

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.9051-9052 OF 2018 (arising out of SLP (C)
Nos. 4275-4276 of 2017)

OM PRAKASH AGARWAL SINCE DECEASED

THR. LRS. & ORS.

... APPELLANT(S)

VERSUS

VISHAN DAYAL RAJPOOT & ANR.

... **RESPONDENT (S)**

J U D G M E N T

ASHOK BHUSHAN, J.

These appeals have been filed by the appellant(landlord), questioning the judgment of Allahabad High Court in Small Causes Court Revision filed by the respondents(tenant) challenging the decree of eviction passed by Additional District Judge, Firozabad. The issue which has arisen in these appeals pertains to the jurisdiction of Court of Additional District Judge in deciding Small Causes Suit on 22 . 10 .2 016.

2. The facts necessary to be noticed for deciding these appeals are:-

The appellant, the landlord of premises in question filed Judge Small Causes Suit No. 1 of 2008 in the Court of Civil Judge (Senior Division), Small Cause Court, Firozabad praying for decree of eviction, rent and damages. By order dated 05.04.2010 passed by District Judge, the suit was transferred to the Court of District Judge, Firozabad and was registered as S.C.C. Suit No. 1 of 2010. The pecuniary jurisdiction of a Judge, Small Cause Court, which at the time of filing of the suit was Rs.25,000/- was raised from Rs.25,000/- to Rs. 1 lakh w.e.f. 07.12.2005 vide Uttar Pradesh Civil Laws (Amendment) Act, 2015. The Additional District Judge to whom the suit was transferred earlier on the ground that pecuniary jurisdiction of the suit is more than Rs. 25, 000/- i.e. Rs.27,775/-, proceeded to decide the suit vide its judgment and order dated 22.10.2016 and the suit for eviction, rent and compensation was decreed.

Aggrieved against the judgment of Addl. District Judge, revision under Section 25 of the Provincial Small Cause Courts Act, 1887 was filed by the tenant (respondents to this appeal). One of the grounds taken in the revision was that after enactment of Uttar Pradesh Civil Laws (Amendment) Act, 2015, the Court of Additional

District Judge ceased to have any jurisdiction to try the suit between lessor and lessee of a value upto Rs. 1 lakh. The assumption subsequent thereto of the jurisdiction by the Additional District Judge is without jurisdiction.

Some other grounds were also taken for challenging the judgment dated 22.10.2016. The High Court vide its impugned judgment dated 07.12.2016 allowed the Small Cause Court revision taking a view that order passed by Additional District Judge was without jurisdiction in view of Uttar Pradesh Civil Laws (Amendment) Act, 2015 w.e.f. 07.12.2015, after which date, such case of valuation of Rs.27,775/- could have been decided by Civil Judge

(Senior Division) working as Judge Small Causes Court. The High Court relied on the earlier judgment of High Court in SCC Revision No. 278 of 2016 – Shobhit Nigam Vs. Smt. Batulan and another

decided on 29.08.2016. The High Court remanded back the Revision for a fresh decision by Small Causes Court presided over by a Civil Judge (Senior Division). The landlord aggrieved by said judgment has come up in this appeal.

3. Shri A.K. Singla, learned senior counsel appearing for the

appellant contended that High Court committed an error in allowing the Revision. It is submitted that Uttar Pradesh Civil Laws (Amendment) Act, 2015 w.e.f.

07.12.2015 has only enhanced the jurisdiction for institution of small causes suit, which amendment shall have no effect on the pending cases. In the Uttar Pradesh Civil Laws (Amendment) Act, 2015, there was no stipulation that pending cases of having valuation of more than Rs.25,000/- before the Court of District Judge should be transferred. He submits that no objection to the pecuniary jurisdiction of Additional District Judge was taken by the respondents before the Additional District Judge, hence by virtue of Section 21 of the Civil Procedure Code, they were estopped from taking any such objection in the Revision.

4. Shri S.U. Khan, learned counsel appearing for the respondents refuting the submission of the appellant contends that the Uttar Pradesh Civil Laws (Amendment) Act, 2015 w.e.f. 07.12.2015, uses the word "cognizance". If a suit is cognizable by a Court then the Court has got the jurisdiction not only to receive the plaint but also to decide the suit. After the amendment by Uttar Pradesh Civil Laws (Amendment) Act, 2015, the Court of Additional District Judge was not only debarred from

receiving complaints but was also not competent to decide Small Causes Suit, which has valuation upto Rs. 1 lakh. To the view taken by the High Court in Shobhit Nigam's case (supra), there is a contrary view taken by the High Court in Pankaj Hotel Vs. Bal Mukund, (2018) 1 ALJ 2017. The principles and objections of pecuniary jurisdiction as contemplated in Section 21(2) is not attracted in the present case. In Shobhit Nigam's case (supra) High

Court had issued a general direction for transferring of Regular Judge Small Causes Court Suits upto valuation of Rs. 1 lakh to the Civil Judge(Senior Division). He

submits that specialleave petition deserves to be dismissed.

5. From the above submissions of learned counsel for the parties and the pleadings on record, following are the issues, which arise for consideration in this appeal:

- (i) Whether the Uttar Pradesh Civil Laws (Amendment) Act, 2015 is only prospective in nature and confined only to the fresh

institution of suits in the Court of Civil Judge (Senior Division) w.e.f. 07.12.2015 upto valuation of Rs. 1 lakh and shall not affect the cognizance/hearing of pending suits upto the valuation of Rs. 1 lakh pending in the Court of District Judge/Additional District Judge?

- (ii) Whether the Court of District Judge/Additional District Judge, which Court was vested with the jurisdiction of Small Causes suit of the valuation of more than Rs.25,000/- w.e.f. 08.02.1991 shall cease to have or could have still exercised the pecuniary jurisdiction on the Small Causes Suits of Valuation upto Rs. 1 lakh?
- (iii) Whether respondents (tenants) having not raised any objection regarding jurisdiction of the Court of Additional District Judge where the suit was pending after amendments made by Uttar Pradesh Civil Laws (Amendment) Act, 2015, the respondent (tenant) is precluded to question the competence of the Court of Additional District Judge to decide the suit vide his judgment dated 22.10.2016 in view of Section 21 of Code

of Civil Procedure, 1908 in revision filed under Section 25 of the Provincial Small Causes Court Act?

