

Kabari Pvt. Ltd.

Vs

Shivnath Shroff and Others

Civil Appeals No. 11517 of 1995 with Nos. 11518-20 of 1995

(G. N. Ray, Dr. A. S. Anand JJ)

01.12.1995

JUDGMENT

G.N. RAY, J. -

1. Leave granted. Heard learned counsel for the parties.
2. The appeals arising out of Special Leave Petitions (Civil) Nos. 6912 and 6914 of 1994 which have been preferred against the order of the Division Bench of the Calcutta High Court passed on the review application for recalling the order dismissing Appeal No. 619 of 1992 arising out of Suit No. 513 of 1981 instituted in the ordinary original civil jurisdiction of the Calcutta High Court. The appeals arising out of Special Leave Petitions (Civil) Nos. 6254 and 6913 of 1994 are directed against the order passed by the Division Bench of the Calcutta High Court on the review application for setting aside the order passed in Appeal No. 410 of 1992 arising out of the order refusing to grant extension of time to effect amendment of plaint in Suit No. 531 of 1981. For the purpose of appreciating the rival contentions of the parties in these appeals, the relevant facts relating to the aforesaid Suit No. 531 of 1981 and two appeals being Appeals No. 619 and 410 of 1992 arising out of Suit No. 531 of 1981 are to be noted as hereunder.
3. There was an agreement on 21-9-1978, for sale of Property No. 8-A, Burdwan Road, Calcutta for a consideration of Rs. 2 lakh between the plaintiffs and the defendants. The agreement was signed in the office of the solicitors of the defendants-Vendors, namely, M/s. Khaitan & Co. Plaintiff 1 was already in possession of the said property. Pursuant to such agreement the plaintiffs had paid earnest money by cheque on 28-8-1978. On 15-1-1979, a further sum of Rs. 15,000 was paid by Plaintiff 1 by cheque. The Draft Deed of Conveyance was duly approved by the solicitors of the Vendors. The Vendors made an application on 23-6-1980 for permission for sale in favour of the plaintiffs before the authorities under the Urban Land and Ceiling Act. On 1-7-1981, the solicitors of the Vendors, namely, M/s. Khaitan & Co. informed the solicitors of the plaintiffs that the permission to sale had been refused by the authorities under the Urban Land and Ceiling Act. The Vendors, however, transferred the said Premises No. 8-A, Burdwan Road, in favour of M/s. Kabari Pvt. Ltd. after obtaining permission from the Urban Land and Ceiling authority. The plaintiffs, namely, Shivnath Shroff and Others, filed the suit for specific performance of the agreement in the ordinary original civil jurisdiction of the Calcutta High Court being Suit No. 531 of 1981. In the said suit, an application for interim injunction restraining the defendants, namely, the Vendors from dealing with or disposing of the said premises was made and an ad interim order was passed on such application for interim injunction in favour of the plaintiff. On 20-7-1981, the interlocutory application appeared as New Motion when the defendants (Vendors) appeared and submitted before the Court that the said Premises No. 8-A, Burdwan Road, had already been transferred to a third party, namely

M/s. Kabari Pvt. Ltd. It was also contended by the defendants that the agreement of sale dated 21-9-1978 in favour of the plaintiffs ceased to exist due to refusal to sell the said property by the authority under the Urban Land and Ceiling Act. The defendants (Vendors) also stated that by four separate deeds of conveyance all dated 6-7-1981, the said premises had been conveyed in favour of the M/s. Kabari Pvt. Ltd. On 8-3-1982, the plaintiffs made an application in the said Suit No. 531 of 1981 for amendment of the plaint seeking to implead M/s. Kabari Pvt. Ltd. and also to effect other amendments in the body and prayer of the plaint. On 1-6-1982, M/s. Kabari Pvt. Ltd. affirmed an affidavit and filed the same in Court. On 9-7-1982, the Court after hearing the parties including M/s. Kabari Pvt. Ltd. allowed the application for amendment of the plaint and the added respondent, namely, the said M/s. Kabari Pvt. Ltd. was restrained from alienating or encumbering the disputed premises. On 14-7-1982, a fresh writ of summons was directed to be issued for service on the added respondent, namely, M/s. Kabari Pvt. Ltd. It is the case of the plaintiffs that the plaintiffs by their letter requested their solicitors M/s. T. Banerjee & Co. to comply with the orders passed by the Court for effecting service upon the added respondent. It is the further case of the plaintiffs that on 28-7-1982, the plaintiffs also requested M/s. T. Banerjee & Co. to carry out the amendment and to serve the writ of summons. It may be stated here that after purchasing the suit property, M/s. Kabari Pvt. Ltd. filed a suit for eviction of the plaintiffs from the suit premises before the learned Subordinated Judge, Alipore. By an order dated 22-9-1982, the said suit was transferred to the High Court for disposal and the same is pending before the High Court.

