahabad for further proceedings. It shows that in the matter of winding up, main operations are to be conducted at Allahabad. Hence, here issue of territorial jurisdiction is only technical. For all practical purposes, jurisdiction is with Judges sitting at Allahabad. In any case, it is urged that it is not a case of inherent lack of jurisdiction in the matter of winding up. Thus, also the objection raised by appellant deserves to be rejected. It is lastly contended that objection of jurisdiction ought to have been taken at the earliest and not after availing several orders in favour of appellant and at a much later stage. With regard to such belated objection reliance is placed on Supreme Court's judgments in **R.S.D.V. Finance Company Private Limited vs. Shree Vallabh Glass Works Limited, 1993 (2) SCC 130; Om Prakash Agarwal (since deceased) through legal heirs and others Vs. Vishan Dayal Rajpoot and another, 2019 (Allahbad Civil Journal) 3 (SC)** and **Competition Commission of India vs. Bharti Airtel Limited and others, 2019 (2) SCC 521**.

21. We have considered rival submissions of parties, perused record and also relevant authorities and statutory provisions, very carefully, and looked into entire matter in depth.

22. In support of submissions with respect to jurisdiction learned Senior Counsel has placed reliance on Supreme Court's judgment in **Sri Nasirruddin (supra)** at length and also historical backdrop of Courts at Lucknow and Allahabad, which ultimately resulted in amalgamation and functioning of High Court at Lucknow and Allahabad.

23. Submissions advanced by learned Senior Counsel of respective parties, in our view give rise to following issues :-

(I) Whether “Permanent Seat” and “Principal Seat” is one and the same thing and can it be said that there is no “Permanent Seat” as well as “Principal Seat” of this High Court at Allahabad and Lucknow?

(II) Whether issue of 'jurisdiction' in the matter of winding up of a company goes to the root of the matter, inasmuch as, Judges sitting at Allahabad on the subject of winding up of a company have no jurisdiction at all or considering peculiar facts and circumstances in the matter, dealing with winding up of company matters, can it be said that jurisdiction to Judges sitting at Allahabad is not completely barred?

(III) Whether in the facts of this case, where Reference made by BIFR on 23.04.1999 was received by this Court at Allahabad on 03.05.1999 and thereafter first order was passed by Company Judge at Allahabad on the statement made by appellant's counsel on 14.10.1999 and subsequent proceedings held for almost eight years without any objection to territorial jurisdiction, would prevent appellant from raising the issue of lack of jurisdiction after almost eight years or objection being inherent and going to the root of the matter, has to be upheld irrespective of conduct of appellant and whether entire proceedings which had gone for the last eight years, are without jurisdiction?

(IV) If the objection regarding jurisdiction and the above questions are answered against appellant, whether on merits also winding up order passed by Company Judge, is justified?

24. Now we proceed first to decide the first question which is of utmost importance, not only for the purpose of present case, but even otherwise.

25. The dispute in relation to territorial jurisdiction, i.e. cases admissible with reference to territory of this Court at Allahabad and Lucknow, is a perennial cause of discontentment and continuous cause of litigation. It has also involved rivalry of Advocates at these two places, since it directly affects quantum of work at two places. Therefore, it has attracted attention of this Court as well as Supreme Court, time and again. We can take judicial notice of the fact that territorial jurisdiction or

division of cases on the basis of territory has become a serious point of confrontation amongst Advocates practising at Lucknow as well as Allahabad and many a times even Court's work has been paralysed due to abstention of Advocates from work for raising and pressing their demand in respect of certain cases, arising from particular area, whether admissible at Lucknow or Allahabad. In our view, it is high time when this aspect needs be considered threadbare so as to settle dispute for all times to come, to mitigate rivalry among two sections of officers of this Court practising at these two places and also in the interest of litigants at large.

26. For history, development and growth of Courts, including High Court, it is not necessary to go into Moghal system of dispensation of justice, instead it will be appropriate to have a brief re-look from the stage of growth of power of Britishers, firstly with East India Company and thereafter, British Government. In fact at the time of independence we had the system of administration of justice as developed by Britishers and we have maintained that inheritance with some changes as found necessary in the light of the provisions of Constitution of India which came into force on 26th January 1950. For having a retrospect of historical development of judicial system initiated and developed by Britishers, fortunately we have information in the form of publication of certain official momentos by this Court in recently concluded “Sesquicentennial functions” on completion of 150 years of establishment of this Court. Enough historical details have been given in various documents published by this Court and having benefit of same, what transpires therefrom, in brief, may be noticed hereinafter.

27. Arrival of Britishers in India begins with the issue of Charter of 1600 by Queen Elizabeth in England, pursuant whereupon, some merchants of London formed “East India Company” to trade with East Indies. As a consequence of this Charter “British East India Company” set up trading establishment on the East and West Coasts of India and in Bengal. Charter of 1600 was mainly designed for trade in order to meet

competition with Portuguese and Dutch. This Charter contained all provisions necessary for constitution of a Government according to law in any territory. This Charter granted permits to traffic and use trade of merchandise and to assemble themselves in any convenient place to make reasonable laws and ordinances for the good governance of “East India Company”. The Factories, on the other hand, were not given power to make laws and impose punishments.

28. Charter of 1661 gave East India Company power to coin money to administer justice and to punish the Interlopers. It also empowered 'East India Company' to appoint Governor's Council, and, appoint other officers for their help. Governor and Councils were authorized to administer justice in all the causes, civil as well as criminal, according to the laws of Kingdom and execute judgments accordingly. Charter of 1661 gave 'East India Company' power to make peace or war with non Christians, erect Fortifications and cease Interlopers.

29. Next is Charter of 1669 which for the first time gave territorial sovereignty to 'East India Company' by granting it, Port of Bombay. It also enlarged its administrative, judicial and governmental powers with civil and military government.

30. Charter of 1677 empowered 'East India Company' to establish a mint at Bombay for coining money i.e. Indian Rupees. Charter of 1683 gave Company full powers with respect to declaring wars and making peace with “heathen nation” (the nation where people do not follow Christianity) and King established a Court of Justice with maritime jurisdiction. Courts were empowered to adjudge and determine cases according to rules of equity and good conscience and laws and customs of merchants.

31. By Charter of 1687 'East India Company' established a Mayor's Court at Madras. It consisted of twelve Aldermen and sixty or more Burgess. After settlement of Calcutta founded by Job Charnoc in 1690

there was gradual increase of British population in India. A necessity was felt for having Courts which may dispense justice to Britishers in accordance with English law. There was diverse legal frameworks working in British settlements. Charter of 1726, therefore, came to be issued providing for establishment of 'Corporation' in each presidency town. It also established 'Mayor Court' at all three presidencies i.e. Madras, Calcutta and Bombay. These Courts were having jurisdiction in civil matters including 'Testamentary' and 'Probate Wills' but criminal matters were left to be decided by and within the jurisdiction of Governor-in-Council which acted as Court in such matters. It also made a provision for Second Appeal to King and Council. Under this Charter, First Appeal could be filed before Governor and Council, and Second Appeal could be taken to King and Council in England. These Courts administered English law which was assumed to be 'lex loci' of the settlement. Inhabitants of settlement resorted to English law. They were governed by English law, irrespective of their nationality. Mayor's Courts were declared to be “courts of record” and authorized to hear and determine all civil actions and may plead between parties and party. Outside the settlement, local inhabitants i.e. Indians were supposed to be living in their own country and subject to their own laws, the task of administering justice which had been taken upon, since disintegration of Moghal sovereignty, by their erstwhile Deputies and Governors.

32. In 1765, Robert Clive secured in perpetuity, for 'East India Company', Dewani of Bengal, Bihar and Orissa from Moghal Emperor Shah Alam against payment of Rs.26 lacs. By this grant, Company claimed to have become virtual 'Sovereign' and master of this territory. Consequently, a proposal was made by Warren Hastings and his Council on 15.08.1772, which was adopted by British Government on 21.08.1772, and Mofussil Dewanny Adawluts, or Provincial Courts of civil justice, under superintendence of Collectors of Revenue were established in each district. Under Regulations passed on 21.08.1772, Criminal Courts,

designated as 'Faujdari Adalats' were established and placed under superintendence of Collectors of Revenue.

33. British Parliament passed Regulating Act in 1773 giving power upon Her Majesty to constitute Supreme Court in Bengal for British subjects and employees of Company. However, Charter of 1774 pursuant to Regulating Act, 1773 though established Supreme Court in Bengal but did not mention limitations. This omission caused a lot of conflict in opinion about jurisdiction of Supreme Court. For Indians living outside Calcutta, administration of justice was different.

34. In 1774, a minor alteration was made and Collectors were withdrawn by appointing Provincial Councils in six Divisions in respect of the set up of above Courts.

35. On 18.10.1775, superintendence of Criminal Courts was entrusted to Naib Nazim, who appointed Foujdars to preside over the said Courts. On 28.03.1780 it was decided to establish District Courts in six Divisions, which were made independent of Provincial Councils. In 1781, alleging that Foujdars have not satisfied the intended purpose, a change was brought in. Criminal Courts were continued in several Divisions subject to superintendence of Naib Nazim but English Judges of Dewani Adalats were appointed as Magistrates with power to take cognizance of offences, apprehend their perpetrators and commit them to nearest Criminal Court for trial. Interestingly, these English Magistrates had no effective role over Zamindars and Landholders. On 27.06.1787, Magistrates were vested with authority to decide, upon complaints, petty offences such as petty affrays, abusive names etc.

36. On 03.12.1790, Regulations were passed whereby 'Courts of Circuit' under superintendence of English Judges, assisted by persons well versed in Mohammedan Law, were established for trying, in the first instance, cases of crimes and misdemeanours. Regulations with regard to Criminal Courts were consolidated and re-enacted in Regulation IX of

1793.

Revenue Adminstration

37. Revenue Administration owed its origin to the grant of Dewani whereby 'East India Company' had become responsible for collection of Revenue in view of grant, it held, from the then Moghal Emperor. Prior to 1771, task of settlement and collection of Revenue was carried by covenanted servants of East India Company in Calcutta, Twenty-four Parganas, Burdwan, Midnapore and Chittagong. In other parts, Dewans at Murshidabad and Patna were responsible for collecting revenue. In 1771 Directors of 'East India Company' declared their resolution regarding management and care of revenue through the agency of Company's servants. To resolve disputes regarding revenue arising between East India Company and Landholders, and, also Landholders and their tenants or 'Ryots', the 'Mal Adawluts' or Revenue Courts were established. These courts were presided over by Collectors and appeals from their decisions lay to Board of Revenue and then on to Governor-General-in-Council. By Regulation II of 1793, Mal Adalats were abolished and jurisdiction was transferred to Civil Courts. Collectors were made responsible only for collection of revenue.

'Sadar Diwani' and 'Sadar Nizamat Adalats'

38. By Regulation of 1772, Sadar Dewani Adalat was instituted in the Presidency under superintendence of three or more members of Council to hear appeals from Diwani Adalats in causes exceeding value of five hundred rupees. By same Regulation, 'Sadar Nizamut Adalat' was established at Murshidabad. The jurisdiction of Dewani Adalat was defined by Regulation III of 1793 whereby British subjects were expressly excluded from their jurisdiction with certain exceptions. Designation of Dewani Adalat established in Murshidabad, Dacca and Patna were named after name of these cities, while of those established in several districts (Zillahs) were named after the name of District/Zillah.

39. By Regulation V of 1793 Provincial Courts of Appeal were established, which, besides having Appellate jurisdiction, also had original jurisdiction in certain matters. Appeals from Zillah and City Courts (Dewani Adalats), which till then were directly admissible in Sadar Dewani Adalat, were now to be filed in these Provincial Courts and appeals against Provincial Courts were to be filed in Sadar Dewani Adalat.

40. In effect Sadar Dewani Adalat and Sadar Nizamat Adalat of Bengal were presided over by Governor General and members of Supreme Council. These courts were meant to dispense justice to local inhabitants i.e. Indians and had no authority over British subjects.

Extension to North

41. The territory around Banaras was ceded to 'East India Company' by Nawab Vazir of Awadh/Oudh in 1775. In 1781, Court of Justice vested with Criminal jurisdiction was established in the city of Banaras. In 1788, Courts with similar powers were established in districts of Ghazipur, Jaunpur and Mirzapur. Resident at Banaras was to act as Magistrate throughout the Province of Banaras. By Regulation XVI of 1795, Judges of Dewani Adalats, which were established in the same year in the city of Banaras and above mentioned three districts, were empowered to act as Magistrates within their jurisdiction and this power which was being exercised by Resident at Banaras was resumed from him. 'Court of Circuit' having similar powers as those in Bengal for trial of serious offences, was created by same Regulations in Banaras. This Court was subordinate to 'Sadar Nizamat Adalat' of Bengal.