6. Before we proceed to consider the issues, which has arisen for consideration in this appeal, it is useful to refer the relevant statutory provisions relevant for the subject.

7. Two enactments namely (i) The Bengal, Agra, Assam Civil Courts Act, 1887 and (ii) The Provincial Small Causes Courts Act, 1887, were passed with regard to constitution, jurisdiction of Civil Courts in the then North-Western Provinces both being enforced w.e.f.

01.07.1887. The Bengal, Agra and Assam Civil Courts Act, 1887 was enacted to consolidate and amend the law relating to Civil Courts in Bengal, the North-Western Provinces and Assam. Section 3 of the Act provides for Constitution of Civil Courts. Section 4 relates to number of District Judges, Subordinate Judges and Munsifs. Section 17 dealt with continuance of proceeding of Courts ceasing to have jurisdiction.

Section 18 dealt with extent of original jurisdiction of District or Subordinate Judge (for the State of Uttar

Pradesh, the word "Subordinate" was substituted with the word "Civil"). Section 19 dealt with extent of jurisdiction of Munsif. Section 19 as applicable in the State of Uttar Pradesh was substituted by U.P. Act No. 17 of 1991 was to the following effect:-

"19(1) Save as aforesaid, and subject to the provisions of sub-section(2), the jurisdiction of a Munsif extends to all like suits of which the value does not exceed ten thousand rupees.

(2) The High Court may direct by notification in the official Gazette, with respect to any munsif named therein, that his jurisdiction shall extend to all like suits of such value not exceeding twenty five thousand rupees as may be specified in the notification."

8. Section 25 deals with power to invest

Subordinate

Judges and Munsifs with Small Cause Court Jurisdiction.

Section 25 of the Act as applicable in the State of

Uttar Pradesh is as follows: -

"[25.[1] The High Court may by notification in the official Gazette, confer within such local limits as it thinks fit, upon any Civil Judge or Munsif, the jurisdiction of a Judge of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887 for the trial of suits cognizable by such Courts up to such value not exceeding five thousand rupees as it thinks fit, and may withdraw any jurisdiction so conferred:

Provided that in relation to suits of the nature referred to in the proviso to sub-section (2) of Section 15 of the said Act, the reference in this sub-section to five thousand rupees shall be construed as reference to twenty- five thousand rupees.]

[(2) The High Court may, by notification in the Official Gazette, confer upon any District Judge or Additional District Judge the jurisdiction of a Judge of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887, for the trial of all suits (irrespective of their value), by the lessor for the eviction of a lessee from a building after the determination of his lease, or for the recovery from him of rent in respect of the period of occupation thereof during the continuance of the lease or of compensation for the use and occupation thereof during the continuance of the lease or of compensation for the use and occupation thereof after such determination of lease, and may withdraw any jurisdiction so conferred.

Explanation - For the purposes of this subsection, the expression 'building' has the same meaning as in Article (4) in the Second Schedule of the said Act.]

[(3)]x x x]

[(4) Where the jurisdiction of a Judge of a Court of Small Causes is conferred upon any District Judge of Additional District Judge by notification under section, then, notwithstanding anything contained in section 15 of the Provincial Small Cause Courts Act, 1887, all suits referred to in sub-section (2) shall be cognizable by Court of Small Causes.]"

9. The Provincial Small Cause Courts Act, 1887 was enacted to

consolidate and amend the law relating to courts of small causes established beyond the Presidency town. AS the name suggests, the Provincial Small Cause

Courts Act 1887 was enacted to deal with "Small Causes".

The Object of the Act was to create a separate court for dealing with small causes. The object obviously was that

small causes may be dealt with expeditiously. A summary procedure was also envisaged for dealing with small

causes. The Presidency Small Cause Courts Act, 1882 was already in place in Calcutta, Bombay and Madras. In

this country, before the Provincial Small Cause Courts Act 1887 was enacted, there were different legislations

applicable in different areas with the same object,

i.e., to deal with cases of small causes effectively and

summarily. The Statement of Objects and Reasons of

Provincial Small Cause Courts Act 1887 was to the

following effect:-

"The suits cognizable in Courts of Small Causes are subject to certain provisos, described in Section 6, Act XI of 1865, as "claims for money due on bond or other contract, or for rent, or for personal property, or for the value of such property, or for damages, when the debt, damage or demand does not exceed in amount or value the sum of five hundred rupees whether on balance of account or otherwise"

and Sec. 586 of the Code of Civil Procedure provides that "no second appeal shall lie in any suit of the nature cognizable in Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed five hundred rupees". Since Section 6 of the Act of 1865 was enacted, a vast quantity of case-law has grown up around it, and, as the rulings of the Courts have not been uniform, doubts constantly arise on the question whether a suit is or is not a suit of the nature cognizable by a Court of Small Causes, and, consequently, whether or not, where the suit is of value not exceeding five hundred rupees and the original decree made in it was not final but was open to appeal, an appeal will also lie from the appellate decree in the suit. It appears to the Government of India that the conflicting constructions placed on Section 6, of which some are due to the progress of legislation during the last twenty years (ILR 3 All 66), render a more accurate definition necessary of the suits of which Courts of Small Causes may take cognizance, and that legislation to this end should follow Sections 18 and 19 of the Presidency Small Cause Courts Act, 1882, in declaring the jurisdiction of those Courts to extend to all suits of a civil nature, subject to specified exceptions. This Bill has accordingly been prepared, its primary object being to remove the doubts now felt as to the effect of Section 6, Act XI of 1865; and, as several sections and parts of sectionsof that Act have, from time to time, been repealed and other sections are obsolete as regards both expression and utility, it has been considered desirable to repeal the Act and re-enact the substance of the extant portionsof it" - Gazette of India, 1886, Part V, page 8."

10. Black's Law Dictionary has referred to "Small

Claims Court", which explained it in following manner:-

"A court that informally and expeditiously

adjudicates claims that seek damages below a specified monetary amount, usu. claims to collect small accounts or debts.— Also termed small-debts court; conciliation court."