4. In March 1986, M/s. T. Banerjee & Co., the solicitors of the plaintiffs wrote a letter to the Inspecting Assistant Commissioner of Income Tax on behalf of the plaintiffs that the entire matter relating to the transfer of the suit premises to M/s. Kabari Pvt. Ltd. was sub judice and pending decision of the Calcutta High Court. It is stated that Mr. Debashish Mukherjee, Advocate and Partner of M/s. T. Banerjee & Co. who was dealing with the said Suit No. 531 of 1981 for the plaintiffs died on 15-11-1990. On 25-6-1991, the suit appeared for scrutiny before the Senior Master on the original side of the Calcutta High Court and an Assistant of M/s. T. Banerjee & Co. appeared before the Senior Master and the matter was adjourned to 11-7-1991. Mr. Khanna, Assistant of M/s. T. Banerjee & Co. again appeared on behalf of the plaintiffs before the Senior Master on 11-7-1991 and prayed for time. Thereafter, on 8-8-1991 the suit again appeared for scrutiny before the Senior Master and Mr. Sunil Mitra of M/s. T. Banerjee & Co. appeared for the plaintiffs before the Senior Master and prayed for three weeks' time. The learned Advocate on behalf of M/s. Kabari Pvt. Ltd. also appeared and the matter was adjourned till 3-9-1991. According to the plaintiffs, M/s. T. Banerjee & Co. orally informed the plaintiff on 8-8-1991 that the suit had appeared in the scrutiny list. A letter to that effect was also written by M/s. T. Banerjee & Co. to the plaintiffs and according to the plaintiffs such letter was received by the plaintiffs on 14-8-1991. After receiving oral information from M/s. T. Banerjee & Co. the plaintiffs wrote on 9-8-1991 to M/s. T. Banerjee & Co. that the plaintiffs had not been informed about the earlier order passed on 19th and 14-7-1982. In the said letter, the plaintiffs expressed surprise and dissatisfaction as proper steps had not been taken to effect amendment of the plaint. On 3-9-1991, the said suit appeared for scrutiny before the Senior Master but since no sitting had taken place on that date, the matter was deferred till 11-9-1991. On 11-9-1991, M/s. T. Banerjee & Co. requested the plaintiffs to call on their office for perusal of the draft application prepared by the learned counsel and such application was affirmed. On 26-9-1991, the suit appeared before the Senior Master but nobody appeared for the plaintiffs. The learned Advocate appearing for M/s. Kabari Pvt. Ltd., however, submitted that the suit should be directed to be placed in the special list. Accordingly, an order was passed for placing the suit in the special list. M/s. T. Banerjee & Co. wrote to the plaintiffs on 26-9-1991, that the said suit appeared in the scrutiny list and the same would be placed in the special list for scrutiny. On 10-9-1991, the

plaintiffs affirmed an application for extension of time to carry out the amendment and on 10-10-1991 such application was moved in Court. It may be stated that M/s. T. Banerjee & Co. acted as Advocate on Record for the plaintiffs in connection with the said application for extension of time to carry out the amendment. On 20-12-1991, M/s. T. Banerjee & Co. informed the plaintiff that the application had been adjourned till 20-1-1992. The said application for extension of time to carry out the amendment was, however, dismissed by the Court on 13-3-1992. The plaintiffs informed their solicitors M/s. T. Banerjee & Co. on 17-3-1992 that steps should be taken to prefer appeal. On 27-5-1992, an appeal against order dated 13-3-1992 dismissing the application for extension of time to effect amendment was filed. Such appeal was numbered as Appeal No. 410 of 1992. On 18-6-1992, the Registry of the High Court issued notice to M/s. T. Banerjee & Co. informing that the suit should be set down in the special list of the Hon'ble Judge taking interlocutory matters from 14-7-1992. Such notice had been received by M/s. T. Banerjee & Co. The suit appeared before the Court. M/s. Kabari Pvt. Ltd. also appeared through the learned counsel and the suit was dismissed. It may be mentioned here that the minutes of the Court proceeding indicate that Ms. Ranjanam Guha, learned advocate appeared for the plaintiffs. The plaintiffs were also informed by M/s. T. Banerjee & Co. that the suit appeared in the special list and the prayer for a direction that the suit should go out of the special list was opposed by the defendants including M/s. Kabari Pvt. Ltd. and the suit was dismissed. The plaintiffs instructed M/s. T. Banerjee & Co. their solicitors to prefer an appeal against the order of dismissal of the suit. Appeal No. 619 of 1992 was filed against the said order dated 14-7-1992 dismissing the suit. Both the said appeals, namely, Appeal No. 410 of 1992 and Appeal No. 619 of 1992 were, however, dismissed by a common judgment by the Division Bench of the Calcutta High Court on 16-2-1993. At this stage the plaintiffs changed their solicitors and M/s. L.P. Agarwalla & Co. was engaged as their solicitors.