42. Regulation VII of 1795 caused establishment of 'Civil Courts' in Banaras Province. City court in Banaras and three Zillah Courts (District Courts) in Jaunpur, Mirzapur and Ghazipur were established. The jurisdiction, power and authority enjoyed by similar courts in Bengal were extended to these courts also. By Regulation IX of 1795, a Provincial Court of Appeal was set up in Banaras to exercise jurisdiction in Banaras

Province, which consisted of city of Banaras and three Districts of Jaunpur, Mirzapur and Ghazipur. Provincial Court was to hear appeals against judgments of City and Zillah Courts (District Courts). Appeal against Provincial Courts lay to 'Sadar Dewani Adalat of Bengal, Bihar and Orissa', jurisdiction thereof was extended to Banaras Province by Regulation X of 1795.

43. In 1800, British Parliament enacted Government of India Act, 1800 (hereinafter referred to as “G.I. Act, 1800”) for Regulation of Government of British Territories in India and better Administration of Justice within the same. It conferred powers upon Court of Directors of East India Company to declare which part or parts of territorial acquisitions or of any other, now subject to the government of Presidency of Fort Saint George or Presidency of Bombay, together with the revenues arising therefrom, and the establishment of civil servants connected therewith, respectively, shall from henceforth hereafter be subject to the government of either and which of the said presidencies or of the Presidency of Fort William in Bengal, and from time to time, as occasion may require, to revoke and alter in the whole or in part such appointment, and to make such new distribution of the same as to them shall deem fit and expedient, subject nevertheless in all cases to the superintendence, direction and control of the Commissioners for the affairs of India, in like manner as any Acts or Orders of said Courts of Directors are now by law subject. They are also given power to establish Court or Courts of Judicature. The British Government also was given power to establish a Supreme Court at Madras. Power of Supreme Court of Fort William in Bengal was extended over the province of Banaras and all places subordinate thereto including all districts thereafter annexed to the Presidency of Fort William.

44. Territory of 'East India Company' extended. In 1801 a major portion of the area, later known as 'Agra Province', was ceded to British by Nawab of Awadh. In 1803, Zillah Courts (District Courts) were constituted in the districts of Moradabad, Bareilly, Etawah, Farrukhabad,

Kanpur, Allahabad and Gorakhpur vide Regulation II of 1803. By Regulation IV of 1803, a 'Provincial Court of Appeal' was established at Bareilly for exercising appellate jurisdiction over these Zillah Courts (District Courts). Appeals against decisions of Provincial Courts of appeal was admissible in 'Sadar Dewani Adalat of Bengal'. Out of the territories ceded by Peshwa and Daulat Rao Sindhia, six Districts were formed by Regulation IX of 1804.

45. By Regulation VIII of 1805 five new Districts were formed out of conquered provinces, within the Doab and on the right bank of Jamuna, excepting Delhi, as also out of the territory of Bundelkhand ceded by the Peshwa. These districts were Aligarh (at that time Allyghur), Northern Zilla of Saharanpur, Southern Zilla of Saharanpur, Agra and Bundelkhand. By same Regulations, Zilla Courts/District Courts were established in these districts. Two parts of Saharanpur, however, were amalgamated in 1806. Appeals from these Zilla Courts/District Courts, lay to Provincial Court established by Regulation IV of 1803 and further appeals to Sadar Dewani Adalat of Bengal.

46. In 1817, Dehardun and Kumaon, which were acquired from Nepal, were brought under above legal system vide Regulations IV and X. Some defects were found in superintendence of Criminal and Revenue Administration, hence nine Divisions were created in 1829, out of the ceded and conquered territories, later known as 'North Western Provinces' and each Division was placed under a 'Commissioner of Revenue and Circuit'.

47. Provincial Courts of Banaras and Bareilly ceased to be 'Courts of Circuit' and power to hold “sessions of goal delivery” enjoyed by them was transferred to Commissioners vide Regulation I of 1829. The amalgamation of Civil and Criminal jurisdiction was effectuated by Regulation VII of 1831 providing for appointment of Zillah Judges as Sessions Judges whenever deemed advisable, though appeals from the

orders of Magistrates lay to Commissioner. Like Commissioner, the Sessions Judges were subordinated to 'Sadar Nizamat Adalat of Bengal'. To relieve Zillah and City Judges from pressure of work, a provision was made for appointment of Principal Sadar Ameens, whenever necessary, by Regulation V of 1831. They were to try such appeals, against decisions of Munsifs, and original suits, not exceeding five thousand rupees, as the Zillah or City Judges referred to them.

48. 'Sadar Dewani' and 'Nizamat Adalats' established in Western Provinces consisted of Province of Banaras and ceded and conquered Provinces, in 1831, by Regulation VI, ordinarily to be stationed at Allahabad and all the nine Divisions created in 1829 were placed within its jurisdiction. These Courts were created to mitigate discontent and dissatisfaction prevailed among the litigants due to expensive litigation, difficulties and delay experienced in prosecuting appeals in Bengal. Later, these two Courts, 'Sadar Dewani' and 'Nizamat Adalats' were shifted to Agra.

49. By Regulation X of 1831 a Board of Revenue was created at Allahabad. Revenue administration which was till then under Board of Revenue in Bengal, was shifted to Board of Revenue at Allahabad. In 1833, by Regulation II, Provincial Courts of Appeal were abolished. Their appellate jurisdiction including pending appeals, was transferred to 'Sadar Dewani Adalat', while original jurisdiction including pending suits was transferred to Zillah (District) and City Courts.

50. Government of India Act, 1833 (hereinafter referred to as “G.I. Act, 1833”) was enacted for effecting an arrangement with 'East India Company' and for better government of His Majesty, Indian territory. Vide Section 38 of G.I. Act, 1833, territories which were subject to government of Presidencies of Fort William in Bengal were divided in two and another Presidency was constituted as 'Presidency of Agra'. Power to divide territories in the newly constituted Presidencies vis-à-vis existing

Presidency was conferred upon Board of Directors of 'East India Company'.

51. In 1836, 'North-Western Provinces' was formed out of the territory around Banaras ceded by Oudh/Avadh in 1775, other territories ceded in 1801, conquered territories acquired from Maharaja of Sindhia in 1803, a portion of Bundelkhand acquired from Peshwa and territory then known as the hill districts acquired in 1816 from Nepal. The ceded territories covered greater portion of Uttar Pradesh. Sagar and Narbada territories ceded by Rulers of Nagpur, also became part of 'North Western Provinces'.

52. Jhansi which lapsed to East India Company in 1853, became part of North Western Province. Delhi territory which also formed part of the North Western Provinces, later transferred to Punjab in 1858. In January 1858, Lord Canning proceeded to Allahabad forming 'North Western Province' excluding Delhi Division.

53. Avadh/Oudh was annexed to territories of 'East India Company' in 1856. Twelve districts of Lucknow, Barabanki, Faizabad, Sultanpur, Hardoi, Rae Bareilly, Pratapgarh, Unnao, Gonda, Bahraich, Sitapur and Kheri were placed under a Chief Commissioner. Till annexation of Avadh/Oudh to the territories of East India Company in 1856, administration of justice therein was under a system laid by then Nawab of Avadh. After annexation, Court of Appeal was established at Lucknow with a Judicial Commissioner for disposal of Civil and Criminal cases.

54. After First war of independence in 1857, sovereignty was transferred from 'East India Company' to 'British Government'. In 1861, 'Indian High Court Acts, 1861' and 'Indian Council Act, 1861' were passed by British Parliament.

55. Indian High Courts Act, 1861 provided for abolition of Supreme Courts of judicature established at Calcutta, Madras and Bombay as also 'Sadar Dewani Adalat'. It further provided for constitution of High Courts

of Judicature in their places in above three Presidencies. Vide Section 16 of Indian High Courts Act, 1861, power was reserved to British Crown to constitute similar High Courts in other territories which were not within local jurisdiction of any of three proposed High Courts of Calcutta, Bombay and Madras. Indian Council's Act 1861 empowered Governor General to create local legislatures in various provinces.

56. Thereafter the only 'Sudder Court' which remained was “Court of Sudder Dewani” and “Nizamat Adalat” for North-Western Provinces. This Court sat at Agra, although Bengal Regulation VI of 1831 provided that it was “to be ordinarily stationed at Allahabad”. On 17.03.1866 a Letters Patent for creation of a High Court was issued whereupon Court of Sudder Diwanny and Nizamut Adalat ceased to exist in North-Western Provinces and a High Court came into existence called as “High Court of Judicature for North-Western Provinces”. Aforesaid Charter conferred jurisdiction upon newly formed High Court in respect of Civil, Criminal, Testamentary and Interstate as well as Matrimonial matters. First sitting of High Court took place at Agra on 18.06.1866, but in 1868 it was shifted to Allahabad.

57. With regard to Avadh/Oudh, as we have already noticed, a Judicial Commissioner was appointed for disposal of Civil and Criminal cases. Court of Appeal was established in Lucknow in 1856 with a Judicial Commissioner. Initially there was only one Judicial Commissioner but he was not the highest Court of Appeal in rent and revenue cases. System of dispensation of justice in Oudh/Avadh was different for the reason that Regulations of Bengal did not apply to Oudh/Avadh. Hence like other Non Regulation Provinces, it also remained None Regulation Territory.

58. After annexation in 1856, various grades of posts were established vide Act XIV of 1865, similar to those provided for Central Provinces under the same Act. The aforesaid Act was framed chiefly with reference to Central Province. It was found incomplete and inconvenient as regards

Oudh/Avadh.

59. Accordingly, in 1871, Oudh Civil Courts Act (Act No.XXXII of 1871) was passed by Governor General-in-Council to consolidate and amend laws relating to Civil Courts in Avadh. Besides constituting Civil Courts in a reformed shape, Judicial Commissioner's Court was re-constituted as the highest Court. Five grades of Courts were constituted i.e. (1) Tehsildar (2) Assistant or Extra Assistant Commissioner (3) Deputy Commissioner or Civil Judge of Lucknow (4) Commissioner and (5) Judicial Commissioner. General control over all Courts of first and second grades in any District vested in Deputy Commissioner and control over courts of first three grades, in any Division, vested in Commissioner, subject to superintendence of Judicial Commissioner. Court of Deputy Commissioner was Principal Civil Court of original jurisdiction in any district. He could direct business in the Courts of first and second grades to be distributed amongst such courts as he found fit, having regard to limits of their jurisdiction. He entertained appeals from those courts except when the amount in dispute exceeded Rs.1000/- in which case appeal lay before Deputy Commissioner and Commissioner and then to Judicial Commissioner who was empowered to refer cases, in which he entertainrf any doubt, to High Court of North Western Provinces.

60. Inter relationship of Judicial Commissioner's power vis a vis North-Western Province High Court established under Indian High Courts Act, 1861 by Charter dated 17.03.1866 is discernible from Section 23 of Act XXXII of 1871, which reads as under :-

> *"23. When the **Judicial Commissioner entertains any doubt as to the decision to be passed on any appeal under this Act, he may make a reference to the High Court of the North-Western Provinces of the Presidency of Bengal,** and shall transmit the record of the case referred, and all the proceedings connected therewith, to the said Court."*
>
> *(emphasis added)*

61. A perusal of aforesaid provision shows that a Judicial

Commissioner in Oudh Provinces, if had any doubt as to the decision to be given by him, he would make reference to North-Western Provinces High Court and then the case had to be decided in accordance with judgment of High Court of North Western Provinces.

62. Offices of Lieutenant Governor of North-Western Provinces and Chief Commissioner of Oudh were combined in the same person in 1877.

63. As already said Judicial Commissioner was not the highest Court of Appeal in rent and revenue cases. For this purpose there was Financial Commissioner as higher Court. But Court of Financial Commissioner was abolished by Act No.XXXII of 1871 and his work was also entrusted to Judicial Commissioner. Civil Courts, on the lines of those in the North-Western Provinces, were established in Oudh/Avadh by Act No.XIII of 1879, which was amended by Act No.XVI of 1891. The same established following grades of Civil Courts in Oudh/Avadh :

(i) Court of Judicial Commissioner

(ii) Court of District Judge

(iii) Court of Subordinate Judge

(iv) Court of Munsif

64. Since, work was on increase, by subsequent enactments i.e. Act IV of 1885, power was given to make temporary appointments and thereafter by Act XIV of 1891, Oudh Courts Act, provision was made for appointment of permanent 'Additional Judicial Commissioner', equal in status but not in emoluments to 'Judicial Commissioner'. By Act XVI of 1897, provision was made for Second Additional Judicial Commissioner but salary between Judicial Commissioner and Additional Judicial Commissioner remained different i.e. Rs.3500/- per mensem to Judicial Commissioner and Rs.3333/- per mensem to Additional Judicial Commissioner.