11. The object as is delineated from Statements of Objects of enactment was to provide for speedy machinery for small claims. Although, Code of Civil Procedure is applicable by virtue of Section 17 of Small Causes Courts Act, but the Code of Civil Procedure itself in Order L provides a simplified procedure excluding various rules and orders of the C.P.C. for small causes cases. Order L of the C.P.C. is as follows:-

"1. Provincial Small Cause Courts - The provisions hereinafter specified shall not extend to Courts constituted under the Provincial Small Cause Courts Act, 1887 (9 of 1887)[or under the Berar Small Cause Courts Law, 1905] or to Courts exercising the jurisdiction of a Court of Small Causes [under the said Act or Law], [or to Courts in [any part of India to which the said Act does not extend] exercising a corresponding jurisdiction] that is to say-

(a) so much of this Schedule as relates to-

- (i) suits excepted from the cognizance of a Court of Small Causes or the execution of decrees in such suits;
- (ii) the execution of decrees against immovable property or the interest of a partner in partnership property;
- (iii) the settlement of issues; and

(b) the following rules and orders:-

Order II, rule 1 (frame of suit);

Order X, rule 3 (record of examination of parties);
 Order XV, except so much of rule 4 as provides for the pronouncement at once of judgement;
 Order XVIII, rules 5 to 12 (evidence);
 Orders XLI to XLV (appeals);
 Order XLVII, rules 2, 3, 5, 6, 7 (review);
 Order LI."

12. Section 5 provided for establishment of small causes courts by the State Government. Chapter III of the Act deals with "Jurisdiction of Courts of Small Causes". Section 15 of the Act provides: -

15. **Cognizance of suits by Courts of Small Causes-(1)** A Court of Small Causes shall not take cognizance of the suits specified in the Second Schedule as suits expected from the cognizance of a Court of Small Causes.
 (2) Subject to the exceptions specified in that Schedule and to the provisions of any enactment for the time being in force, all suits of a civil nature of which the value does not exceed five hundred rupees shall be cognizable by a Court of Small Causes.
 (3) Subject as aforesaid, the [State Government] may, by order in writing, direct that all suits of a civil nature of which the value does not exceed one thousand rupees shall be cognizable by a Court of Small Causes mentioned in the order."

13. The Uttar Pradesh Civil Laws (Amendment) Act, 1972

(U.P. Act No. 37 of 1972) was enacted by Uttar Pradesh Legislature with the Presidential assent. The Statement of Objects and Reasons of U.P. Act No. 37 of 1972, which are relevant for understanding the Scheme and purpose of the amendment are to the following effect:-

"Prefatory Note—Statement of Objects and Reasons.—(1) The Provincial Small Cause Courts Act, 1887, provides for a summary procedure in the trial of suits. Moreover, the decisions of such courts are not appealable, and only one revision is provided. However such courts cannot take cognizance of suits for possession of immovable property. By a recent amendment contained in Section 20(6) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U. P. Act XIII of 1972), eviction suits against the tenant after the expiration of his tenancy have been taken out from the purview of this exception and have been made cognizable by the small cause courts. This has been done because in such suits the issues are usually simple.

In cases where the question of title comes to be in issue, a small cause court has power to return the plaint for presentation to a regular court. It is now proposed to delete the aforesaid amendment from U. P. Act XIII OF 1972, and instead, to incorporate a wider amendment directly in the Provincial Small Causes Court Act, 1887, so that all buildings, and not merely those buildings which are governed by U. P. Act XIII of 1972 , may be covered thereby. It is further proposed that in respect of such suits the ordinary small cause courts may be conferred jurisdiction to decide cases of a value up to Rs. 5,000 (instead of only Rs. 2 ,000 in some districts and Rs.1,000 in most districts, as at present) and that cases of a higher value may be decided by District

Sections 2, 3 and 4 of the U.P. Act No. 37 of

1972

provides as follows:-

"2. Amendment of Section 15 of Act IX of 1887.-- In Section 15 of the Provincial Small Cause Courts Act, 1887, as amended in its application to Uttar Pradesh, hereinafter referred to as the principal Act, in sub-section (3), the following proviso shall be inserted, namely:

"Provided that in relation to suits by the lessor for the eviction of a lessee from a building after the determination of his lease, or for recovery from him of rent in respect of the period of occupation thereof during the continuance of the lease, or of compensation for the use and occupation thereof after such determination of lease, the reference in this sub-section to two thousand rupees shall be construed as a reference to five thousand rupees.

Explanation.--For the purposes of this sub-section, the expression 'building' has the same meaning as in Article (4) in the Second Schedule."

3. Amendment of Section 25 of Act IX of 1887.-- In Section 25 of the principal Act the following proviso thereto shall be inserted, namely :

"Provided that in relation to any case decided by a District Judge or Additional District Judge exercising the jurisdiction of Judge of Small Causes, the power of revision under

this section shall vest in the High Court."

4. Amendment of the Second Schedule to Act IX of 1887.-- In the Second Schedule to the principal Act, for Article (4) the following Article shall be substituted, namely :

"(4) a suit for the possession of immovable property or for the recovery of an interest in such property, but not including a suit by a lessor for the eviction of a lessee from a building after the determination of his lease, and for the recovery from him of compensation for the use and occupation of that building after such determination of lease.

Explanation.--For the purposes of this Article, the expression 'buildings, means a residential or non-residential roofed structure, and includes any land (including any garden), garages and out-houses, appurtenant to such building, and also includes any fittings and fixtures affixed to the building for the more beneficial enjoyment thereof."

16. One more amendment, which was affected by U.P. Act No. 37 of 1972 was amendment in Section 25 of Bengal, Agra and Assam Civil Courts Act, which was made by

Section 5 of the Act, which is to the following effect:-

"5. Amendment of Section 25 of Act XII of 1887.- Section 25 of the Bengal, Agra and Assam Civil Courts Act, 1887, as amended in its application to Uttar Pradesh shall be renumbered as subsection (1) thereof, and--

(i) in sub-section (1), as so renumbered, for the existing proviso, the following proviso shall be substituted, namely :

"Provided that in relation to suits of the nature referred to in the proviso to sub-section (3) of Section 15 of the said Act the references in this sub-section to one thousand rupees and five hundred rupees shall be construed respectively as references to five thousand rupees and one thousand rupees."

(ii) after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely :

"(2) The State Government may by notification in the official Gazette, confer upon any District Judge or Additional District Judge the jurisdiction of a Judge of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887, for the trial of all suits (irrespective of their value), by the lessor for the eviction of a lessee from a building after the determination of his lease, or for the recovery from him of rent in respect of the period of occupation thereof during the continuance of the lease or of compensation for the use and occupation thereof after such determination of lease, and may withdraw any jurisdiction so conferred.