5. On 17-4-1993, the plaintiffs filed two special leave petitions before this Court. Special Leave Petition (C) No. 8083 of 1993 was directed against dismissal of Appeal No. 410 of 1992 arising out of the order refusing to extend the time to effect amendment and Special Leave Petition (C) No. 8084 of 1993 was directed against dismissal of Appeal No. 619 of 1992 (which arose out of the order of dismissal of Suit No. 531 of 1981). It may be stated here that M/s. L.P. Agarwalla & Co. acted as advocates for the plaintiffs in both the said special leave petitions. The plaintiffs thereafter filed review petitions on 17-6-1993 before the Calcutta High Court for recalling the orders dismissing Appeals Nos. 410 of 1992 and 619 of 1992 and M/s. L.P. Agarwalla & Co. acted as solicitors for the plaintiffs/petitioners. It is to be noted here that the plaintiffs did not mention in the review applications that this Court had already been moved against the said orders of dismissal of the appeals by filing the aforesaid special leave petitions. The plaintiffs did not make any attempt to get the said special leave petitions taken up for hearing. On the contrary, the learned counsel for the petitioners in the said special leave petitions mentioned the matter on several occasions for adjournment. As a result, the special leave petitions were not even listed for hearing on several occasions. It was only after the review petitions were allowed by the Calcutta High Court on 16-3-1994, the special leave petitions were allowed to be dismissed as withdrawn on the prayer of the petitioners.

6. Mr. Nariman, learned Senior Counsel appearing for the petitioners in Special Leave Petitions (C) Nos. 6913-6914 of 1994 has very strongly contended that the plaintiffs-respondents Shivnath Shroff and others filed the said Suit No. 531 of 1981 for specific performance of contract in the High Court and on the prayer on the plaintiffs to amend the body of the plaint and also the prayer portion, the High Court allowed the prayer as far back as on 9-7-1982. On 14-7-1982 fresh writ of summons was directed to be issued for service on Kabari Pvt. Ltd. The plaintiffs in an attempt to delay the hearing of the suit and in furtherance of the evil design in adopting dilatory tactics, deliberately failed and

neglected to take steps for effecting amendment of the plaint. The suit appeared for scrutiny before the Senior Master of the High Court (Original Side) on 25-6-1991 and thereafter on subsequent dates. But the plaintiffs did not take steps for effecting amendment even then. Mr. Nariman had submitted that even if it is accepted that Shri Debashish Mukherjee, Advocate and partner of M/s. T. Banerjee & Co., Solicitors was in charge of the said Suit No. 531 of 1981 and he having died on 15-11-1990, appropriate steps in effecting amendment of plaint could not be taken by the plaintiffs on earlier occasions, there cannot be any reasonable explanation for the failure on the part of the plaintiffs and their solicitors in not taking steps at least from 25-6-1991 when the matter started appearing on various dates before the Senior Master for scrutiny. It is not the case that because of death of Shri Mukherjee who was in charge of the said suit, the solicitors of the plaintiffs lost sight of the suit. The plaintiffs as a matter of fact were represented either by an Assistant to the solicitors or by an advocate appearing for the plaintiffs before the Senior Master. Admittedly, the plaintiffs were informed by their solicitors on 8-8-1991 that for not taking steps in effecting amendment, the suit was appearing before the Senior Master for scrutiny. Even then, the plaintiffs and their solicitors were not at all diligent to take appropriate steps immediately. It was only on 30-9-1991 an application for extension of time to carry out amendment was affirmed by the plaintiffs and only on 10-10-1991 such application was moved in Court. The Court, however, rightly rejected the said application on 13-3-1992 as the plaintiffs failed to satisfy the Court about the bona fides of the plaintiffs in not taking steps for effecting amendment from July 1982, namely, for about 10 years. Mr. Nariman has submitted that the suit thereafter appeared in 'Special List'. On July 14, when the suit appeared in 'Special List', Ms. Ranjanam Guha, learned advocate appeared for the plaintiffs. The Court dismissed the suit for gross negligence on the part of the plaintiffs. Mr. Nariman has submitted that it is quite evident that the Single Bench of the High Court rejected the plea of the plaintiffs that there was no laches and negligence on their part and for negligence and laches on the part of their solicitors the plaintiffs should not be victimised.