65. Thereafter in 1902, new name to two Provinces was given i.e.

"United Province of Agra and Oudh". It became 'Uttar Pradesh' on 24.01.1950 under United Provinces (Alteration of Name) Order, 1950 (hereinafter referred to as "Order 1950").

66. With an intention to provide larger power in provincial matters to the Provinces, G.I. Act, 1915-1919 was enacted. We are confining ourselves to the part of aforesaid Act which relates with Indian High Courts which was contained in 'Part IX' running from Sections 101 to 114. It recognizes High Courts established by Letters Patent only as the 'High Courts' under the aforesaid Act. Section 101 (1) of G. I. Act, 1915-1919 reads as under :

> "***101. Constitution of high courts.****-(1) The* ***high courts referred to in this Act, are the high courts of judicature for the time being established in British India by letters patent.****"*
>
> (emphasis added)

67. However, by Section 101 (5) of G. I. Act, 1915-1919, it renominates 'High Court for the North Western Provinces' and titled as "High Court of Judicature at Allahabad". The Court at Fort William in Bengal was made as "High Court of Judicature at Calcutta". Section 101 (5) of G. I. Act, 1915-1919 reads as under :

> "***101.(5)****. The high* ***court for the North-Western Provinces may be styled*** *the high* ***court of judicature of Allahabad****, and the* ***court at Fort William in Bengal*** *is in this Act referred to* ***as the high court at Calcutta.****"*
>
> (emphasis added)

68. Section 106 of G. I. Act, 1915-19 declares jurisdiction of High Courts and reads as under :

> "***106. Jurisdiction of high courts.****-(1) The several high courts are courts of record and have such jurisdiction, original and appellate, including admirality jurisdiction, in respect of offences committed on the high seas, and all such*

> *powers and authority over or in relation to the administration of justice, including power to appoint clerks and other ministerial officers of the court, and power to make rules for regulating the practice of the court, as are vested in them by letters patent, and, subject the provisions of any such letters patent, all such jurisdictions, powers and authority as are vested in those courts respectively at the commencement of this Act."*

69. System of 'Judicial Commissioner' in Oudh/Avadh came to an end when U. P. Legislature with previous sanction of Governor General, as required under Section 80-A(3) of G. I. Act, 1915-1919, passed 'Oudh Court's Act', U.P. Act No.4 of 1925 (hereinafter referred to as "U. P. Act, 1925"). The local legislature of United Provinces of Agra and Oudh passed U. P. Act of 1925 and it received assent of Governor of United Provinces of Agra and Oudh on 03.04.1925 and Governor General on 04.05.1925. It was published under Section 81 of G.I. Act, 1915-1919 on 16.05.1925. Preamble of U. P. Act, 1925 stated that it was enacted to amend and consolidate the laws relating to the Courts in Oudh. Section 3 of Act, 1925 provided that on and from commencement of said Act there shall be established for Oudh a 'Chief Court' referred to as "Chief Court".

70. Section 4 of Act, 1925 talked of constitution of Chief Court and provides that "Chief Court" shall consist of a Chief Judge and four or more Judges who shall be appointed by Governor General-in-Council. The Judges including 'Chief Judge' were to be appointed from three sources namely :-

> *"(a) Barristers, Advocates and Vakils of a High or Chief Court including the former Judicial Commissioner's Court in Oudh of not less than ten years' standing; at least two.*
>
> *(b) Members of the Indian Civil Service of not less than ten years' standing, and having for at least three years served as, or exercised the powers of, a District Judge; at least*

two.

(c) Members of the United Provinces Civil Service who have held judicial office not inferior to that of a Subordinate Judge or a Judge of a Small Cause Court for a period of not less than five years; at least one."

71. Proviso of Section 4 of U. P. Act, 1925 provided that if one of the Judges, who is a member of Indian Civil Service, has been promoted from United Provinces Civil Service, it shall not be necessary to appoint any other Judge from United Provinces Civil Service.

72. Section 8 and 9 of U. P. Act, 1925 provided that 'Chief Court' shall be deemed to be 'highest Court of appeal and revision' for civil appellate jurisdiction and criminal jurisdiction. By Section 21 of U. P. Act, 1925, four grades of Civil Courts in Oudh were contemplated and it said as under :

"21. Besides the Chief Court, the Courts of Small Causes established under the Provincial Small Cause Courts Act, 1887, and the Courts established under any other enactment for the time being in force, there shall be four grades of Civil Courts in Oudh namely,-

(1) The Court of the District Judge.

(2) The Court of Additional Judge.

(3) The Court of the Subordinate Judge.

(4) The Court of the Munsif."

73. In 1935 Government of India Act, 1935 (hereinafter referred to as "G.I.Act, 1935") was passed. Section 219 thereof talked of the meaning of 'High Court' and reads as under :

*"**219.-(1)** The following courts shall in relation to British India be deemed to be High Courts for the purposes of this Act, that is to say, the High Courts in Calcutta, Madras, Bombay, **Allahabad, Lahore and Patna, the Chief Court in Oudh, the Judicial Commissioner's Courts in the Central Provinces and Bear, in the North-West Frontier Province***

> ***and in Sind,*** *any other court in British India constituted or reconstituted under this chapter as a High Court, and any other comparable court in British India which His Majesty in Council may declare to be a High Court for the purposes of this Act.*
>
> *Provided that, if provision has been made before the commencement of Part III of this Act for the establishment of a High Court to replace any court or courts mentioned in this subsection, then as from the establishment of the new court this section shall have effect as if the new court were mentioned therein in lieu of the court or courts so replaced.*
>
> *(2) The* ***provisions of this chapter shall apply to every High Court in British India.****"*
>
> (emphasis added)

74. Therefore, 'Chief Court in Oudh' was included within the meaning of 'High Court' by G.I. Act, 1935. Section 229 of G. I. Act, 1935 gave power to British Crown to constitute a High Court by Letters Patent for any Province or any part thereof or reconstitute, in like manner, any existing High Court for that Province or for any part thereof or where there are two High Courts in that Province, amalgamate that Courts. Section 229 reads as under :

> *"****229.-(1)*** *His Majesty, if the Chamber or Chambers of the Legislature of any Province present an address in that behalf to the Governor of the Province for submission to His Majesty,* ***may by letters patent constitute a High Court for that Province or any part thereof or reconstitute in like manner any existing High Court for that Province or for any part thereof, or, where there are two High Courts in that Province, amalgamate those courts.***
>
> *(2) Where any Court is* ***reconstituted, or two Courts are amalgamated,*** *as aforesaid, the letters patent shall provide for the continuance in their respective offices of the existing*

> *judges, officers and servants of the Court or Courts, and for the carrying on before the reconstituted Court or the new Court of all pending matters, and may contain such other provisions as may appear to His Majesty to be necessary by reason of the reconstitution or amalgamation."*
>
> (emphasis added)

75. In 1948, Governor General in exercise of powers under Section 229 of G.I. Act, 1935 issued U. P. High Courts (Amalgamation) Order, 1948 published in Gazette of Govt. of India (Extraordinary) dated 19.07.1948. It provided that it shall come into force from the date of publication i.e. 19.07.1948. In Article/Clause 2, it defines two terms i.e. "appointed day" and "existing High Courts" and same read as under :

> *"**2.(1)** In this order-*
>
> *"appointed day" means the twenty-sixth day of July, 1948; and*
>
> *"existing High Courts" means the High Courts referred to in Section 219 of the Act, as the **High Court in Allahabad** and the **Chief Court in Oudh**.*
>
> *(2) The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament."*
>
> (emphasis added)

76. Article/Clause 3 of U. P. High Courts (Amalgamation) Order, 1948, provided that from appointed day i.e. 26.07.1948, High Court in Allahabad and Chief Court in Oudh/Avadh shall be amalgamated and shall constitute one High Court in the name of "High Court of Judicature at Allahabad", In subsequent part of Order, 1948 it has been referred as "New High Court". Article/Clause (3) is reproduced hereinunder :

> *"3. As from the appointed day, the High Court in Allahabad and the Chief Court in Oudh shall be amalgamated and shall constitute one High Court by the name of the **High Court of Judicature at Allahabad** (hereinafter referred to as "**the new High Court"**)."*

(emphasis added)

77. All the existing Judges, whether Permanent or Additional and Acting Judges in the existing High Court, became Judges in the same capacity of "New High Court". Article/Clause 5 provided that the person who, immediately before appointed day, is the Chief Justice of High Court in Allahabad shall be the Chief Justice of "New High Court", meaning thereby Chief Justice of High Court in Allahabad became Chief Justice of Amalgamated High Court i.e. "New High Court". Article/Clause 5 (2) provided the order of other Judges i.e. Chief Judge of High Court in Oudh/Avadh, Puisne Judges of High Court in Allahabad and Puisne Judges of Chief Court in Oudh/Avadh and additional and acting Judges. It says that firstly, the former Chief Judge of High Court in Oudh/Avadh and former Puisne Judges of the High Court in Allahabad, shall be placed according to the priority of their respective appointments in their capacity and thereafter, former Puisne Judges of Chief Court in Oudh/Avadh according to the priority of their respective appointments shall be placed.

78. Article/Clause 5 (3) of U. P. High Courts (Amalgamation) Order, 1948, provided an order of Additional and Acting Judges according to priority of their respective appointments in either of the existing High Courts. All existing staff i.e. Officers and servants of existing High Courts were declared as deemed to have been appointed in corresponding position in the "New High Court", on the same terms and conditions.

79. Article/Clause 7 of U. P. High Courts (Amalgamation) Order, 1948, provided jurisdiction of "New High Court" and reads as under :

> *"7.(1) The* ***new High Court*** *shall have, in respect of the* ***whole of the United Provinces****, all such original , appellate and other jurisdiction as, under the law in force immediately before the appointed day is excercisable in respect of any part of that Province by either of the existing High Courts.*
>
> *(2) The new High Court* ***shall also have in respect of any area outside the United Provinces*** *all such original,*

> *appellate and other jurisdiction as under the law in force immediately before the appointed day is exercisable in respect of that area by the High Court in Allahabad."*
>
> (emphasis added)

80. Thus, the "New High Court" as provided in Article/Clause 7 of Order, 1948, was conferred with jurisdiction in the entire United Provinces and also in respect of the area outside the United Provinces if it was exercising jurisdiction before "appointed day" in respect of such area.

81. Article/Clause 7 of U. P. High Courts (Amalgamation) Order 1948 thus makes it very clear that jurisdiction in respect of whole of United Provinces in all subjects and other matters which was being exercised by existing High Courts, shall be exercised by New High Court i.e. High Court of Judicature at Allahabad. This jurisdiction was given to High Court of Judicature at Allahabad by Article/Clause 7, which does not require any order of Chief Justice but it comes by way of declaration made under Article/Clause 7 as such. However, a distinction was created in subsequent provisions with respect to sitting of some Judges of High Court of Judicature at Allahabad, at Lucknow, and jurisdiction to be exercised thereat. This was to be done by an order/notification of Chief Justice of High Court of Judicature at Allahabad, otherwise the entire jurisdiction by declaration of law was at High Court of Judicature at Allahabad.

82. Article/Clause 9 of U. P. High Courts (Amalgamation) Order, 1948, provided application of laws relating to practice and procedure. It says that such laws as were enforced immediately before "appointed day" with respect to practice and procedure in High Court in Allahabad, with necessary modifications, shall apply in relation to "New High Court" and the power available to High Court in Allahabad before "appointed day" for making Rules and Orders in respect of practice and procedure, shall continue to be exercised accordingly. However, Chief Justice of "New High Court" was also given power by proviso to allow provisions with

modifications in respect of practice and procedure in the "New High Court"sitting at Lucknow. Article/Clause 9 of Order, 1948, reads as under :

> *"9. Subject to the provisions of this Order, the* ***law in force immediately before the appointed day with respect to practice and procedure in the High Court in Allahbad shall, with the necessary modifications apply in relation to the new High Court*** *and accordingly that hiogh Court shall have all such powers to make rules and orders with respect to practice and procedure as are immediately before the appointed day* ***exercisable by the High Court in Allahabad****:*
>
> *Provided that any rules or orders which are in force immediately before the appointed ay with respect to practice and procedure in the High Court in Allahabad shall,* ***until varied or revoked by rules or orders made for the new High Court, apply with the necessary modifications in relation to practice and procedure in the new High Court as if made by that Court:***
>
> ***Provided*** *further* ***the Chief Justice may****, in his discretion* ***order that any rules or orders which were in force immediately before the appointed day with respect to practice and procedure in the Chief Court in Oudh shall, until varied or revoked by new rules or orders made for the new High Court, apply with the necessary modifications*** *in relation to practice and procedure in the* ***new High Court sitting at Lucknow****."*
>
> (emphasis added)

83. In respect of Subordinate Courts, Article/Clause 10 of Order, 1948, provided that until varied or revoked, the existing provisions made in respect of High Courts will continue to apply with necessary modifications.