Explanation--For the purposes of this sub-section, the expression 'building' has same meaning as in Article (4) in the Second Schedule to the said Act.

(3) The State Government may by notification in the official Gazette delegate to the High Court its powers under this

section.”

17. As noted above, the jurisdiction of Small Causes Court in so far as State of Uttar Pradesh was concerned was to be vested in both in the Court of Munsifs [now known as Civil Judge (Junior Division)] and Civil Judge [now designated as Civil Judge (Senior Division)]. As noted above, Court of Small Causes were empowered to take cognizance of small causes having particular pecuniary jurisdiction only. Section 25 of the Bengal, Agra and Assam Civil Courts Act, 1887 empowered the State Government by notification to confer upon any Subordinate Judges and Munsifs with jurisdiction of Small Cause Court for the trial of suits and cognizance of such suits upto the value as fixed in the Act.

Section 25 of the Bengal, Agra and Assam Civil Courts Act, 1887 as applicable in the State of Uttar Pradesh has been amended as has been noticed above, where the High Court exercising power under Section 25(2) of the Bengal, Agra & Assam Civil Courts Act, 1887 can confer upon any District Judge or Additional District Judge the jurisdiction of a Judge of Small Causes Court for the trial of all

suits(irrespective of their value), by the lessor for the eviction of a lessee of a building after the determination of his lease.

18. In Section 15 of Provincial Small Cause Courts Act, for sub-section (2) and (3), following was substituted by U.P. Act 17 of 1991 w.e.f. 15.01.1991:-

"(2) Subject to the exceptions specified in that Schedule and to the provisions of any enactment for the time being in force, all suits of a civil nature of which the value does not exceed five thousand rupees shall be cognizable by a Court of Small Causes;

Provided that in relation to suits by the lessor for the eviction of a lessee from a building after the determination of his lease or for recovery from him of rent in respect of the period of occupation thereof during the continuance of the lease, or of compensation for use and occupation thereof after the determination of the lease, the reference in this sub-section to five thousand rupees shall be construed as a reference to twenty-five thousand rupees.

Explanation- For the purposes of this subsection, the expression 'building' has the same meaning as in Art.(4) in the Second Schedule."

19. Section 17 of the Act makes the Code of Civil

Procedure applicable to the Court of Small Causes in all

suits cognizable by it and all proceedings arising out of all such suits. By Uttar Pradesh Civil Laws (Amendment) Act, 2015 w.e.f. 07.12.2015, Section 19, Section 21 of the Bengal, Agra and Assam Civil Courts Act, 1887 and Section 15 of Provincial Small Cause Courts Act, 1887, were amended. The act contains only four sections which is to the following effect: -

"AN ACT further to amend the Bengal, Agra and Assam Civil Courts Act, 1887 and the Provincial Small Cause Courts Act -1887 in their application to Uttar Pradesh.

IT IS HEREBY enacted in the Sixty-sixth year of Republic of India as follows:-

*CHAPTER - I
PRELIMINARY*

1. (1) *This Act may be called the Uttar Pradesh Civil Laws (Amendment) Act, 2015,*
- (2) *It shall extend to whole of Uttar Pradesh.*

CHAPTER - II

Amendment of Bengal, Agra and Assam, Civil Courts Act-1887.

2. *Bengal, Agra and Assam, Civil Courts Act- 1887 hereinafter in this chapter referred to as the principal Act,-*

(a) *in sub-section (1) for the words "ten thousand rupees" the words "one lakh rupees" shall be substituted;*

(b) *in sub-section (2) for the words "twenty five thousand rupees" the words "five lakh rupees" shall be substituted.*

3. In section 21 of the principal Act, in sub-section (1), in clause (b)-

(a) for the words "one lakh rupees" the words "five lakh rupees" shall be substituted; and

(b) for the words "five lakh rupees" the words "twenty five lakh rupees" shall be substituted.

CHAPTER - III

Amendment of the Provincial Small Cause Courts Act, 1887

4. In Section 15 of the Provincial Small Cause Courts Act, 1887,-

(a) in sub-section(2) for the words "five thousand rupees" the words "twenty five thousand rupees" shall be substituted;

(b) in the proviso to sub-section (2) for the words "twenty five thousand rupees" the words "one lakh rupees" shall be substituted."

20. By the above amendment in the Provincial Small Cause Courts Act, 1887 the limit of pecuniary jurisdiction of small causes court was increased from Rs.25,000/- to Rs.1 Lakh. The Judge, Small Causes Court in the State of U.P. is senior-most Civil Judge, working in the district. Although the Court of Small Causes was empowered to take cognizance of a suit upto the valuation of Rs.1 lakh w.e.f. 07 . 12 .2015, the suit in question namely Small Causes Suit No.1 of 2010 which was pending in the Court of Additional District Judge, Firozabad continued to proceed in the court of Additional District

Judge. None of the parties raised any objection with regard to hearing of suit by Additional District Judge, consequently, the Additional District Judge heard the parties and by judgment dated

22.10.2016 decreed the suit for eviction and due rent & compensation. The tenant aggrieved by the judgment of Additional District Judge filed a revision under Section 25 of Provincial Small Cause Courts Act, 1887, before the High Court.

21. One of the grounds taken before the High Court was that in view of the U.P. Civil Laws (Amendment) Act, 2015, the Court of Additional District Judge ceased to have jurisdiction to try suit between lessor and lessee of value upto Rs.1 Lac w.e.f. 07.12.2015, assumption of jurisdiction subsequent thereto, is without jurisdiction.

22. The High Court accepted the above submissions raised by learned Counsel for the respondent *vis-a-vis* and decreed the suit and allowed the revision by remanding the suit for fresh decision before Small Causes Court presided by Civil Judge,

Senior Division. Following are the reasons given by the High Court for allowing the revision:-

*"...The controversy as to the jurisdiction of the Judge Small Causes Court has been decided by this Court, vide judgment dated 29.08.2016 passed in SCC Revision No.278 of 2016, **Shobhit Nigam Vs. Smt. Batulan and another.***

It has been held that consequent to the amendment, in Section 15 of the Provincial Small Causes Court Act, an SCC Suit having a valuation between Rs.25,000/- to Rs.1 lac shall lie before the Small Cause Court presided over by a Civil Judge (Senior Division). The suits having a valuation of more than Rs.1 Lac would lie before the Additional District Judge/District Judge constituting a Small Causes Court.