7. Mr. Nariman has submitted that although special leave petitions are not statutory appeals and exercise of jurisdiction under Article 136 of the Constitution is discretionary with this Court, the fact remains that the orders of dismissal of the appeals by the High Court were assailed before a superior court by filing special leave petitions. From the judgment disposing of the review applications, it does not appear that the attention of the High Court was drawn to the fact that prior to the filing of review applications, special leave applications had been filed before this Court and such applications had been pending disposal. Mr. Nariman has submitted that if the petitioners had specifically stated in the review petitions that this Court had already been moved by filing special leave petitions and such applications were pending, in all probability, the High Court would not have entertained the review applications for disposal on merits. Pendency of two parallel proceedings for the same relief namely setting aside the orders dismissing the said appeals - one before the Apex Court by way of special leave petitions and the other before the High Court by way of review applications cannot be encouraged because of the possibility of inconsistent finding by the courts. Mr. Nariman has submitted that review under Order 47 Rule 1 of the Code of Civil Procedure must be construed in a wider sense keeping in mind the underlying principle involved, that before making review applications, no superior court has been moved for getting the selfsame relief. He has submitted that gross injustice has been meted out to the defendants-petitioners by allowing review applications despite grossest negligence and laches on the part of the plaintiffs is not carrying out the proceedings of the said suit diligently but indulging in dilatory tactics. He, therefore, submits that the special leave petitions should be allowed and impugned orders should be set aside.

8. Mr. Sanghi, the learned Senior Counsel appearing for M/s. Kabari Pvt. Ltd. in the other two

special leave petitions has supported Mr. Nariman in this submission both on facts and law.

9. Mr. Sanghi has submitted that the plaintiffs-respondents cannot be permitted to contend that they are not required to keep vigil about the progress of the suit and carriage of the proceedings in connection with the same. The plaintiffs are educated businessmen. They stay in Calcutta itself. It is not the case of the plaintiffs that Shri Debashish Mukherjee, a partner of their solicitors, T. Banerjee & Company who is stated to have been dealing with their case in the High Court, had wrongly informed the plaintiffs that all necessary steps for effecting amendment of plaint had been taken and on such representation they had no occasion to cause any enquiry in the matter. Mr. Sanghi has submitted that the letter dated 9-8-1991 stated to have been written by the plaintiffs to their solicitors M/s. T. Banerjee & Company on getting oral information from the solicitors on 8-8-1991 that the suit had been placed in the scrutiny list on account of failing to take steps in effecting amendment of the plaint, should not be accepted to have been bona fide written on 9th August. Such letter, according to Mr. Sanghi, was later on fabricated for the purpose of showing that the plaintiffs' solicitors had let them down by keeping them in darkness about the progress of the suit. Mr. Sanghi has very strongly contended that the role of the plaintiffs even when admittedly they came to know that their solicitors miserably failed to take proper steps in the carriage of proceedings in the suit and the solicitors also failed to keep them informed about the developments of the suit, is far from being satisfactory. The plaintiffs ought to have ensured either by personally attending to the matter or by sending some of their officers, that steps for enlarging the date for taking steps in effecting amendment of plain was taken immediately. It is an admitted position that the matter appeared before Senior Master on a number of occasions and only on 10-10-1991 an application for extension of time was made by the plaintiffs, which was rightly rejected by the Court.