84. With respect of seal of High Court, Article/Clause 11 of U. P. High Courts (Amalgamation) Order, 1948, provides as under :

> *"11.(1) The* ***new High Court shall have a seal of such form and design as the Chief Justice may direct.***

> *(2) The law in force immediately before the appointed day with respect to the* ***custody of the seal of the High Court in Allahabad shall****, with the necessary modifications, apply with respect to the custody of the* ***seal of the new High Court."***

85. In respect of form of writs and other processes used, issued or awarded, law in force by High Court in Allahabad with necessary modifications would apply to "New High Court" vide Article/Clause 12 of U. P. High Courts (Amalgamation) Order, 1948, which reads as under :

> *"12. The law in force immediately before the appointed day with respect to the form of writs and other processes used, issued or awarded by the* ***High Court in Allahabad*** *shall, with the necessary modifications, apply with respect to the form of writs and other processes used, issued or awarded* ***by the new High Court****."*
>
> (emphasis added)

86. Article/Clause 12 of U. P. High Courts (Amalgamation) Order, 1948 shows that with respect to forms of writs and other processes used, issued or awarded, procedure at High Court in Allahabad was applied with necessary modifications, if any, to New High Court i.e. High Court of Judicature at Allahabad, whether the Judges are sitting at Allahabad or Lucknow irrespective thereof.

87. The law in force immediately before the "appointed day" relating to the powers of Chief Justice, Single Judges and Division Courts of High Court in Allahabad and with respect to all matters ancillary to the exercise of those powers, with necessary modifications, was to apply in relation to "New High Court" as per Article/Clause 13 of U. P. High Courts (Amalgamation) Order, 1948.

88. Then comes Article/Clause 14 of Order, 1948, which talked of sitting of "New High Court" and it reads as under :

> *"14. The new High Court and the Judges and Division Courts thereof,* ***shall sit at Allahabad or at such other places in the United Provinces as the Chief Justice may,***

> ***with the approval of the Governor of the United Provinces, appoint*** *:*
>
> *Provided that* ***unless Governor*** *of the United Provinces with the* ***concurrence of the Chief Justice, otherwise directs****,* ***such Judges of the new High Court, not less than two in nubmer, as the Chief Justice, may, from time to time nominate, shall sit at Lucknow,*** *in order* ***to exercise in respect of cases arising in such areas in Oudh,*** *as* ***the Chief Justice may direct,*** *the* ***jurisdiction and power for*** *the time being vested in the* ***new High Court****.*
>
> *Provided further that the Chief Justice may in his discretion order that* ***any case or class of cases arising in the said areas shall be heard at Allahabad.****"*
>
> (emphasis added)

89. Article/Clause 15 of U. P. High Courts (Amalgamation) Order, 1948, applied laws in respect of appeals to His Majesty in Council or to Federal Court from High Court in Allahabad to be applied to "New High Court".

90. Article/Clause 16 of U. P. High Courts (Amalgamation) Order, 1948, made a declaration that all proceedings before "appointed day" in either of the existing High Courts shall stand transferred to "New High Court" and shall continue as if they had been proceedings instituted in that High Court.

91. By virtue of Article/Clause 17 of U. P. High Courts (Amalgamation) Order, 1948, Letters Patent dated 17.03.1866 whereby 'High Court of Judicature for North Western Provinces' was established and Chapter II of Oudh Courts Act, 1925, were declared to have ceased, except for the purpose of construing or giving effect to provisions of Order, 1948. Similar omissions in respect of "Government of India (High Court Judges) Order, 1937" were made vide sub section (b) of Article/Clause 17. It is declared by Article/Clause 17 (c) that references in any Indian Law to either of the existing High Courts shall, unless the context otherwise requires, be construed as references to the "New High Court". It would be

appropriate to reproduce Article/Clause 17 also hereat :

> *"17. As from the appointed day-*
>
> *(a) the* ***Letters patent of Her Majesty, dated the 17th March, 1866****, establishing the High Court of Judicature for the North-Western Provinces and Chapter II of the Oudh Courts Act, 1925 (U. P. Act IV of 1925),* ***shall cease to have effect*** *except for the purpose of construing or giving effect to, the provisions of this order;*
>
> *(b) the* ***Government of India (High Court Judges) order, 1937, shall be further amended*** *as follows :*
>
> *(i) in the First Schedule in the entry relating to the High Court at Allahabad, for the figures "12" the figures "21" shall be substituted and the* ***entry relating to the Chief Court of Oudh shall be omitted****; and*
>
> *(ii) in the Second Schedule, the* ***entry relating to the Chief Court of Oudh shall be omitted*** *and in the Note, the words "****a Chief Judge and an acting Chief Judge" shall be omitted.***
>
> *(c) references in any Indian Law to either of the existing High Courts by whatever name shall, unless the context otherwise requires, be construed as references to the new High Court."*
>
> (emphasis added)

92. Article/Clause 14 of U. P. High Courts (Amalgamation) Order, 1948, thus provided sitting of "New High Court" at Allahabad. It further says that in the alternative, it may be such other places in the United Province as the Chief Justice with approval of Governor of United Province, appoints. First Proviso to Article/Clause 14 says that unless Governor of United Province with the concurrence of Chief Justice, otherwise directs, such Judges of "New High Court", not less than two in number, as the Chief Justice, may, from time to time nominate, shall sit at Lucknow, in order to exercise jurisdiction in respect of cases arising in such areas in Oudh/Avadh, as the Chief Justice may direct, jurisdiction and power for the time being vested in the "New High Court".

93. A bare reading of Article/Clause 14 of U. P. High Courts (Amalgamation) Order, 1948, shows that general provision in respect of sitting of "New High Court" is at Allahabad or such other places in the United Provinces as the Chief Justice with approval of Governor of United Provinces, appoints. First proviso, however, makes an exception in respect of Lucknow. It provides that unless Governor of United Provinces, in concurrence with the Chief Justice, otherwise directs, such Judges of "New High Court" but not less than two, as nominated by Chief Justice, would sit at Lucknow and exercise jurisdiction in respect of cases arising in such areas in Oudh/Avadh as Chief Justice may direct, the jurisdiction and power vested in "New High Court".

94. Therefore, Article/Clause 14, First Proviso of U. P. High Courts (Amalgamation) Order, 1948, provides, while declaring that sitting of "New High Court" would be at Allahabad and Judges and Division Courts thereof shall sit thereat but in respect of cases arising in such areas of Oudh/Avadh, as Chief Justice may direct, at least two Judges as nominated by Chief Justice shall sit at Lucknow and exercise jurisdiction of "New High Court" thereat. The number of Judges required to sit at Lucknow may be increased by Chief Justice of "New High Court" but it cannot be less than two. Judges who are not nominated to sit at Lucknow, by virtue of principal clause of Article/Clause 14, shall sit at Allahabad. The power, however, has been given to Chief Justice to appoint instead of Allahabad, other place in the United Province for sitting of "New High Court".

95. The word "or" used in Article/Clause 14, in the context of sitting at Allahabad, came up for consideration before a Full Bench of this Court and ultimately it has been settled by Supreme Court wherein reversing judgment of this Court, where word "or" was read as "and", Supreme Court said that it is "or" and cannot be read as "and", meaning thereby, under Article/Clause 14, sitting of "New High Court" shall be either at Allahabad or such other place as appointed by Chief Justice. In regard to

the cases arising in respect of such areas of Oudh/Avadh as the Chief Justice directs, First Proviso of Article/Clause 14 provides that at least two Judges shall sit at Lucknow and exercise jurisdiction thereat.

96. Second proviso to Article/Clause 14 further confers power upon Chief Justice to pass order in respect of any case or class of cases, arising in the area of Oudh/Avadh, entertained by Judges sitting at Lucknow, to be heard at Allahabad.

97. These provisions of U. P. High Courts (Amalgamation) Order, 1948 and in particular Article/Clause 14 of U. P. High Courts (Amalgamation) Order, 1948 came up for consideration before a five Judges Bench of this Court in **Sri Nirmal Das Khaturia and others vs. State Transport (Appellate) Tribunal, U. P. Lucknow, AIR 1972 Alld. 200**. Four questions were referred for consideration by Larger Bench and fifth was formulated by Larger Bench itself and these five questions were as under :-

> "*(1) Can a case falling within the jurisdiction of the Lucknow Bench of this Court be presented at Allahabad?*
>
> *(2) Can the judges sitting at Allahabad summarily dismiss a case presented at Allahabad pertaining to the jurisdiction of the Lucknow Bench?*
>
> *(3) Can a case pertaining to the jurisdiction of Lucknow Bench, presented and entertained at Allahabad, be decided finally by the judges sitting at Allahabad, without there being an order as contemplated by the second proviso to Article 14 of the U. P. High Court (Amalgamation) Order, 1948?*
>
> *(4) What is the meaning of the expression "in respect of cases arising in such areas in Oudh" used in first proviso to Article 14 of the High Court (Amalgamation) Order, 1948? Has this expression reference to the place where the case originated or to the place of the sitting of the last court or authority whose decree or order is being challenged in the proceedings before the High Court?*

(5) Whether this writ petition can be entertained, heard and decided by the Judges sitting at Lucknow?"

98. Above questions were answered by Larger Bench as under :

"(1) A ***case falling within the jurisdiction of judges at Lucknow should be presented at Lucknow*** *and not at Allahabad.*

(2) However, if such a ***case is presented at Allahabad, the judges at Allahabad cannot summarily dismiss it only for that reason.*** *The case* ***should be returned for filing before the judges at Lucknow*** *and where the case has been* ***mistakenly or inadvertently entertained at Allahabad****, a direction should be made to the High Court* ***office to transmit the papers of the case to Lucknow.***

(3) A ***case pertaining to the jurisdiction of the judges*** *at Lucknow and* ***presented before the judges at Allahabad cannot be decided by the judges at Allahabad in the absence of an order contemplated by the second proviso to Article 14 of the Amalgamation Order, 1948.***

(4) The expression "in respect of cases arising in such areas in Oudh" used in the first proviso to Article 14 of the High Court (Amalgamation) Order, 1948, refers to legal proceedings, including civil cases, criminal cases, petitions under Articles 226, 227 and 228 of the Constitution and petitions under Articles 132, 133 and 134 of the Constitution instituted before the judges sitting at Lucknow and having their origin, in the sense explained in the majority judgment in such areas in Oudh as the Chief Justice may direct. The expression "arising in such areas in Oudh" refers to the place where the case originated in the sense explained in the majority judgment and not to the place of sitting of the last court or authority whose decree or order is being challenged in the proceeding before the High Court.

(5) The Lucknow Bench have no jurisdiction to hear Writ Petition No.750 of 1964 which gave rise to Writ Petition No.3294 of 1970."