Shri Satendra Kumar-I, who has filed their counter affidavit in Court today, has not been able to effectively rebut the submissions made by the counsel for the revisionist.

Under the circumstances, this Court finds that the order impugned is without jurisdiction and is hereby set aside. The SCC revision is allowed...
"

23. Now we proceed to consider the issues which have arisen in the present appeals:-

24. Prior to Uttar Pradesh Civil Laws (Amendment) Act, 2015, as per Section 15(2) of Provincial Small Cause Court, 1887 as applicable in the State of Uttar Pradesh in relation to suits by lessor for eviction of lessee from building after determination of his lease after recovering from him of rent, the Court of Small Causes would have taken cognizance of suits value of which does not exceed Rs.25, 000/-. The suit was filed with the valuation of Rs.21,175/-. The Suit was initially filed in the Court of Civil Judge, Senior Division, Small Cause Court, Firozabad. Plaintiff filed a application for amendment which was allowed permitting the valuation to be enhanced to Rs.27,775/-. The suit thereafter was transferred to the Court of District Judge and renumbered as S.C.C.Suit No.1 of 2010.

25. The main issue to be answered is as to whether after 07.12.2015, the court of Additional District Judge where the suit in question was pending could still have pecuniary jurisdiction to decide the suit or suit ought to have been transferred back to the court of Civil Judge, Senior

Division.

26. The High Court while in allowing the revision has relied on an earlier judgment of the High Court in ***Shobhit Nigam vs. Smt. Batulan and another (supra)***.

27. In above case also the valuation of small causes suit was Rs.44 ,000/- and the suit was pending in the court of Additional District Judge who after U.P. Civil Laws (Amendment) Act, 2015 proceeded to decide the suit wide its judgment dated 24.05.2016. S.C.C. Revision filed in the High Court, the same very argument was pressed that the order of Additional District Judge is without jurisdiction. The High Court noticed the provisions of Section 15 of the Provincial Small Causes Courts Act, the U.P. Civil Laws (Amendment) Act, 2015 and had also taken note of the objects and reason of U.P. Civil Laws (Amendment) Act, 2015. The High Court held that the phrase "institution" as occurring in the objects and reasons does not confine to institution of civil suits only and after the amendment w.e.f. 07.12.2015, rather, District Judge and Additional District Judge could have no

jurisdiction to decide suits having valuation of less than Rs.1 lac and their jurisdiction shall be only with regard to those cases which has valuation of over Rs.1 lac. The High Court in **Shobhit Nigam's Case** held that assumption of jurisdiction of Additional District Judge deciding the suit having valuation of Rs.44,000/- is illegal and set aside the judgment. In **Shobhit Nigam's case**, the High Court also directed that copy of judgment be circulated to all District Judges of U.P. for necessary compliance to ensure that all pending suits of rent and eviction from a building after determination of lease falling under proviso to Section 15(2) of the Act upto the valuation of Rs.1,00,000/- be transferred to the Small Causes Court presided over by the senior most Civil Judge, Senior Division of the district irrespective of the date of their institution.

28. Learned Counsel appearing for the respondent submitted that judgment of **Shobhit Nigam's case** does not lay down the correct law. He has relied on another judgment of learned Single Judge decided on 30.08.2017 in S.C.C. Revision No.171

and 172 of 2017, **Pankaj Hotel and others vs. Bal Mukund and others**. Learned Single Judge who decided the case of **Pankaj Hotel and others** took the contrary view and held that U.P. Civil Laws (Amendment) Act, 2015 is only prospective in nature and was applicable with regard to institutions of fresh suits only. In the suits pending, the Court of District Judge/Additional District Judge continued to have pecuniary jurisdiction to decide Small Causes Suits upto the valuation of Rs.1 lac even after U.P. Civil Laws (Amendment) Act, 2015 enforced w.e.f. 07.12.2015. Learned Single Judge referred to an earlier judgment in S.C.C. Revision defective No. 76 of 2017, **Sanjay Sharma alias Pintu vs. Anil Dua alias Titu**, decided on 13.07.2017 where learned Single Judge had taken a contrary view to the judgment of learned Single Judge in **Shobhit Nigam's Case (Supra)**.

29. One of the issues, which has to be answered is as to whether the Court of Additional District Judge, which has been invested with the jurisdiction of Small Causes

Court after amendment by Uttar Pradesh Civil Laws (Amendment) Act, 2015 could still have proceeded to decide the Small Causes Suit w.e.f. 07.12.2015, which suits became cognizable by a Judge Small Causes Court, i.e., a Court presided by a Civil Judge. For answering the above issue, we need to find out the Scheme of Small Cause Courts Act.

30. As noticed above, Small Cause Courts were envisaged to be Courts, which may expeditiously dispose of small causes. Small causes were contemplated to be disposed of by the Courts by following the procedure less cumbersome as compared to those applicable in the regular civil courts. By U.P. Act No. 37 of 1972, the cases by a lessor for eviction of lessee and for recovery of rent in respect of the period of occupation was also taken in fold of small causes, which could be taken cognizance by Small Causes Court after amendment of Clause (4) of Second Schedule of the Provincial Small Cause Courts Act, 1887. The amendment made in Section 25 of the Bengal, Agra & Assam Civil Courts Act, 1887 by

U.P. Act No. 37 of 1972 empowered the State Government to confer upon any District Judge or Additional District Judge power of Judge of Small Causes Court "for the trial of suits irrespective of their value by the lessor

for the eviction of lessee " The above amendment was necessitated since the Court of Small Causes presided by Civil Judge could have entertained small causes suits having value of only five thousand rupees, as per amendment by U.P.

Act No. 37 of 1972 cases by lessor for the eviction of lessee having valuation of more than five thousand rupees could not have been taken

cognizance by Civil Judges, who were designated as Judges of Small Causes Court to take up such cases. When Legislature treated all suits by the lessor for the eviction of lessee from a building as a "Small Cause Suit", a forum had to be created for deciding such cases as small cause cases. The

expression "irrespective of their value" used in Section 25 as amended was with clear intention that irrespective of the value, the cases filed by the lessor for the eviction of lessee should be treated as small causes cases and should be dealt

as a small cause case. By subsequent amendment, the Small Causes Courts presided by Civil Judge become empowered to decide cases of small cause upto twenty- five thousand rupees and cases above twenty-five thousand rupees by lessor against lessee were to be taken cognizance by Court of Additional District Judges. The legislative Scheme contains a clear dichotomy between cases, which could have been taken cognizance by small causes courts presided by Civil Judge and those of small cause cases presided by District Judge or Additional District Judge. The dividing line was only valuation of small cause cases relating to suits by lessor against the lessee. Necessity to empower the District Judge/Additional District Judge to decide small cause cases relating to eviction by lessor against lessee was with the above intent. The Legislature never intended that all cases pertaining to suits by lessor against the lessee of any valuation could be filed in any Small Causes Court.