10. Mr. Sanghi has also submitted that the plaintiffs did not change their solicitors even the application for extension of time was dismissed and later on when the suit itself was dismissed. Admittedly the same solicitors namely M/s. T. Banerjee & Company were retained for preferring both the said appeals. It was only when both the appeals were dismissed by the High Court, the plaintiffs changed their solicitors and M/s. L.P. Agarwalla & Company was engaged as their solicitors. Mr. Sanghi has submitted that such change was made designedly to put blames on their previous solicitors and to make out a false case of alleged discovery of some relevant facts relating to the steps taken by their previous solicitors so that a case for filing review application may be made out. Mr. Sanghi has submitted that M/s. Kabari Private Limited had purchased the property long back. They are keen to get possession of the property. The suit for eviction of the plaintiffs who are in possession of the disputed property had been transferred to the High Court because of the said title suit instituted by the plaintiffs in the High Court claiming specific performance of contract was pending in the High Court. Mr. Sanghi has submitted that M/s. Kabari Private Limited has been suffering serious prejudice on account of frivolous litigation and proceedings arising out of it at the instance of the plaintiffs for prolonging their illegal occupation of the suit property.

11. Mr. Sanghi has submitted that the plaintiffs knew well that there was no case for review of the orders dismissing the said appeals. Hence, as a last resort they preferred special leave petitions before this Court assailing the orders dismissing the said appeals. He has submitted that in the facts of the case, it is quite apparent that later on, applications for review had been filed before the High Court on false and fabricated premises. In the review petitions, the plaintiffs deliberately suppressed the fact that they had already approached the Apex Court for assailing the orders of dismissal of the appeals by preferring special leave petitions.

12. Mr. Sanghi has submitted that even though from the decree dismissing the suit the High Court, a

litigant cannot maintain an appeal as a matter of right but an appeal certainly lies to this Court, subject to grant of leave by the High Court or grant of special leave by this Court. He has submitted that the expression "from which an appeal is allowed" appearing in clause (a) of Order 47 Rule 1, CPC must be construed liberally so that appeal preferred before this Court by filing special leave petitions to admit the appeal for assailing the judgment or order of a court inferior to it operates as a bar to the maintainability of a review application filed subsequently before the High Court for the same purpose namely for assailing the impugned judgment. The salutary principle which bars two parallel proceedings initiated before two different forums namely the court which would review its own judgment and the superior court which would consider the correctness of the said judgment would be defeated if the expression "appeal is allowed" is given a narrow interpretation thereby limiting it to an appeal which may be preferred as a matter of right without requiring any leave to be granted for preferring such appeal. Mr. Sanghi has submitted that the plaintiffs in this case have exercised option to assail the impugned judgments by preferring appeals before this Court by granting special leave instead of getting the said judgments reviewed by the High Court. In such circumstances, the review applications must be held as not maintainable and should be treated as dismissed. Mr. Sanghi has submitted that the plaintiffs are guilty of a sharp practice in suppressing the factum of presentation of the special leave petitions before this Court prior to the filing of the review applications before the High Court by not mentioning this important fact in the review applications. He has, therefore, submitted that the impugned orders passed by the High Court in allowing the review application should be dismissed with exemplary cost.

13. Mr. Salve, learned Senior Counsel appearing for the plaintiffs-respondents, however, refuted the contentions of both Mr. Nariman and Mr. Sanghi. Mr. Salve has submitted that the suit was instituted in the ordinary original jurisdiction of the Calcutta High Court. The High Court has framed special rules of procedure for the carriage of the proceedings in the suit instituted in the original side. Precisely for the said reason, the service of a reputed solicitors' firm namely M/s. T. Banerjee & Company was requisitioned by the plaintiffs. The plaintiffs and their predecessors had close association with M/s. T. Banerjee & Company and the plaintiffs had reposed trust and confidence in such firm in the matter of carriage of the proceedings in the said suit. The Court in its experience can take notice of the fact that disposal of suit in the High Court takes several years. Hence, it is neither necessary nor practicable to cause enquiries every now and then about the progress of the suit. Moreover when a reputed and experienced solicitors' firm had been engaged by the plaintiffs, there was enough justification on their part to depend on such firm. The criticism that plaintiffs being educated businessman staying in Calcutta itself should have ensured either by themselves or by their officers that proper steps in the suit were being taken in the suit, is not proper and justified. Mr. Salve has submitted that plaintiffs on coming to learn that the suit was placed in scrutiny list for not taking proper steps in effecting amendment expressed their shock and anguish for failure to take appropriate steps in their letter dated 9-8-1991 addressed to their solicitors. Because of the long association with the said firm the plaintiffs did not change the solicitors and retained their services till the hearing of the said appeals. But as it finally appeared to the plaintiffs that solicitors were not only guilty of serious laches but were no longer dependable, they changed the solicitors' firm and M/s. L.P. Agarwalla & Company were engaged as their solicitors. Mr. Salve has submitted that all relevant facts could not be placed before the Court at the time of disposal of the appeal. But with the change of the solicitors and on obtaining further materials in possession of the old solicitors, review applications had been made by drawing attention of the Court to the facts and circumstances which amply demonstrated that the plaintiffs were not guilty of laches and negligence but they fell victim to the laches and negligence on the part of their previous solicitors and the Court, on consideration of relevant facts, has felt that the unfortunate litigants should not