(emphasis added)

99. Matter went in appeal before Supreme Court and decided vide judgment in **Sri Nasiruddin vs. State Transport Appellate Tribunal (supra)**. Supreme Court examined correctness of finding of this Court that "New High Court" has its seat at Allahabad, which is a "permanent seat" and the word "or" occurring in the main provision of Article/Clause 14 of U. P. High Courts (Amalgamation) Order, 1948 is to be read as "and", meaning thereby that sitting shall be at Allahabad and such other places as appointed by Chief Justice. Another finding of Court was is respect of area of Oudh/Avadh and this Court said that Chief Justice can even reduce area to the extent of abolition of sitting of Judges at Lucknow and allocation of jurisdiction shall also be in the domain of Chief Justice. Further, Second Proviso was read by this Court that Chief Justice can pass such an order in respect of cases within jurisdiction of Lucknow to be filed at Allahabad or in a pending case to be transferred at Allahabad to be heard thereat. This Court said that the word 'heard' in Second Proviso applies not only to pending cases but also to cases which are yet to be filed. This Court also said that if an appeal or revision is filed to an authority within area of Lucknow, though original proceedings had arisen in an area outside the jurisdiction of Judges sitting at Lucknow, then writ petition under Article 226 would lie in the High Court depending on original area where cause of action has arisen and not because appellate or revisional order was passed by authority sitting in jurisdiction of Judges at Lucknow. These parts of findings were not found correct by Supreme Court. In para 27 of judgment in **Sri Nasiruddin (supra),** Court held that reasoning of High Court that 'permanent' seat is at Allahabad is not sound. Court said that word "or" cannot be read as "and". In para 29 of judgment, construing Article/Clause 14 of U. P. High Courts (Amalgamation) Order, 1948, Court said :-

> *"29. The **Order describes the High Court as the new High Court.** The two High Courts have amalgamated in the new High Court. The seat is at Allahabad or at such other places as may be determined. **There is no permanence attached to***

> ***Allahabad.*** *If that were the intention of the Order, the word "and" instead of the word "or" would have been used.* ***Other places may be determined by the Chief Justice in consultation with the Governor****. It is left to prudence of the authorities mentioned as to what other places should be determined.* ***In the normal understanding of the matters, it is left to the discretion of the authorities as to whether the seats at Allahabad as well as at Lucknow will be changed. Both places may continue. Both places may be changed.*** *Lucknow is the seat of the Government. Allahabad has also the history that the High Court was there before the Order. Lucknow has been the principal place of Oudh.* ***The Order aimed at giving status to the Oudh Chief Commissioner's Court as that of the High Court****. It is difficult to foresee the future whether the authorities will change the location to other places but* ***no idea of permanent seat can be read into the Order****. One can only say that it is the wish and hope that both Allahabad and Lucknow will be the two important seats so that history is not wiped out and policy is not changed."*
>
> (emphasis added)

100. The above decision has been followed and reiterated in **U. P. Rashtriya Chinni Mills Adhikari Parishad, Lucknow vs. State of U. P. and others, 1995 (4) SCC 738**, and Court said that amalgamation order is a special law which must prevail over general law. Law laid down by four Judges Bench of Supreme Court in **Sri Nasiruddin (supra)** holds good despite incorporation of explanation to Section 141 of Code of Civil Procedure, 1908 (hereinafter referred to as "C.P.C.").

101. Again the law has been reiterated in **Kusum Ingots and Alloys Ltd. vs. Union of India and others, 2004 (6) SCC 254**. There, Company was registered under Act, 1956 with registered Office at Mumbai. It had obtained loan from Bhopal Branch of State Bank of India. Notice for repayment was issued by Bank's Branch at Bhopal in terms of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "Act, 2002") promulgated by Parliament. Vires of Act, 2002 was challenged in Writ

Petition at Delhi High Court which was dismissed on the ground of territorial jurisdiction and matter came to Supreme Court. Supreme Court said that mere passing of legislation by itself would not confer any right to file writ petition unless a cause of action arises therefor. A parliamentary legislation when received assent of President and published in official gazette unless specifically excluded will apply to entire territory of India. If passing of a legislation would give rise to a cause of action, a writ petition questioning constitutionality thereof can be filed in any High Court of the country. However, it is not correct for the reason that the cause of action will arise only when provisions of Act or some of them which are implemented shall give rise to civil or evil consequences of a party for the reason that Writ Court would not determine a constitutional question in vaccum. Court must have requisite territorial jurisdiction and an order passed on a writ petition questioning constitutionality of a Parliamentary Act will have effect throughout the territory of India subject to the course of applicability of act. The mere fact that seat of Union of India is at Delhi, would not confer a territorial jurisdiction to High Court at Delhi to entertain writ petition questioning constitutionality of Parliamentary Act. Referring to Supreme Court judgment in **Nasiruddin (supra)** and **U. P. Rashtriya Chinni Mill (supra),** Court said in paras 25, 26, 27 as under :

> *"25. The said decision is an authority for the proposition that the place from where an appellate order or a revisional order is passed may give rise to a part of cause of action although the original order was at a place outside the said area. When* ***a part of the cause of action arises within one or the other High Court, it will be for the petitioner to choose his forum.***
>
> *26. The view taken by this Court in* ***U.P. Rashtriya Chini Mill Adhikari Parishad, Lucknow (supra)*** *that* ***situs of issue of an order or notification by the Government would come within the meaning of expression 'cases arising' in clause 14 of the (Amalgamation) Order is not a correct***

> ***view of law for the reason hereafter stated and to that extent the said decision is overruled.*** *In fact, a legislation, it is trite, is not confined to a statute enacted by the Parliament or Legislature of a State, which would include delegated legislation and subordinate legislation or an executive order made by the Union of India, State or any other statutory authority. In a case where the field is not covered by any statutory rule, executive instruction issued in this behalf shall also come with within the purview thereof situs of office of the Parliament,* ***Legislature of a State or authorities empowered to make subordinate legislation would not by itself constitute any cause of action or cases arising.*** *In other words,* ***framing of a statute, statutory rule or issue of an executive order or instruction would not confer jurisdiction upon a court only because of the situs of the office of the maker thereof****.*
>
> *27. When an order, however, is passed by a Court or Tribunal or an executive authority whether under provisions of a statute or otherwise, a part of cause of action arises at that place. Even* ***in a given case, when the original authority is constituted at one place and the appellate authority is constituted at another, a writ petition would be maintainable at both the places.*** *In other words as order of the appellate authority constitutes a part of cause of action, a writ petition would be maintainable in the High Court within whose jurisdiction it is situate having regard to the fact that the order of the appellate authority is also required to be set aside and as the order of the original authority merges with that of the appellate authority."*
>
> (emphasis added)

102. The above findings in **Sri Nasiruddin (supra)** show that Supreme Court held that it is in the prudence of the authorities to decide whether seats at Allahabad as well as Lucknow will be changed. Both places may continue and both places may be changed. Court clearly said that Lucknow is the seat of Government and Allahabad has history of having High Court there, before U. P. High Courts (Amalgamation) Order, 1948. Further, Lucknow was principal place of Oudh/Avadh. U. P. High Courts

(Amalgamation) Order, 1948 aimed to give status to Oudh Chief Commissioner's Court as that of High Court. Court said that it is difficult to foresee what will happen in future whether authorities will change location to other places but from reading of Article/Clause 14 of U. P. High Courts (Amalgamation) Order, 1948 it is clear that there is no idea of 'Permanent Seat'. The aforesaid observations make it very clear that findings of this Court that Allahabad is the 'Permanent Seat' of “New High Court” as per U. P. High Courts (Amalgamation) Order, 1948 and in particular Article/Clause 14 was not found correct, as no such 'permanence of seat', has been stated in U. P. High Courts (Amalgamation) Order, 1948, but there is no discussion or reference in the context of 'Principal Seat' of “New High Court”, since that was not an issue before Supreme Court.

103. The concept of 'Principal Seat' of High Court has arisen subsequently when taking away power of judicial review of High Court in certain matters, by constituting quasi judicial bodies like Tribunals, place of sitting was decided by government and issue was raised whether for several High Courts only one Tribunal at one place would be justified or what should be the situs of such Tribunals in the context of Principal seat of High Courts. Supreme Court's dictum in **Sri Nasiruddin (supra)** in para 29 is in the context of finding of this Court that Allahabad is the 'Permanent Seat' of “New High Court” under U. P. High Courts (Amalgamation) Order, 1948, but it has nothing to do with the question with regard to 'Principal Seat' of High Court.

104. The word “Permanent” has a different connotation than the word “Principal” and two cannot be equated together. If any institution or body has its place of sitting at more than two places and such places are liable to be changed, it may be said that there is no 'permanent place' of sitting of such bodies, but when the question arises as to out of more than one place of sitting which place is the 'principal place' of such body, it has to be decided in the context of the constitution of the body, the work being

discharged at different places of sitting and which place is broadly controlling general functions of Institution and body etc.

105. The meaning and connotation of words “Principal” and “Permanent” as we have already discussed are different and it would be prudent to refer meanings of two terms as defined in general as well as legal dictionaries :-

Meaning of “Principal”

(1) Collins Cobuild Advanced Learner's English Dictionary, Fourth Edition, Page-1134 **:-**

“Principal**-Principal means **first in order of importance”

(2) Black's Law Disctionary, Eighth Edition, Page-1230 :-

***“Principal**-Chief, primary, most important, **one who authorizes another to act on his or her behalf as an agent.**”*

(3) Dr. A. R. Biswas Encyclopaedic Law Dictionary (Legal and Commercial), 3rd Ediction 2008, Page-1156 :-

***“Principal**-the person for whom an act is done by the agent is called 'principal'; a person who employs an agent to do some act for him.”*

(4) P Ramanatha Aiyar's The Law Lexicon, The Encyclopaedic Law Dictionary, Fourth Edition, Page-1489 :-

***“Principal**-One who employs another to act for him subject to his general control and instruction; the person from whom an agent's responsibility is derived; **'Principal' means** highest in rank, authority, character, **importance,** or **degree**; most considerable or important; chief; main (as) the principal officers of a government, the principal men of a state, the principal productions of a country, the principal arguments in a case.”*

Meaning of “Permanent”

(1) P Ramanatha Aiyar's The Law Lexicon, The Encyclopaedic Law Dictionary, Fourth Edition, Page-1412 :-

“Permanent-'Permanent' is defined to mean not temporary, or subject to change; abiding, remaining fixed, or **enduring in character, state or place**; the meaning of the word 'permanent' according to the lexicographers, is continuing in the same state, or

without any change that destroys form or character,remaining unaltered or unremoved, abiding, durable, fixed, lasting, continuing; as a permanent impression, permanent institution"

(2) Collins Cobuild Advanced Learner's English Dictionary, Fourth Edition, Page-1067 **:-**

"Permanent*-something that is permanent* ***lasts for ever;*** *'permanent' is used to describe* ***situations or states that keep occurring or which seems to exist all the time****; used especially to describe problems or difficulties."*

(emphasis added)

106. We admit no doubt in our mind that 'Principal Seat' of High Court of Judicature at Allahabad is at Allahabad but to buttress, it we may notice a few indications to fortify our views as under :-

(I) The appointments of Judges are made in the High Court of Judicature at Allahabad. After taking oath, without any order of Chief Justice, subject to determination/roster, they sit and hold Courts at Allahabad. For this purpose, neither any nomination is required, nor any order of Chief Justice is required, but for sitting at Lucknow a nomination through notification is made by Chief Justice and thereafter a Judge, who has taken oath as Judge of this Court, may sit and hold Court at Lucknow. Therefore, with appointment, authority to hold Court at Allahabad is implicit, but sitting at Lucknow requires a nomination by Chief Justice.

(II) In certain cases, where Chief Justice pass order, cases, may be transferred from Lucknow to Allahabad for hearing, but not vice versa. Therefore, Judges sitting at Allahabad may hear cases which were entertained by Judges sitting at Lucknow, since, cause of action had arisen within the area which has been decided by the Chief Justice to be entertained by the Judges sitting at Lucknow, but cases which relates to other parts of State of U. P. and have been entertained at Allahabad, cannot be heard at Lucknow, since no power of transfer of such cases is conferred upon Chief Justice. We

do not find any otherwise provision for such transfer of cases.

(III) Administrative control is also broadly in the Secretariat of High Court i.e. Registrar General at Allahabad, which governs entire State of U. P.

(IV) When new High Court was constituted, Chief Justice of High Court at Allahabad was given status of “Chief Justice” of “New High Court” while “Chief Judge” of “Chief Court of Oudh” became a “Puisne Judge”, though senior-most among Puisne Judges. This also shows difference in status of two places, which was conceived even by U. P. High Courts (Amalgamation) Order, 1948.

107. We, therefore, have no hesitation in holding that the question, whether seat at Allahabad is 'permanent' or not, stands answered by decision in **Sri Nasiruddin (supra)** and it cannot be said that Allahabad, as per provisions of U. P. High Courts (Amalgamation) Order, 1948 is a 'Permanent Seat' of this Court, but it cannot be doubted that seat at Allahabad is 'Principal Seat' of “New High Court” which came into existence as a result of amalgamation, under U. P. High Courts (Amalgamation) Order, 1948.