31. It is true that District Judge or Additional District Judge functioning as Small Causes Courts can take cognizance of all suits irrespective of their

value. But use of the words "irrespective of their value" was in contradiction of the pecuniary value, which was given to Judge of Small Causes Courts presided by Civil Judge. The fact that District Judge or Additional District Judge can take cognizance of all suits irrespective of their value shall not whittle down or dilute the line of separation between two courts in taking cognizance of small cause cases. The mere fact that District Judge or Additional District Judge can take cognizance of suits of unlimited value will not empower them to take cognizance of cases, which, according to statutory Scheme can be taken only by small causes courts presided by Civil Judge. It is relevant to notice that the Allahabad High Court had occasion to consider the provisions of the Provincial Small Cause Courts Act, 1887 as applicable in the State Prades. A reference is made to M.P. Mishra Vs. Sangam Lal Agarwal, AIR 1975 Allahabad 425. In the above case before the Allahabad High Court, a small cause suit was decided by the Additional District Judge, which had valuation of more than five thousand rupees. Arguments

were raised that valuation of small cause case is more than five thousand rupees, hence Additional District Judge could not have decided the case as small cause case rather it ought to have been decided as a normal civil suit. In the above context, provision of U.P. Act No. 37 of 1972 and U.P. Act No. 19 of 1973 by which Section 25 of Bengal, Agra and Assam Civil Courts Act, 1887 was amended by adding another sub-section, i.e. sub-section(4), and the notifications issued by the High Court in above respect were noticed. Paragraph Nos. 5 to 8, which are relevant are as follows:-

"5. By the U.P. Civil Laws Amendment Act of 1973 (President's Act No. 19 of 1973) another sub-section, namely, Sub-section (4) was added to Section 25. The said Sub-section (4) reads as follows :

"Where the jurisdiction of a Judge of a Court of Small Causes is conferred upon any District Judge or Additional District Judge by notification under this section, then, notwithstanding anything contained in Section 15 of the Provincial Small Cause Courts Act, 1887 all suits referred to in Subsection (2) shall be cognizable by Court of Small Causes."

By virtue of Section 1 (3) of the said Act of 1973 it shall be deemed that the said Subsection (4) came into force on the 20th September, 1972, i.e. the date on which the U.P. Civil Laws Amendment Act of 1972 came into force.

6. Certain notifications which have been issued may also be noticed here. Notification No. 4111 (8)/VII-A-580/72, dated September 22, 1972, published in Uttar Pradesh Gazette, dated 30-9-72, Part I (Page 5252), issued by the State Government lays down as under :

"In exercise of the powers conferred by Sub-section (3) of Section 15 of the Provincial Small Cause Courts Act, 1887 (Act IX of 1887) as amended by the U.P. Civil Laws Amendment Act, 1972 (U.P. Act No. 37 of 1972) and in continuation of Government Notification No. 1 (8) 69-Nyaya (Ka-II), dated September 23, 1969, the Governor is pleased to direct, that subject to the exceptions specified in the Second Schedule to the first mentioned Act, and to the Provisions of any enactment for the time being in force, all suite referred to in the proviso to the said sub-section of which the value does not exceed five thousand rupees, shall, with effect from the date of publication of this notification, be cognizable by the Courts of Judge. Small Causes, Bareilly, Moradabad, Meerut, Gorakhpur, Aligarh, Kanpur, Allahabad, Varanasi, Agra, Lucknow, and the Court of additional Judge, Small Causes, Lucknow."

7. The State Government issued another notification on the same day i.e. Sep. 22, 1972 dated September 22, 1972, published in Uttar Pradesh Gazette, Part I, dated October 7, 19 72 (page No. 5973), which lays down as under :

"In exercise of the powers under Sub-section (3) of Section 25 of the Bengal, Agra and Assam Civil Courts Act, 1887 (Act XII of 1887) as amended by the Uttar Pradesh Civil Laws (Amendment) Act, 1972, (U.P.

Act No. 37 of 1972) and in supersession of all earlier notifications issued in this behalf, the Governor is pleased to delegate to the High Court of Judicature at Allahabad the powers of the State Government under the said section."

8. By Notification No. 525 dated 25-10-1972 the High Court conferred "upon all the District Judges and Additional District Judges, the jurisdiction of a Judge of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887 (Act IX of 1887), for the trial of all suits (irrespective of their value) of the nature referred to in the said Sub-section (2)."

32. The High Court also noticed the object and purpose of Uttar Pradesh Civil Laws (Amendment) Act, 1972 and High Court held that Additional District Judge had jurisdiction to take cognizance of cases of valuation of more than five thousand rupees. In Paragraph Nos. 11 and 12, following was stated:-

"11. The amendments which were effected by the U.P. Civil Laws Amendment Act of 1972 were motivated by a consideration that the suits for eviction filed by the lessors against the lessees of buildings took an unduly long time to be finally decided and, therefore, it was thought advisable that such suits should be tried as suits of the nature of small causes suits so that they could be decided expeditiously and there could be no appeal against the decision of the trial Court. This change was sought to be brought about by amending Article 4 of the Second Schedule of the Provincial Small Cause Courts Act so that a suit

by a lessor for the eviction of a lessee from a building after the determination of his lease and for the recovery from him of compensation for the use and occupation of the buildings after such determination of lease

was no longer excepted from the cognizance of the court of small causes. Such suits, therefore, became triable by the Courts of Judge, Small Causes and by virtue of Section 16 of the Provincial they became exclusively triable by such courts. Of course, the limitation on account of the valuation of the suit remained, This limitation was contained in Section 15(2) and in Section 15(3). Ordinarily, the jurisdiction of the Small Causes Court stretched up to Rs.