suffer for laches and negligence of their solicitors and keeping the paramount consideration of ends of justice, allowed the review applications. Mr. Salve has also submitted that although in the review applications the factum of presenting the special leave petitions before this Court was not specifically mentioned but he has mentioned that he is instructed to submit that such a fact was made known to the court before disposal of the said review applications. He has submitted that the allegations of sharp practice being resorted to by the plaintiffs and deliberate suppression of material facts namely non-disclosure of presentation of special leave petitions before filing review applications and pendency of such petitions are unfortunate and not correct but the same have been made to cause prejudice against the plaintiff-respondents.

14. Mr. Salve has submitted that special leave petitions under Article 136 of the Constitution stand entirely on a different footing. Exercise of jurisdiction of this Court under Article 136 is absolutely discretionary and not as a matter of course or must. In this connection, Mr. Salve has referred to the decision of this Court in CCE v. Standard Motor Products wherein this Court has indicated that jurisdiction exercised by this Court under Article 136 of Constitution in the matter of granting leave to appeal before it being discretionary, stands as a separate class. Mr. Salve has submitted that application for special leave, therefore, cannot be equated with an appeal as allowed since contemplated under Order 47 Rule 1(a) CPC as sought to be contended. Mr. Salve has submitted that interpretation of procedural law which debars availing court's consideration for furtherance of the cause of justice should be strictly construed. He has submitted that review applications presented before the High Court after filing a special leave petition were maintainable and contentions to the contrary should not be countenanced.

15. Referring to Order 6 Rule 18 CPC Mr. Salve has submitted that even if it is assumed that the plaintiffs failed to bring about amendment of the plaint within time, the suit should proceed with unamended plaint by dismissal of the suit cannot be justified. Mr. Salve has submitted procedural law must be applied for furtherance of justice and not for its hindrance. In the instant case the High Court felt that the suit should not have been dismissed in the special facts of the case and therefore allowed the review applications. Such order, in any event, does not call for interference by this Court by granting special leave. He, therefore, submits that special leave petitions should be dismissed.

16. Mr. Ganguli, learned Senior Counsel appearing for the plaintiff-respondents in one of the appeals (arising out of SLP No. 6914 of 1994) has also refuted the contentions made by Shri Nariman and Shri Sanghi. He has strongly contented that the suit of the plaintiffs did not deserve to be dismissed on account of failure by the solicitors to take appropriate steps in effecting the amendment of the plaint. Mr. Ganguli has submitted that the plaintiffs being not conversed with the special procedures in the carriage of proceedings in the suit in the original civil jurisdiction of the Calcutta High Court engaged a reputed firm of solicitors. It is evident that the plaintiffs could not afford taking risk of getting the suit dismissed by following dilatory tactics because the stake in the suit is quite high for the plaintiff. Mr. Ganguli has submitted that unfortunately the appeals were dismissed by the High Court by not appreciating that the laches and negligence were not directly attributable to the plaintiffs but they fell victim to laches and negligence of their solicitors. He has also submitted that after the changes of the solicitors, the new solicitors found other relevant facts and circumstances which not being made known to the plaintiffs, could not be placed for court's consideration earlier. Such facts amply demonstrate the bona fide on the part of the plaintiffs in proceeding with the suit. Mr. Ganguli has also submitted that the High Court even though dismissed the appeals, considered such further materials in disposing review applications and became satisfied that the dismissal of the appeals was not warranted and the plaintiffs did not deserve to be

victimised. The review application were accordingly allowed.