108. To bring the facts straight, we may also notice that now “New High Court” as it was under the provisions of U. P. High Courts (Amalgamation) Order, 1948, has been declared again as 'High Court of Judicature at Allahabad' as High Court for State of U. P. vide Section 26 of Uttar Pradesh Reorganisation Act, 2000 (hereinafter referred to as “Act, 2000”), which reads as under :

> ***“26. High Court of Uttranchal.****-(1) As from the appointed day, there shall be a separate High Court for the State of Uttaranchal (hereinafter referred to as “the High Court of Uttaranchal”) and the* ***High Court of Judicature at Allahabad shall become the High Court for the State of Uttar Pradesh*** *(hereinafter referred to as the High Court at Allahabad).”*

(emphasis added)

109. Under Section 3 of Act 2000 from the "appointed day" i.e. 9th October, 2000, State of Uttar Pradesh comprised of territories other than those specified in Section 3 of aforesaid Act.

110. Thus, Supreme Court in **Sri Nasiruddin (supra)** did not approve findings of this Court that the area of jurisdiction of Judges sitting at Lucknow may be decreased by Chief Justice under First Proviso of Article/Clause 14 of U. P. High Courts (Amalgamation) Order, 1948. It held that First Proviso to Article/Clause 14 of U. P. High Courts (Amalgamation) Order, 1948 shows that there is limitation on the number of Judges with regard to minimum that it shall not be less than two. Beyond that, number can be increased or decreased according to the exigencies and consequently Judges may come from Allahabad to Lucknow or vice versa from time to time. The words "from time to time" apply only to Judges required to be nominated by Chief Justice to sit at Lucknow and not connected with "such areas of Oudh as the Chief Justice may direct". Supreme Court said that in respect of areas, power of Chief Justice is liable to be exercised only once, and once that power is exercised, it is exhausted. Relevant extract of Judgment reads as under :

> *"The words "as the Chief Justice may direct" mean that the Chief Justice exercises the power to direct what the areas in Oudh are for exercise of jurisdiction by Judges at Lucknow Bench. Once that power is exercised, it is exhausted. The reason is that the* ***areas once determined should hold good on account of certainty and to dispel problems being created from time to time by increase or decrease of areas."***

(emphasis added)

111. Court also held in para 33 with reference to Article/Clause 7 of U. P. High Courts (Amalgamation) Order, 1948 that thereunder "New High Court" has jurisdiction in respect of whole province. Article/Clause 14 deals with seats of High Court at Allahabad and Lucknow. It is only First

Proviso to Article/Clause 14 of Order, 1948, which provides that unless Governor with concurrence of Chief Justice directs otherwise not less than two Judges shall sit at Lucknow in order to exercise in respect of cases arising in such areas at Oudh/Avadh, the jurisdiction and power vested in the "New High Court". Then Court further said as under :

> *"The first proviso to paragraph 14 of the Order specifies the instrumentality through which the jurisdiction vested in the new High Court will be exercised in respect of cases arising in Oudh. The* ***direction which the Chief Justice has given once with regard to the areas in Oudh remains unaltered."***
>
> (emphasis added)

112. Supreme Court also said that for exercise of power with respect to territorial jurisdiction in the matters to be taken by Judges sitting at Lucknow, first part of Section 14 of General Clauses Act, 1897 (hereinafter referred to as "Act, 1897") shall have no application and second part of first proviso of Article/Clause 14 of U. P. High Courts (Amalgamation) Order, 1948 shows that power therein is not to be exercised from time to time but only once. Relevant observations read as under :

> *"The second part of the first proviso to paragraph 14 shows that such areas in Oudh as the Chief Justice may direct are areas in respect of which once such direction is given, there is* ***no intention in the Order to exercise such power of direction from time to time.****"*
>
> (emphasis added)

113. Supreme Court, therefore, reversed findings of this Court that areas in Oudh/Avadh can be increased or decreased by Chief Justice from time to time. Court said that it is only if Lucknow ceased to be the seat of High Court when otherwise direction is given by Governor in concurrence with the Chief Justice as provided in first proviso to Article/Clause 14 of U. P. High Courts (Amalgamation) Order, 1948 with regard to sitting of Judges at Lucknow and exercising jurisdiction in respect of cases arising in areas

in Oudh/Avdah, only then the direction of Chief Justice with regard to determination of area would cease to have any significance in relation to Lucknow, otherwise once such decision is taken or direction issued, it stands exhausted and thereafter area brought within the jurisdiction of Judges sitting at Lucknow cannot be changed i.e. neither increased nor decreased.

114. Judgment in **Sri Nasiruddin (supra)** has also settled law that area determined by Chief Justice in respect whereof the matter shall be taken by Judges sitting at Lucknow, would remain unchanged, either way, if once such exercise of determination has been exhausted by Chief Justice, as this power cannot be exercised repeatedly. Therefore, whatever area which has already been assigned by Chief Justice to be entertained by Judges sitting at Lucknow, that has become final, and neither such area can be increased nor decreased, unless some decision is taken to change the place Lucknow itself by Governor in consultation of Chief Justice to make the place of sitting elsewhere.

115. The third finding of larger Bench in **Sri Nirmal Das Khaturia (supra)** that the place of filing application under Article 226 will be decided in the context of right of petitioner first, and if it is within area of Oudh/Avadh then it can be filed at Lucknow otherwise at Allahabad, has also been reversed by Supreme Court. It has held if cause of action arose because of appellate order or revisional order which came to be passed at Lucknow, then Lucknow would have jurisdiction though original order was passed at a place outside the areas in Oudh/Avadh. Supreme Court, therefore, has summarized its conclusions in respect of above findings of Larger Bench of this Court, which have been reversed, as under :

> *"(1) There is **no permanent seat** of High Court at Allahabad. **Seats at Allahabad and at Lucknow may be changed in accordance with the provisions of the Order.***
>
> *(2) Chief Justice has **no power to increase or decrease the areas in Oudh from time to time.** The areas in Oudh have*

> *been* ***determined once by the Chief Justice, then there is no scope for changing the area thereafter.***
>
> *(3)* ***Chief Justice has power*** *under second proviso to Clause 14 of Order 1948 to direct that* ***any case or class of cases arising in Oudh areas shall be heard at Allahabad****. The word "heard" means that cases which have already been instituted or filed at Lucknow may in the discretion of the Chief Justice be directed to be heard at Allahabad. The cases which are yet to be filed and have jurisdiction before Judges sitting at Lucknow in respect thereof power under second proviso to Clause 14 of Order 1948, cannot be exercised by Chief Justice.*
>
> *(4) If cause of action wholly or partly has arisen within Oudh area, then Lucknow Bench will have jurisdiction. Where cause of action in part has arisen in specified Oudh areas and part outside the Oudh area, it will be open to litigant to frame the case appropriately to attract the jurisdiction either at Lucknow or at Allahabad.*
>
> *(5) A criminal case arose when offence has been committed or otherwise has been provided in Cr.P.C. that will attract jurisdiction of Court at Allahad and Lucknow in some cases depending on the facts and provisions regarding jurisdiction. It may arise in either place."*
>
> (emphasis added)

116. Subject to above directions and reversing findings of this Court, Supreme Court held that answers given to first three questions are correct, but answer given to fourth question was set aside and answer given to fifth question was discharged.

117. The aforesaid historical backdrop, therefore, makes it clear that High Court at Allahabad was created by Royal Charter. Initially it was called as 'High Court of Judicature for North Western Provinces' which had the area of aforesaid Province but Oudh was a different Province, not governed by North Western Provinces. 'High Court of Judicature for North Western Provinces' subsequently became 'High Court of Judicature at Allahabad'. Judicial system at Province in Oudh area came to be governed

by British system of justice after Oudh area was acceded to by Britishers (East India Company) in 1856. Judicial system for Oudh area was governed by Statute governing judicial system in Oudh, then changed by various statutes and commencing from Act No.XIV of 1865 abd followed by Act No.XXXII of 1871 i.e. 'Oudh Civil Courts Act' and subsequent Statutes enacted thereafter. In 1925 vide Oudh Courts Act, a Chief Court for Oudh was constituted consisting of one Chief Judge and four Puisne Judges. They continued till U. P. High Courts (Amalgamation) Order, 1948 was enacted amalgamating both Courts at Lucknow and Allahabad in one High Court called as 'High Court of Judicature at Allahabad'. Though Government of India Acts were enacted from time to time and first one, being Government of India Act, 1800, was enacted with further Regulations for establishing British domain in India and better administration of justice within the same, but Chartered High Courts established under the provisions of Indian High Courts Act, 1861 came to be governed together for the first time by Government of India Act, 1919 i.e. 1915-1919 and Section 101 thereof provided that High Courts referred to in the said Act are such which were established in British India by Letters Patent.

118. By Section 130 of G.I. Act, 1915-1919, Acts specified in Fourth Schedule were repealed and Indian High Courts Act, 1861 and Indian High Courts Act, 1865 in entirety were repealed. The G.I. Act, 1915-1919 obviously did not cover Judicial Commissioner's Court for Oudh Province.

119. However for the first time, G. I. Act, 1935 while declaring as to which Court shall be deemed to be High Courts for the purpose of G. I. Act, 1935, declared, besides others, existing High Courts, to include Chief Court of Oudh also. This status conferred upon Chief Court of Oudh as a 'High Court' came to be recognized vide U. P. High Courts (Amalgamation) Order, 1948 wherein Chief Court of Oudh at Lucknow and High Court of Judicature at Allahabad, both were termed as 'existing

High Courts' and on amalgamation gave rise to a New High Court i.e. 'High Court of Judicature at Allahabad'. However, Chief Justice of Allahabad High Court became Chief Justice of New High Court and Chief Judge of Avadh/Oudh became one of the Judges though as per his priority, he was placed above other Puisne Judges of High Court of Judicature at Allahabad. Superintendence of New High Court by Chief Justice, who was sitting at Allahabad at that time, continued with him.

120. The entire discussions made above at the pain of repetition leads an undoubted inference that New High Court created by U. P. High Courts (Amalgamation) Order, 1948 did not declare any 'Permanent Seat' of New High Court, but considering the fact that Chief Justice of High Court of Judicature at Allahabad i.e. existing High Court became Chief Justice of New High Court also, we have no manner of doubt to observe that 'Principal Seat of Allahabad remained at Allahabad'. This is also evident from the fact that the number of Judges to sit at Lucknow would not be less than two but how much beyond that, has to be decided by Chief Justice. All other judges would sit at Allahabad. Similarly, territorial jurisdiction of New High Court at Lucknow is subject to determination of Chief Justice, which power could have been exercised for once. In respect of remaining areas, jurisdiction remained with New High Court at Allahabad. Further in a pending case, Chief Justice may transfer the matter for hearing to Allahabad but not vice versa. This shows that High Court at Allahabad has residuary authority. It can hear matters within jurisdiction of Judges sitting at Lucknow but not vice versa. All this go to show that New High Court at Allahabad can be termed as “Principal Seat” of High Court.

121. Question (1) therefore, is answered by holding that Allahabad or Lucknow cannot be said to be a “Permanent Seat” of High Court and no such permanence in respect of seat has been visualized or provided by U.P. High Courts (Amalgamation) Order, 1948 as held by Constitution Bench in **Sri Nasiruddin (supra)** but “Principal Seat” of 'High Court of

Judicature at Allahabad' is at 'Allahabad'.

122. Now coming to the second question with regard to jurisdiction conferred in respect of 'Company Judge', we find that certain Notifications under Article/Clause 14 have been issued in exercise of powers under U. P. High Courts (Amalgamation) Order, 1948 and relevant Notifications are dated 26.07.1948, 15.07.1949, 02.07.1954, 05.08.1975, 04.01.2003 and 14.01.2003.

123. The earliest order passed by Chief Justice in purported exercise of power under Article/Clause 9 of U. P. High Courts (Amalgamation) Order, 1948 is Notification dated 26.07.1948 and it reads as under :

> *"In exercise of the powers conferred by Article 9 of the United Provinces High Courts (Amalgamation) Order, 1948, the Chief Justice of the High Court of Judicature at Allahabad is pleased to direct that as from the 26th of July, 1948, until further orders, the following* ***provisions of the rules of the Chief Court of Avadh at Lucknow and Appendices shall apply in relation to the Bench at Lucknow in supersession of the rules of the High Court of Judicature at Allahabad governing the matters covered by these provisions subject to the modifications hereinafter mentioned :***
>
> *The whole of Chapter IV.*
>
> *The whole of Chapter V.*
>
> *The whole of Chapter VI.*
>
> *The whole of Chapter VII.*
>
> *The whole of Chapter IX.*
>
> *Rules 7, 10, 111 and 12 of Chapter XII.*
>
> *Rule 2 (e) of Chapter XIII.*
>
> *The whole of Chapter XVI.*
>
> *The whole of Chapter XVII.*
>
> *Rules 1 to 9 of Chapter XVIII.*
>
> *Rule 7 of Chapter XX.*
>
> *The whole of Chapter XXII.*

The whole of Chapter XXIII.