Small Causes

1,000 under Section 15(2) of the Provincial Small Cause Courts Act. But under Section 15(3) the State raise the pecuniary limit of such jurisdiction to Rs. 5,000 in respect of suits between the lessors and the lessees for eviction of the

Government

latter after the determination of their tenancy from buildings. This result was brought about by the addition of the proviso to Section 15(3) by the U.P. Civil Laws Amendment Act, 1972 . As has been stated, the State Government issued a Notification dated Sept. 22, 1972, whereby the Court of Judge,

Small Causes situated at Bareilly, Moradabad, Meerut, Gorakhpur, Aligarh, Kanpur, Allahabad, Varanasi, Agra, Lucknow and the Court of Additional Judge, Small Causes, Lucknow were empowered to take cognizance of the suits between the lessors and the lessees for the latter's eviction from buildings whose value does not exceed Rs. 5,000. In view of the addition of Sub-section (2) to Section 25 of the Bengal, Agra and Assam Civil Courts Act it became possible to confer upon the District Judge or Additional District Judge the jurisdiction of a Judge of a Court of Small Causes for the trial of suits for eviction of lessees and for recovery of rents and damages (disregarding some minor aspects of the matter). Such a jurisdiction has been conferred upon the District Judges and the Additional District Judges by the aforesaid Notification dated 25-10-1972 issued by this Court.

12. In view of the aforesaid amendments, in the district of Allahabad (from where this revision has arisen) the Court of Judge of Small Causes had a jurisdiction to take cognizance of the suits between the lessors and the lessees in respect of the latter's eviction from buildings provided the valuation of such suits does not exceed Rs. 5,000. If the valuation exceeds Rs. 5,000 then the court of the District Judge and the Additional District Judge who have been empowered to take cognizance of such suits can try the same in the manner in which suits of the Small Cause

Court nature are tried. In Section 25(2), it is clearly stated that the District Judge or the Additional District Judge will have the jurisdiction of a Judge of a Court of Small Causes for the trial of the aforesaid variety of suits irrespective of their value. In my view, if the contention on behalf of the applicant were to be accepted then it will be doing violence to the said expression. Any interpretation which seeks to put a limitation on the valuation of the Suits cognizable by the District Judge or the Additional District Judge will be contrary to the clear expression used in Sub-section (2) of Section 25 "irrespective of their value". Learned counsel for the applicant placed reliance on the pronouncement of the Supreme Court reported in Raja Soap Factory v. S. P. Shantharaj [AIR (1965) SC 1449. In my view, the said pronouncement does not support the contention on behalf of the applicant. Counsel also sought to support his contention by inviting my attention to Sub-section (4) added to Section 25 by the U.P. Civil Laws Amendment

Act of 1973. The said Sub-section (4) has been reproduced above and in the concluding portion

thereof the words used are "..... all suits referred to in Sub-section (2) shall be cognizable by court of Small Causes". It is urged that if the legislative intention were that the District Judge or the Additional District Judge on whom the powers of a Judge of a Court of Small Causes have been conferred should take cognizance of

the aforesaid variety of suits between the lessor and the lessee then in the concluding portion of Subsection (4) the legislature would not have used the words "Court of Small Causes" but would have used the expression "District Judge or

Additional District Judge," counsel contended that there is a distinction between a Court of Small Causes established under the

Provincial Small Causes Court and officers who are invested with the powers of a Judge of Court of Small Causes.

In my opinion this contention is not valid. In *Mt. Sukha v. Raghunath* (AIR 1917 All. 62); *D. D. Vidyarthi v.*

Ram Pearey Lal (AIR1935 All 690); *Badal Chandra v. Srikrishna Dey* (AIR 1929 Cal 354); *Bhagwan Das v. Keshwar Lal* (AIR 1923 Pat 49) and *Narayan Sitaram v. Bhagu* [(1907) ILR 31 Bom 314] it has been laid down that the Courts on which Small Cause Court's powers are conferred shall also be deemed to be Courts of Small Causes. Section 4 of the Provincial Small Cause Courts Act lays down as under:--

"In this Act, unless there is something repugnant in the subject or context, "Court of Small Causes" means a Court of Small Causes constituted under this Act. and includes any person exercising jurisdiction under this Act in any such Court."

It is clear that the expression "Court of Small Causes" has to be interpreted in the context in which the said expression is used. In my view, the expression 'Court of Small Causes' used at the end of subsection (4) of Section 25 really means and refers to a District Judge or Additional District Judge on whom the jurisdiction of a Judge of Small Causes has been conferred."

33. The Allahabad High Court has followed the above judgment in several cases subsequently.

34.

Whether the Additional District Judge, in the facts of the present case, had jurisdiction to take cognizance of small causes suits having valuation upto Rs. 1 lakh and could still have proceeded to decide the suit, whose valuation was less than Rs. 1 lakh? We may also notice provision of Section 15 of the Code of Civil Procedure, which provides that suits shall be instituted in the Court of the lowest grade competent to try it. Section 15 of Code of Civil Procedure is as follows:-

"Every suit shall be instituted in the Court of the lowest grade competent to try it."

35. The purpose of Section 15 is obvious that even though more than one court has jurisdiction to try the suit, it should be instituted in the Court of lowest grade. For example, a small cause case can be instituted in Court of Small Cause presided by Civil Judge having valuation of upto Rs. 1 lakh as on date and small cause suit having valuation of more than Rs. 1 lakh can be instituted in the Court of District Judge or Additional District Judge. As per Section 15

of the Code of Civil Procedure, suit of less than Rs. 1 lakh valuation has to be instituted in Small Causes Court presided by Civil Judge. Although, District Judge or Additional District Judge has unlimited pecuniary jurisdiction but under the legislative Scheme, the suit is not to be taken cognizance by the District Judge or Additional District Judge, which has valuation upto Rs. 1 lakh. Even though if Section 15 of the C.P.C. is a provision, which regulate the institution of suits and does not affect the jurisdiction of Courts, reading the provision of Section 15 alongwith relevant provisions of the Provincial Small Cause Courts Act, 1887 and the Bengal, Agra, Assam Civil Courts Act, 1887, the legislative Scheme is clear that small cause cases should be taken cognizance by Small Cause Courts presided by Civil Judge upto the valuation of Rs. 1lakh and cases having valuation of more than Rs. 1 lakh by District Judge or

Additional District Judge, who have been invested with the power of Small Cause Courts. Unless the above legislative intent and Scheme is followed, there shall be confusion and inconsistency.