17. Mr. Ganguli has submitted that the Court has always an anxiety to ensure that the justice does not get defeated in the vortex of technically of procedural law. Mr. Ganguli has also submitted that application for special leave to appeal before this Court cannot be treated as preferring an appeal for the purpose of Order 47 Rule 1 of the Code of Civil Procedure. He has submitted that the remedy sought by making an application under Article 136 of the Constitution before this Court is an extraordinary remedy and not a remedy by way of preferring an appeal before this Court. In this connection, Mr. Ganguli has referred to a decision of this Court in Laxman Marotrao Navakhare v. Keshavrao. In the said decision, it has been held by this Court that Article 136(1) of the Constitution confers on the Supreme Court overriding and extensive powers of granting special leave to appeal. It does not confer a right to appeal. It confers a right to apply for special leave to appeal which is in the discretion of the Court. The discretionary power under Article 136 cannot be construed as to confer a right to appeal where none exists. Although the power under Article 136(1) is unfettered, but it cannot be held that after having entertained a special leave petition against any final or interlocutory order, the Supreme Court converts itself into a court of appeal for the hearing of the dispute involved.

18. Mr. Ganguli has submitted that as the special leave petition stands entirely on a different footing and it cannot be deemed to be an appeal before a superior court, the plaintiffs had justification in not mentioning the factum of presenting special leave petitions before this Court in review applications. Such non-disclosure of the factum of presenting special leave petitions before filing the review applications, therefore, cannot be held to be a sharp practice designed to keep back from the High Court a relevant fact which was required to be considered in the context of maintainability of the review application. Mr. Ganguli has submitted that when the High Court became satisfied that gross injustice was meted out to the plaintiffs for laches and negligence not attributable to them and on such considerations restored the appeal by allowing the review applications, this Court, in its discretionary jurisdiction, should not interfere with the impugned order more so when such order has advanced the cause of justice instead of hindering the same. Mr. Ganguli has, therefore, submitted that the appeals should be dismissed.

19. Having considered the facts and circumstances of the case and the orders dismissing the appeals and also the impugned judgment allowing the review applications by the High Court and having given our anxious consideration to the respective contentions of the learned Senior Counsel forcefully placed before us, it appears to us that the plaintiffs failed and neglected to take proper steps in the carriage of proceedings of the suit. The plaintiffs filed Suit No. 531 of 1981 in the ordinary original civil jurisdiction of the Calcutta High Court. An application for interim injunction was made by the plaintiffs for restraining the defendants, namely, the vendors of the suit property from dealing with or disposal of the suit premises and on such application, an ad interim order was passed in favour of the plaintiffs. On 20-7-1981, the interlocutory application appeared as New Motion when the defendants appeared and submitted before the High Court that the suit premises had already been transferred to a third party, namely, M/s. Kabari Pvt. Ltd. The defendants (vendors) also disclosed to the Court that by four separate deeds of conveyance all dated 6-7-1981, the suit premises had been conveyed to M/s. Kabari Pvt. Ltd. As the property in question had been conveyed prior to the institution of the suit, the plaintiffs felt the need to implead M/s. Kabari Pvt. Ltd. also as a defendant in the said suit and they made an application for amendment of the plaint for incorporating facts not pleaded and also for moulding the prayer. As far back as in July 1982, the Court, after hearing the parties, allowed an application for amendment of the plaint and restrained M/s. Kabari Pvt. Ltd. from alienating or encumbering the disputed premises. Pursuant to

the leave granted for amendment of the plaint, a writ of summons was directed to be issued on 14-7-1982 to M/s. Kabari Pvt. Ltd. It may be noted here that M/s. Kabari Pvt. Ltd. instituted a suit for eviction of the plaintiffs in the Court of learned Subordinate Judge at Alipore because the plaintiffs were in possession of the disputed property as tenants. In view of the pendency of the said Suit No. 531 of 1981 in the ordinary original civil jurisdiction of the Calcutta High Court wherein the purchaser M/s. Kabari Pvt. Ltd. was restrained from alienating and encumbering the disputed property, the suit for eviction was also transferred to the High Court. Such suit is also pending in the High Court.

20. It is quite apparent, in the facts of the case, that the amendment which was sought for by the plaintiffs was required to be incorporated otherwise no effective relief could be given to the plaintiffs in the said Suit No. 531 of 1981. For effective relief in the said suit, the transfer of the disputed property in favour of M/s. Kabari Pvt. Ltd. is required to be set aside. Otherwise, no decree for specific performance of contract for selling the said property in favour of the plaintiffs can be passed. In the aforesaid facts, the amendment of the plaint is essential for the maintainability of the suit. The contention that the suit was not required to be dismissed but the same may proceed without the amendment is misconceived and without any substance.