Appendices 12 and 13.

Rules made under the Indian Companies Act (VII of 1913)

Modifications -

1. References to the Chief Judge in these provisions shall be construed as references to the senior Judge at Lucknow.

2. References to the Registrar in those provisions shall include references to the Deputy Registrar at Lucknow."

(emphasis added)

124. Another Notification is dated 15.07.1949 which was issued in purported exercise of power under Article/Clause 14 of U. P. High Courts (Amalgamation) Order, 1948 and it reads as under :-

"No.8427/Ib-39-49.-In exercise of the powers conferred by Article 14 of the United Provinces High Courts (Amalgamation) Order, 1948, and in partial modification of the Court's notification no.6103, dated July 26, 1948, as amended up-to-date, the Chief Justice of the High Court of Judicature at Allahabad is pleased to ***direct that with effect from July 25, 1949, the Lucknow Bench of the High Court of Judicature at Allahabad shall not exercise jurisdiction and power in respect of cases under the following Acts arising within its existing territorial jurisdiction :***

(1) The Indian Divorce Act, 1869 (Act IV of 1869).

(2) The Special Marriage Act, 1872 (Act III of 1872).

(3) ***The Indian Companies Act, 1913 (Act VII of 1913).***

(4) The Indian Income-tax Act, 1922 (Act XI of 1922).

(5) The Indian Succession Act, 1925 (Act XXXIX of 1925)

(6) The Indian Matrimonial Causes (War Marriages) Act, 1948 (Act no.XL of 1948) :

Provided that ***nothing herein contained shall affect the jurisdiction and power of the Lucknow Bench in respect of proceedings already pending before that Bench prior to the coming into force of this notification****."*

(emphasis added)

125. Then comes Notification dated 02.07.1954 which was also issued in purported exercise of power under Article/Clause 14 of U. P. High Courts (Amalgamation) Order, 1948 and reads as under :

> *"No.6984/Ib-39.-In exercise of the powers conferred by Article 14 of the U. P. High Courts (Amalgamation) Order, 1948 and in supersession of the Court's notification no.8427/Ib-39-49, dated July 15, 1949, the Chief Justice of the High Court of Judicature at Allahabad is pleased to direct that with effect from July 10, 1954, the Lucknow Bench of the High Court of Judicature at Allahabad shall exercise jurisdiction and power in respect of cases under the following Acts arising within its existing territorial jurisdiction :*
>
> *(1) The Indian Divorce Act, 1869 (Act IV of 1869).*
>
> *(2) The Special Marriage Act, 1872 (Act III of 1872).*
>
> *(3) The Indian Succession Act, 1925 (Act XXXIX of 1925).*
>
> *(4) The Indian Matrimonial Causes (War Marriages) Act, 1948 (Act XL of 1948).*
>
> ***Jurisdiction and power in respect of cases under the Indian Companies Act, 1913 (Act VII of 1913) and the Indian Income tax Act, 1922 (Act XI of 1922) shall be exercised by the Allahabad Bench of the Court.***
>
> *Provided that nothing herein contained shall affect the jurisdiction and power of the High Court at Allahabad in respect of proceedings already pending before it prior to the coming into force of this notification."*

(emphasis added)

126. In respect of company matters jurisdiction conferred upon Judges sitting at Lucknow by Notification dated 15.07.1949 was taken away by Notification dated 02.07.1954. This situation continued upto 04.08.1975.

127. A deviation was made by Notification dated 05.08.1975 and thereby jurisdiction was again given to Judges sitting at Lucknow in the matter of Act, 1956. To entertain winding up petitions i.e. upto the stage of

proceedings under Section 439 of Act, 1956 jurisdiction was given to Judges sitting at Lucknow but it was clearly provided that subsequent proceedings will be heard at Allahabad. Notification dated 05.08.1975 reads as under :

> *"WHEREAS by notification No.8427/Ib-39-49.-dated the 15th of July, 1949, the Lucknow Bench fo the High Court of Judicature at Allahabad was not to exercise the jurisdiction and power of the High Court in respect of cases arising in the areas of erstwhile Oudh under the following Acts and those cases were to the heard at Allahabad.*
>
> *(1) The Indian Divorce Act, 1869 (Act IV of 1869).*
>
> *(2) The Special Marriage Act, 1872 (Act III of 1872).*
>
> *(3) The Indian Succession Act, 1925 (Act XXXIX of 1925)*
>
> *(4)The Indian Matrimonial Causes (War Marriages) Act, 1948 (Act no.XL of 1948) :*
>
> *(5) The Indian Companies Act, 1913 (Act VII of 1913).*
>
> *(6) The Indian Income-tax Act, 1922 (Act XI of 1922).*
>
> *AND WHEREAS by the subsequent notification No.6984/Ib-39.-dated the 2nd of July, 1954, the Lucknow Bench of the High Court of Judicature at Allahabad was to exercise the jurisdiction and power of the High Court in respect of the cases under the following acts arising in the areas of erstwhile Oudh :*
>
> *(1) The Indian Divorce Act, 1869 (Act IV of 1869).*
>
> *(2) The Special Marriage Act, 1872 (Act III of 1872).*
>
> *(3) The Indian Succession Act, 1925 (Act XXXIX of 1925).*
>
> *(4) The Indian Matrimonial Causes (War Marriages) Act, 1948.*
>
> *and the cases under the Indian Companies Act, 1913 (Act VII of 1913) and Indian Income Tax Act, 1922 (Act XI of 1922) arising in the areas of erstwhile Oudh continued to be heard and decided at Allahabad and the Lucknow Bench was not to exercise jurisdiction and power of the High Court in respect to these class of cases.*
>
> *AND WHEREAS* ***it is desirable that the Lucknow***

Bench of the High Court of Judicature at Allahabad should exercise the jurisdiction and power of the High Court in respect of cases under the Income-Tax Act, 1961 and under the Companies Act, 1956 upto the stage of winding up arising within the area of erstwhile Oudh.

NOW THEREFORE, in exercise of the powers conferred by Clause 14 of the U. P. High Court (Amalgamation) Order, 1948 and in supersession of the notifications No.8427/Ib-39-49 dated July 15, 1949 and No.6984/Ib-39 dated July 2, 1954, the Hon'ble the Chief Justice of the High Court of Judicature at Allahabad is pleased to direct that with effect from 1st October, 1975, the Lucknow Bench of the High Court of Judicature at Allahabad shall exercise the jurisdiction and power of the High Court in respect of the cases under the following Acts arising in the areas of erstwhile Oudh :

1. The Income Tax Act, 1961 (Act No.XLIII of 1961)

2. The Companies Act, 1956 (Act No.1 of 1956) upto the stage of winding up i.e. upto the stage of proceedings under Section 439 Companies Act, 1956.

PROVIDED that after the winding up order is passed the subsequent proceedings will be heard at Allahabad.

PROVIDED FURTHER that all proceedings under the above Acts instituted or commenced before the date of enforcement of this notification, shall continue to be heard at Allahabad.

PROVIDED FUTHER that this notification shall not affect the operation of notification No.5877/Ib-39, dated April 18, 1973 and notifications dated May 1, 1973 and December 21, 1974 which shall continue to remain in force."

(emphasis added)

128. Thus, vide Notification dated 05.08.1975, Chief Justice restored jurisdiction to Judges sitting at Lucknow to entertain winding up matters under Act, 1956 upto the stage of proceedings under Section 439, but thereafter subsequent proceedings will have to be heard at Allahabad.

129. A Division Bench of this Court in **Sumac International Limited v. M/s PNB Capital Services Ltd, AIR 1997 Allahabad 424** decided on 2nd July, 1997, held that institution of winding up petition of a company having its registered office within territorial jurisdiction of Judges sitting at Lucknow, at Allahabad is valid, since Judges sitting at Lucknow have no jurisdiction in view of Notification dated 15.07.1949. Apparently, Court did not consider that by Notification dated 05.08.1975 earlier Notification dated 15.07.1949 and 02.07.1954 were modified to the extent that winding up petition under Act, 1956 upto the stage of proceedings under Section 439 would lie at Lucknow where registered office is within jurisdiction of Judges sitting at Lucknow and ignoring Notification dated 05.08.1975 aforesaid judgment was given.

130. Apparently, the Division Bench in **Sumac International Ltd (supra)** was in ignorance of Notification dated 05.08.1975 and did not lay down a correct law. It was clearly a judgment per-incuriam.

131. Be that as it may. The fact remains that judgment operated and consequential order was issued by Chief Justice on 04.01.2003 to the following effect :

> *"2. Taking into consideration the judgment rendered by a Division Bench of this court in the case of **Sumac International Ltd. Vs. P.N.B. Capital Services Ltd.** decided on July 2, 1997 reported in 1998 Company Cases Vol.93 page 236 as well as the judgement of this court rendered by another Division Bench in the case of **Smt. Padmawati Vs. the Official Liquidator (Special Appeal No.7 of 1979)** connected with the case of **Sri Jugal Kishore Vs. Official Liquidator** dated 24.9.1982, which have since attained finality, specially the observations made therein, the position in regard to the exercise of jurisdiction, entertainment and disposal of the matters falling within the ambit of the Companies Act as enforced w.e.f. 25th July, 1949 shall stand restored in supersession of the intervening orders covering the subject passed thereafter."*

132. Immediately thereafter it was brought to the notice of Chief Justice

that Notification dated 05.08.1975 conferred jurisdiction upon Judges sitting at Lucknow in the matter of Act, 1956, particularly winding up petition upto the proceedings under Section 439 of said Act. Consequently, another order was passed by Chief Justice on 14.01.2003 to the following effect :

> *"Since the order dated 5th August 1975 passed by the Hon'ble Chief Justice in exercise of powers conferred by clause 14 of the U. P. High Court (Amalgamation) Order, 1948, in supersession of the notification dated 15th July, 1949, had not been brought to my notice it will be appropriate that the order dated 4.1.2003 is suitable modified.*
>
> *Accordingly it is directed that the dated 25th July, 1949 occurring in paragraph 2 of the order dated 4.1.2003 be deleted and substituted by "1 October, 1975"."*

133. Though judgment in **Sumac International Ltd. (supra)** operated the field and it was acted upon by Chief Justice also by issuing Notification dated 04.01.2003, but within ten days when mistake was brought to notice of Chief Justice, it was rectified, and revised Notification was issued on 14.01.2003. The legal position however, it appears remains slightly truncated for the reason that there was a verdict holding that Judges sitting at Lucknow shall have no jurisdiction in companies matters and there was notification of Chief Justice conferring such power upon Judges sitting at Lucknow. This contradiction was noticed by a learned Single Judge in **Registrar of Companies Vs. M/s Kamal Infosys Ltd. (supra)**, hence, following question was referred to be answered by larger Bench :

> *"Whether this company petition filed for winding up of the company M/s Kamal INFOSYS Ltd., respondent No.1 having its registered office at Lucknow is maintainable in the High Court at Allahabad."*

134. A Division Bench considered all the aforesaid notifications and then held that since judgment in **Sumac International Ltd. Vs. P.N.B. Capital**

Services Ltd. (supra) was rendered in ignorance of Notification dated 05.08.1975, the said judgment is per-incuriam. It also held that in company matters such Court has jurisdiction in whose territorial jurisdiction company has its registered office. It, therefore, directed that petition shall be returned to be presented at Lucknow Bench, holding that petition at Allahabad is not maintainable, since, registered office of Company is situate within territorial jurisdiction of Judges sitting at Lucknow i.e. Lucknow Bench. Court also examined issue whether it is a mere technical aspect or not and held that question is of jurisdiction and order passed without jurisdiction, is a nullity. Therefore, applying principle of Order VII Rule 10 C.P.C., Court said that the petition must be returned so that it may be presented in the Court having jurisdiction in the matter.

