RES JUDICATA (BACKBONE OF CPC)

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ABSTRACT

The civil procedure code of 1908 was enacted with a view to have an unvarying civil procedure in all the courts. The code does not contain only provisions and rules but also doctrines that are to be necessarily made applicable in all the courts in all suits in order to not to degrade the standards and functioning of the Judiciary in the eyes of the public that leads to destroy the faith and trust on the judiciary and its functioning. The judiciary being one of the important organs of the state to restore peace and render justice the doctrine of res judicata and res sub judice should be applied in a strict manner for the smooth functioning of the judiciary. The major amendment of 1877 of the civil procedure made an important change regarding making the applicability of doctrine of res judicata in a more effective manner. The judiciary is essential to function properly in each state. No one should doubt the orders passed on a decided matter by the judiciary. The civil suits either pending or decided should not be instituted again in any court and trial for the suit should not be conducted. Double institution of suits either on a pending or decided matter will create a chaotic environment as the judgements passed by different courts and judges won't be the same. Each has their own way of interpreting the facts and providing justice. Moreover the judiciary in India is very slow in disposal of cases and double suits may create stress to the parties than providing them with justice as the cases are delayed and may still remain undisputed even after many years and generations. This paper analyses the doctrines of res sub judice and res-judicata and provides the reason for the necessity application of these doctrines in India effectively and strictly.

INTRODUCTION

The code of civil procedure is a significant legislation that was enacted in the year 1908. It is a procedural code that prescribes the procedures of the court. The code clearly and briefly states the how suits are instituted and the procedures to be followed by the courts and parties for different types of suits. The doctrine of res judicata is defined under section 11 of the code of civil procedure. The doctrine in common terms means that once a suit is decided and judgement is pronounced by the competent court, the party to the suit has no permission to institute a subsequent suit for the same matter in issue. In the absence of this doctrine there will no end to litigation and moreover the parties of the suit will suffer immensely. In the words of Spencer Bower, Res judicata means "*a final judicial decision pronounced by a judicial tribunal having competent jurisdiction over the cause or the matter in litigation, and over the parties thereto."*

In the case of Satyadhyan Ghosal v. Deorjin Debi the term res judicata has been expounded by Das Gupta: The necessity for the doctrine of res judicate is based on finality to judicial decisions. It simply means that once a res is Judicata the same matter shall not to be adjudged again. Section 11of the code states that no court shall attempt any suit or issue in which the matter directly or substantially in issue is the same in the previous or former suit between the same parties or between under whom they or any of them claim litigation under the same title of the former suit already decided before any competent court to attempt such subsequent suit The doctrine of res judicata is developed with the idea to promote large public interest. The main aim of the doctrine is that the litigation of a suit must come to an end sooner or later it should not be a never-ending suit. The doctrine is based on the principles of justice, equity and good conscience. The doctrine provides aid to prevent the parties from getting harassed and suffer immensely by multiplicity of proceedings for the same issue or matter. Res judicata represents the rule of conclusiveness and works as a bar to attempt the same issue once again. The doctrine avoids vexatious litigations. The important aim of this paper is to give a detailed explanation on the doctrine Res-Subjudice and doctrine Res-Judicata. And to find how essential are these two doctrines work on civil procedure code in India and also to find its applicability on the Indian courts.

HISTORY

The doctrine of res judicata has a very ancient history. The doctrine was well understood by Hindu lawyers and Mohammedan jurists of the ancient times. In the ancient Hindu law, the rule of res judicata was well known as Purva Nyaya meaning former or previous judgement. While in the Roman law recognized the doctrine of res judicata *"one suit and one decision was enough for any single dispute"* The European continent and the common wealth countries have accepted this doctrine. The doctrine is based on the following three maxims:

a. Nemo debet bis vexari pro una et eadem causa (no person should be distressed twice for the same suit or matter);

b. Interest republic ateut sit finis litium (it is in the interest of the state that all litigations should not be never ending); and

c. Res judicata pro veritateocipitur (a judicial judgment or decision must be accepted as correct and free from errors.

The last two maxims reflect the public policy and the first maxim expresses the private justice.