21. Even if it is accepted that the plaintiffs having engaged a reputed firm of solicitors had justification in proceeding with the view that the carriage of proceedings required to be taken in the suit must have been taken properly by their solicitors, there was no occasion for the plaintiffs to depend on the solicitors when on 8-8-1991 the plaintiffs had admittedly been informed by the solicitors that the suit had been placed in the scrutiny list for not taking appropriate steps in effecting the amendment during the long span of ten years. It is an admitted position that the plaintiffs were not only fully aware of such gross laches and negligence but according to the plaintiffs, they being aware of such laches and negligence expressed shock and anguish for the inaction on the part of their solicitors. After 8-8-1981 the said suit appeared before the Senior Master of the High Court on a number of occasions but even then application for extension of time for effecting amendment was not made by the plaintiffs immediately. It is only on 10-10-1991, such an application was moved in Court but such application was rightly dismissed by the Court on 13-3-1992. In our view, Mr. Nariman and Mr. Sanghi are fully justified in contending that when the plaintiffs admittedly came to know that their solicitors miserably failed to take appropriate steps in the suit for which the suit was liable to be dismissed, even then they did not take diligent steps.

22. The plaintiffs also did not change their solicitors even when the suit was dismissed. On the contrary, they retained the solicitors for the purpose of preferring the appeals, both against the order dismissing the application for extension of time and also against the order of dismissal of the suit itself. The contention of the learned counsel for the appellants that the bogey of laches and negligence on the part of the solicitors of the plaintiffs by keeping the innocent plaintiffs in darkness and alleged discovery of further materials only after the change of solicitors has been raised designedly, does not appear to be ill-founded. It did not appeal to the High Court that the plaintiffs became victim of the alleged laches and negligence on the part of the solicitors and they had been kept in darkness about such laches and negligence despite their best intention to be diligent and sincere in the carriage of proceedings of the said suit. On a clear finding that the plaintiffs were guilty of gross negligence in the carriage of proceedings in the said suit, both the appeals preferred by the plaintiffs-appellants were dismissed by the Division Bench of the High Court. It is quite apparent and evident that in view of clear findings of the High Court about gross negligence and laches of the plaintiffs in dismissing the said appeals, the plaintiffs, as a last resort, filed special leave petitions before this Court and did not think of filing the review applications.

23. Considering the facts of the case, we have no hesitation to hold that only at a later stage, the plaintiffs filed the review applications before the High Court on false and fabricated premises that after change of the solicitors, they could come to know about some relevant facts which could not be placed before the High Court on earlier occasions and accordingly review applications had been filed. It appears to us that at no point of time, the plaintiffs intended to change the solicitors and the said solicitors were retained not only for the purpose of preferring the appeals but they continued to act as solicitors of the plaintiffs till appeals were dismissed on contest. The contention of the appellants before us that the plaintiffs designedly changed the solicitors to put forth false and fabricated plea of discovery of some relevant materials only after change of solicitors, in an attempt to make some ground for review applications, is wholly justified. In our view, in any event, all relevant facts could be known to the plaintiffs if they had intended to know such facts seriously. There was also no impediment to change the solicitors earlier. In the facts of the case, it appears to us that there was no genuine occasion for filing the review applications. Such review application based on false and fabricated premises deserved to be dismissed in limine. The impugned order allowing the review applications has occasioned a grave failure of justice. We, therefore, feel no hesitation in setting aside the impugned order on merits by allowing the appeals.

24. In our review, there is force in the contention of the learned counsel for the appellants that the expression "from which an appeal is allowed" appearing in clause (a) of Order 47 Rule 1 of the Code of Civil Procedure, should be construed liberally keeping in mind the underlying principle involved in Order 47 Rule 1(a) that before making the review applications no superior court has been moved for getting the selfsame relief, so that for the selfsame relief two parallel proceedings before two forums are not taken.

25. As we have held that applications for review are liable to be dismissed even on merits, the question of maintainability of the said applications for review before the High Court on account of filing the special leave petitions assailing the review applications, need not be gone into by further scrutiny as to whether application for leave to appeal under Article 136 of the Constitution stand on such a separate footing that it should not be treated to be an appeal as contemplated under clause (a) of Order 47 Rule 1 of the Code of Civil Procedure even for the purpose of giving liberal construction to the expression "appeal allowed". Such question, therefore, is kept open to be considered in an appropriate case. In the result, we set aside the impugned order of the High Court allowing the review applications by allowing these appeals with cost, assessed at Rs. 10,000 for each of these appeals.