135. Thereafter again this issue came up in the context of same company namely **Sumac International Ltd. vs. M/s P.N.B. Capital Services Ltd. and another, 2006 (1) ADJ 86 (DB).** Therein Court was examining correctness of order dated 31.03.2006 whereby learned Company Judge sitting at Allahabad had directed for winding up of Company and by order dated 17.10.2006, recall application of winding up order was rejected. Both these orders were held, in intra Court appeal heard by a Division Bench in **M/s Sumac International Ltd. (supra),** as without jurisdiction. In para 3 of judgment, referring to Supreme Court's judgment in **Sri Nasiruddin (supra),** Court said that Lucknow Bench has exclusive jurisdiction with regard to cases which arise in respect of places, which were part of erstwhile Avadh/Oudh. Division Bench categorically said that despite earlier Division Bench judgment in **Sumac International Ltd (supra) i.e. AIR 1997 Allahabad 424**, Court cannot take an otherwise stand when it is clear that Allahabad Seat does not have jurisdiction in the matter. It held that on the point of jurisdiction, there cannot be any res judicata. It also held that an order without jurisdiction is valid only for parties, who choose to treat it as valid, but otherwise such order can be

disregarded by parties, and therefore, even more so by Court, before which such orders come to be considered and applied at later times. Court in paras 25 and 26 of Judgment said as under :

> *"25. In the manner we respectfully read the said judgment and the said observations of the highest persuasive authorities, we feel that the rule still is that an order without jurisdiction is so void that a party can at almost all times disregard at his choice, and that the party might also wait, but that the safer course in any event is to have the order without jurisdiction set aside, or pronounced to be so, as early as possible, which is the course which the pragmatic appellant has taken in this case.*
>
> *26. The appeal is allowed. The two orders under appeal are both set aside. The winding up petition is consigned to the department with liberty to the petitioning creditor to take steps in regard thereto in accordance with law as it might be advised."*

136. Since jurisdiction of cases which can be entertained at Lucknow and Allahabad are governed by Article/Clause 14 of U. P. High Courts (Amalgamation) Order 1948, considering the same, in para 11 of judgment in **Dr. Manju Verma (supra),** Supreme Court said :

> *"the Benches of Lucknow and Allahabad although part of one High Court,* ***exercise distinct and exclusive jurisdiction over demarcated territories.****"*
>
> (emphasis added)

137. If part of the cause of action had arisen within the territorial jurisdiction of both i.e. Lucknow and Allahabad, litigant has choice to invoke jurisdiction at one of the two places.

138. Sri Navin Sinha, learned Senior Counsel appearing for appellant has placed reliance on Supreme Court judgment in **Dr. Manju Verma (supra)**, but we find that except observations made in para 11 of the judgment, otherwise issue in the said case was different. The broad question up for consideration in **Dr. Manju Verma (supra)** was "whether

an order passed under Article/Clause 14 of U. P. High Courts (Amalgamation) Order, 1948 for transferring a case from Lucknow to Allahabad is a quasi-judicial order and Chief Justice exercises quasi-judicial power or not". Considering the manner in which Chief Justice passed order of transfer after hearing parties, Court held that order was quasi-judicial. In para 19 of the judgment Court said as under : :

> *"19. In ordering the transfer of the case under the 1948 Amalgamation Order, the Chief Justice was determining the plea of the respondent and the objection of the appellant to the transfer of the appellant's writ petition. He could not allow the plea without hearing the affected party and without determining on objective criteria and upon investigation whether the case was (a) transferable, and (b) should be transferred.* ***His decision would affect the right of the appellant to choose her "forum convenients"****. He was, therefore,* ***acting as an adjudicating body empowered by the Constitution to discharge judicial functions.*** *We would accordingly hold that the Chief Justice while exercising jurisdiction under para 14 of the 1948 Order,* ***acts as a judicial authority with all the attributes of a court****..."*
>
> (emphasis added)

139. In para 21 of the judgment, Court also said that the power of transfer from Lucknow to Allahabad will arise where judges at Lucknow have jurisdiction, and further, power will be exercised for 'hearing' the matter at Allahabad, but if the matter has already been 'heard', then Article/Clause 14 of U. P. High Courts (Amalgamation) Order, 1948 giving power to transfer a case from Lucknow to Allahabad will not be available. Relevant observations are as under :

> *"The proviso assumes first, that the case or class of cases to be transferred by the Chief Justice from Lucknow to Allahabad are those which the Lucknow Bench would otherwise have the jurisdiction to entertain; and second that the power of transfer must be exercised for the purpose of having the matter heard at Allahabad. If the matter has already been heard, then the Chief Justice would not have*

power to transfer the case from Lucknow to Allahabad."

140. In the present case, this issue is not at all involved, hence, we do not find that judgment in **Dr. Manju Verma (supra)** takes us any further on the question with which we are concerned. We, therefore, answer question (2) holding that since jurisdiction of cases to be entertained at Lucknow and Allahabad are distinct and exclusive over demarcated territories, it renders an order passed by Judges sitting at a place in a matter over which they have no jurisdiction, as nullity.

141. In this very context and answering question (2), we think that even question (3) can be considered simultaneously as to whether objection as to territorial jurisdiction can be raised after a long time i.e. after eight years in the case in hand, and whether appellant's objection should be declined by applying principle of Section 21 C.P.C. that such objection was not raised earlier.

142. In our view, this aspect can be considered in the light of law laid down in **Harshad Chiman Lal Modi vs. DLF Universal Ltd. (2005) 7SCC 791.** An agreement was entered between Harshad Chiman Lal Modi (hereinafter referred to as "Buyer") and DLF Universal Ltd. (hereinafter referred to as "Builder") for purchase of a residential plot at residential colony, DLF Qutub Enclave Complex, Gudgaon, Haryana. Head Office of Builder was at Delhi. Agreement was executed at Delhi and payments were also made at Delhi. Though Buyer claimed that he has made payments as per agreement, but Builder disputed the same and cancelled agreement. This led to filing of Suit No.3095 of 1988 by the Buyer in Delhi High Court for declaration, specific performance of agreement, possession of property and permanent injunction. Entertaining the Suit on 09.12.1988, a Single Judge of Delhi High Court granted interim injunction. In written statement filed by Builder on 29.03.1989, though claim on merit was objected, but jurisdiction of Delhi High Court was admitted in paras 18 and 19. Later, due to change of pecuniary jurisdiction, suit was transferred to District Court on 12.07.1993. On

17.02.1997, District Court framed issues but no issue with regard to territorial jurisdiction was framed, since, there was no dispute between parties. It is only on 22.08.1997 i.e. after more than eight years of filing of written statement, Builder filed an application under Order 6 Rule 17 C.P.C. seeking amendment in the written statement by raising objection with regard to jurisdiction of Delhi Court and claimed that since property in dispute situate in Gudgaon District, State of Haryana, therefore, vide Section 16 C.P.C., suit for recovery of property could be instituted within local jurisdiction where disputed property situated and Delhi Court had no jurisdiction. Amendment was allowed and Trial Court framed an issue on the question of territorial jurisdiction. The issue of jurisdiction was decided as a 'preliminary issue' in favour of Builder. It was challenged in High Court, but failed thereat. Buyer thereafter brought matter in appeal before Supreme Court. Court considered scheme of Sections 15 to 20 C.P.C. and observed that Section 16 C.P.C. recognizes well established principle that actions against 'res' or 'property' should be brought in the forum where such 'res' is situate. Court had no jurisdiction over a dispute over which it cannot give an effective judgment. With respect to Section 20 C.P.C, Court said that it is a residuary provision and covers those cases, not falling within the limitations of Sections 15 to 19 C.P.C. Court also held that normally, if there is an agreement between parties regarding territorial jurisdiction, such agreement can be enforced but not in cases where Court has no jurisdiction at all. In other words, Court said that such agreement can be implemented only when two or more Courts have jurisdiction to try a suit or proceeding and parties decide and agreed for jurisdiction to one of such Courts. Court referred to and relied on its earlier judgment in **Hakam Singh vs. Gammon (India) Limited, 1971 (1) SCC 286** wherein in para 4, Court said :-

> *"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 Code of Civil Procedure 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."*

(emphasis added)

143. Supreme Court said that parties cannot confer jurisdiction upon a Court which otherwise has no jurisdiction and such agreement to that extent would also be void being against public policy. Then considering question of belated objection raised after eight years, Court said that jurisdiction of Court is classified in several categories. The important categories are, (i) territorial or local jurisdiction; (ii) pecuniary jurisdiction; and (iii) jurisdiction over subject matter. Court further held that so far as territorial and pecuniary jurisdiction 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. If such objection is not taken at the earliest, it cannot be allowed to be taken at later stage. The relevant observations of Court are as under :

> *"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."*

144. Thereafter Court said that so far as jurisdiction of subject-matter is concerned, it is totally distinct and stand on different footing. Where a Court has no jurisdiction over subject-matter of suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by Court having no jurisdiction qua subject matter, is a nullity. In para 32 of judgment, relying on its earlier judgment in **Bahrein Petroleum Company vs. P. J. Pappu, AIR 1966 SC 634**, Court held :

> *"A decree* ***passed by a court having no jurisdiction is non est and its invalidity can be set up whenever it is sought to***

> ***be enforced as a foundation for a right, even at the stage of execution or in collateral proceedings.*** *A decree passed by a court* ***without jurisdiction is a coram non judice.****"*
>
> (emphasis added)

145. When we look at aforesaid judgment and apply it to facts of present case, on the one hand, it appears that it is a simple case of objection relating to territorial jurisdiction, but we find that here objection is in respect of subject-matter also. Cases relating to winding up, upto the stage of Section 439 of Act, 1956, arisen in the area within jurisdiction of Judges sitting at Lucknow, are not within jurisdiction of Judges at Allahabad. Therefore, Judges sitting at Allahabad lack jurisdiction on subject-matter also since, after proceeding under Section 439 of Act, 1956, Judges at Allahabad will have jurisdiction but not earlier thereto. Therefore, winding up matter in the present case involves want of jurisdiction on subject-matter also to Judges sitting at Allahabad, hence, order under appeal, in our view, is without jurisdiction and cannot be sustained. In such a situation, belated objection will make no effect.

146. Moreover, with respect to delay also, we find that appellant can not be said to be a negligent and careless litigant outrightly. Reference was made by BIFR on 23.04.1999 and received by Registrar General at Allahabad on 03.05.1999. At that time, Division Bench judgment in **Sumac International Limited (supra)** rendered on 02.07.1997 was operating. Even Chief Justice, in the light of aforesaid judgment, issued a notification on 04.01.2003, though it was rectified within ten days. The issue still was not clear and came to be referred to a Larger Bench for consideration, by a Single Judge in **Registrar of Companies vs M/s Kamal Infosys Limited (supra),** which was decided on 14.03.2005. In this backdrop, when things were not clear even on administrative or judicial side, to blame appellant for delay in raising objection with regard to jurisdiction, will not be just and appropriate, and we cannot non suit Defaulting Company/Appellant for this reason.

147. We, therefore, answer questions (2) and (3) together holding that objection of jurisdiction in the matter of winding up of company having registered Office at a place which is within territorial jurisdiction of Lucknow Bench, goes to the root of the matter and any order passed at Allahabad, ignoring the above jurisdiction, is a nullity. Mere delay in raising objection will not validate the order, since, such an order lacks patent jurisdiction.

148. Now coming to question (4) i.e. last question, since we are setting aside judgment under appeal passed by learned Single Judge, it will not be apropriate to answer question (4), since it has to be seen afresh by appropriate Court at Lucknow and, therefore, question (4) is discharged unanswered.

149. In view of above discussions, it cannot be said that winding up petition at Allahabad in respect of Defaulting Company/Appellant was maintainable at Allahabad, since, registered office of Company is at A/2, Site No.2, Industrial Area, Rae Bareli having its territorial jurisdiction with Judges sitting at Lucknow. Therefore, order passed by learned Single Judge for winding up of company at Allahabad, is patently without jurisdiction.

150. Lastly, it has to be seen as to what ultimate order should be passed since, order of winding up was not passed on a winding up petition, but it is on a Reference made by BIFR. Here winding up proceedings have been initiated not at the instance of an individual party but on a Reference made by BIFR under Section 20 (1) of Act, 1985, which was received at Allahabad. It was enjoined upon Registrar General to remit Reference to Lucknow for further action, but, he committed mistake by placing it before Company Judge at Allahabad. Thus appropriate order would be to direct Registrar General to forward Reference received from BIFR to Registrar at Lucknow for placing it before Company Judge sitting at Lucknow for considering the matter of winding up of Defaulting Company/Appellant and pass necessary order in accordance with law.

151. Appeal is, accordingly, **allowed**. Judgment dated 19.09.2007 passed by Company Judge for winding up of Company and appointing Official Liquidator, is hereby set aside. We direct Registrar General to forward Reference received from BIFR to Registrar at Lucknow for placing it before Company Judge sitting at Lucknow for considering the matter of winding up of Defaulting Company/Appellant in accordance with law.

152. No costs.

Order Date : 17.10.2019
Manish Himwan