EXTENT AND APPLICABILITY

The fundamental concept of the doctrine of res judicata is based on public policy and private interest. It is developed in the larger public interest for each and every litigation come to an end. The doctrine applies to execution proceedings, arbitration proceedings, taxation matters, industrial adjudication, writ petitions, administrative orders, interim orders, etc. Res judicata is a mandatory provision. The plea of res judicata is a plea of law that touches the jurisdiction of a court to attempt the proceedings. A finding on that plea would reject the jurisdiction of a court. If all the components mentioned in section 11 are fulfilled doctrine of res judicata will apply and even the concession made by an advocate will not bind a party. The interpretation of doctrine of res judicata should be done liberally in a wide sense. Since the doctrine is implemented for the benefit of the public interest and for the benefit of preventing the judiciary from dealing with multiple proceedings for the same in matter.

CONDITIONS

The following are the conditions to be satisfied for a matter to constitute as res judicata under section 11 of the code of civil procedure, 1908:

- The matter in the subsequent suit must be same as that of the matter in the former suit.
- The parties in the subsequent suit must be the same parties of the former suit.
- The litigation must be under the same title in the former suit.
- The court decided the former suit must be a court competent to attempt the subsequent suit or the suit in which such issue is subsequently raised.
- The matter in the subsequent suit must have been heard and finally decided by the court in the former or previous suit.

The above-mentioned conditions should be fulfilled for the doctrine of res judicata to be applied. The doctrine bars the institution of an already decided matter by a competent court. Res judicata between co-defendants.

Not only matter between plaintiff and defendant may be res judicata likewise the matter between co-defendants and co-plaintiffs may also be res judicata. The condition that has to be satisfied for the matter between co-defendants may be res judicata is:

- Conflict of interest must be present between co-defendants;
- The conflict needs to be decided in order to give relief to the plaintiff;
- The conflicts or question between co-defendants must have been finally decided; and
- In the former suit the co-defendants were necessary or proper parties.

Res judicata between co-plaintiffs

It is similar to that of matter may be res judicata between co-defendants. There must be conflict of interest between plaintiffs and the conflict is already decided by the competent court, in the subsequent suit the doctrine of res judicata will apply.

APPLICABILITY AND NON-APPLICABILITY OF THE DOCTRINE OF RES JUDICATA

(i) Public interest litigation

The doctrine of res judicata may operate in public interest litigation of if the previous litigation was a bona fide public interest litigation, but if the former or earlier proceeding was not a bona

fide public interest litigation, the subsequent proceeding for the same public interest litigation will not barred.

(ii) Writ petitions

Over for a long period it was settled that the doctrine of res judicata is not applicable to writ petitions filed under article 32 and 226 of the constitution of India. But for the first time in the case of M.S.M Sharma v. Dr. Shree Krishna[4] the supreme court held that general principles of the doctrine of res judicata applies even to the writ petitions filed under article 32 and 226 of the Indian constitution for violation of fundamental rights enshrined under the Indian constitution. The court has stated clearly that the principle of res judicata does not apply to the writ petitions of habeas corpus.

(iii) Criminal proceedings

It is obvious that the doctrine of res judicata even applies to criminal proceedings as the main intention of this doctrine is to bring an end to litigation. The Supreme Court held that Moreover once a person is acquitted or convicted for a criminal offence by a competent court he cannot be tried once again for the same offence.

(iv) Industrial adjudication

The doctrine applies even to industrial adjudication. Once an award is pronounced by the industrial tribunal same matter cannot be claimed again before the tribunal. The doctrine also extends to cases filed under labour courts.

(v) Taxation matters

The doctrine of res judicata is not applicable in taxation matters. From year to year liability to pay tax is distinct, separate and independent liability.

(vi) Execution proceeding

The amendment made in section 11 by act 104 of 1976 specifically provides that the doctrine is applicable to executive proceeding also.

CONCLUSION

The judiciary is the important organ promoting peace and rendering justice. The judiciary in India has many loopholes due to which the disposal of cases is pretty slow and ineffective. Adding on to this if multiplicity of proceedings are allowed for the same matter or issue it will not only make the parties to the suit suffer immensely but also the increases burden on the judiciary and also wastes its resources by making it conduct trial on the same issue and pronouncing judgement for the same. To curb these challenges and problems the doctrine of res sub judice and res judicata is necessary to be implemented in a effective and strict manner preventing the multiplicity of proceedings that leads to multiplicity of doubts in the parties due to the contrary verdicts provided for the same relief in the same court where the earlier suit is pending or already decided. The doubtfulness in any judicial proceeding makes the people lose their confidence, faith and trust in the society. For the smooth and problem free functioning of the judiciary in India the doctrine of res sub judice and res judicata should be applied effectively and strictly.

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