The legislative provisions have to be interpreted in a manner, which may advance the object and purpose of the Act. When clear dichotomy regarding taking cognizance of small causes suits presided by Civil Judge and by District Judge or Additional District Judge have been provided for, the said dichotomy and separation to take cognizance of cases has to be followed to further the object and purpose of legislation.

36. In Pankaj Hotel case (supra), the Court took the view that since the Court of District Judge or Additional District Judge, which have been invested with the power of small causes Court had unlimited pecuniary jurisdiction, they can validly adjudicate small causes suits having valuation of less than Rs. 1 lakh even after amendment by Uttar Pradesh Civil Laws (Amendment) Act, 2015, we do not approve the above view. When the Court of District Judge or Additional District Judge could

no longer take cognizance of small cause suits of having less than Rs. 1 lakh valuation, it was no longer in the competence of Small Cause Court presided by District Judge or Additional District Judge to proceed to decide the suit of having valuation of less than Rs. 1 lakh. Proper course was to transfer the cases before a competent court to decide the suits. It is a different matter that the Court of District Judge or Additional District Judge when proceeded to decide the small cause suits after 07.12.2015 of valuation of less than Rs. 1 lakh and neither any objection was raised by either of the parties nor attention of the Court was drawn towards the amendment, Section 21 of the C.P.C. is there to deal with such eventuality, which provision we shall hereinafter deal separately.

37. Learned Single Judge in ***Pankaj Hotels' Case (Supra)***

has referred to and relied on various judgments of this Court which shall be referred to hereinafter.

38. Section 15 of the Provincial Small

Cause Courts

Act, 1887 bears the title "Cognizance of Suits by Courts of Small Causes". Sub-section (1) of Section 15 provides that a Court of Small Causes shall not take cognizance of the suits specified in the Second Schedule as suit excepted from the cognizance of Court of Small Causes. Sub-section (2) (as applicable in Uttar Pradesh) provides that all suits of the civil nature of which the value does not exceed Rs.5,000/- shall be cognizable by Court of Small Causes. As per the proviso to sub-section (2) in relation to suits by lessor for the eviction of lessee from building after determination of lease, the reference of Rs.5,000/- shall be construed as a reference to Rs.25,000/-. The keyword in the provision is "shall be cognizable by Court of Small Causes." What is the meaning of the phrase 'Cognizable by Court of Small Causes'?

39. The word 'Cognizance' has been defined in Black's

Law Dictionary in following manner: -

"Cognizance-

(1) A court's right and power to try and to determine cases; Jurisdiction,

(2) The taking of judicial or
authoritative notice.

40. Advanced Law Lexicon by P.Ramanatha Aiyar defines

'Cognizance' in the following manner: -

"Cognizance Judicial notice or knowledge; the judicial recognition or hearing of a cause; jurisdiction, or right to try and determine causes. It is a word of the largest import: embracing all power, authority and jurisdiction. The word "cognizance" is used in the sense of "right to take notice of and determine a cause." Taking cognizance does not involve any formal action, or indeed action of any kind, but occurs as soon as a Magistrate, as such, applies his mind of the suspected commission of an offence
"

41. This Court in **(2004) 2 SCC 349, State of Himachal**

Pradesh vs. M.P.Gupta, had occasion to consider the

expression 'Cognizance'. The definition of word

'Cognizance' as given in Black's Law Dictionary was

quoted with approval. In paragraph 10 of the judgment,

following was stated: -

"10 .According to Black's Law Dictionary the word "cognizance" means "jurisdiction" or "the exercise of jurisdiction" or "power to try and determine causes". In common parlance, it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during

discharge of his official duty.

42. The statutory provisions of Section 15(2) of Provincial Small Cause Courts Act, 1887 uses the expression "shall be cognizable by the Court of Small Causes". The word 'Cognizable' is a word of wide import. It takes into its fold institution, hearing and decision of a case cognizable by it. In ***Pankaj Hotels Case***, learned Single Judge of the High Court had noted the statement of objects of U.P. Civil Laws (Amendment) Act, 2015 and has given emphasis on word "for institution" and concluded that amendment is prospective in nature and is applicable only to suits and appeals being instituted after the amendment. When the plain word in the statute i.e. Section 15(2) uses the word "cognizable" whether "statements of objects and reasons" which uses the word "institution" shall whittle down, the word 'cognizable' as used in Section 15(2). The statement of objects and reasons of U.P. Civil Laws (Amendment) Act, 2015, are to the following effect: -

"STATEMENT OF OBJECTS AND REASONS

WHEREAS the value of the subject matters brought to the courts has increased substantially, the pecuniary jurisdiction of the Civil Courts as well as those of Small Cause Courts in the State of

Uttar Pradesh requires to be raised for institution of Civil Suits and appeals. It has, therefore, become necessary to amend the Bengal, Agra and Assam Civil Courts Act, 1887 and Provincial Small Cause courts Act, 1887 to increase the pecuniary jurisdiction of Civil Courts and those of small Cause Courts in the State of Uttar Pradesh for securing better administration of Justice.

The Uttar Pradesh Civil Laws (Amendment) Bill, 2015 is introduced accordingly."

43. It is true that statement of objects noticed that value of subject matters brought to the courts has increased substantially, hence, pecuniary jurisdiction of the Civil Courts as well those of Small Causes Courts in State of Uttar Pradesh requires to be raised for the institution of civil suits and appeals. The amendment has raised pecuniary limits in Provincial Small Cause Courts Act, 1887. The statement of objects and reasons explains the reason for increase of pecuniary jurisdiction but use of word 'for institution' in statement of object cannot control the express language of the statutory provisions.

44. A three-Judge Bench of this Court in **S.S. Bola v.**

B.D. Sardana , (1997) 8 SCC 522, has held that statement of objects and reasons of the statute can be looked into only as extrinsic aid to find out the legislative intent

only when the meaning of statute by its ordinary language is obscure and ambiguous. In paragraph 176, following was laid down: -

"176 But it is a cardinal rule of interpretation that the Statement of Objects and Reasons of a statute is to be looked into as an extrinsic aid to find out the legislative intent only when the meaning of the statute by its ordinary language is obscure or ambiguous. But if the words used in a statute are clear and unambiguous then the statute itself declares the intention of the legislature and in such a case it would not be permissible for a court to interpret the statute by examining the Statement of Objects and Reasons for the statute in question."

45. In ***Subha Ram vs. state of maharashtra, (2003) 1 SCC 506***, this court again laid down that statement of objects and reasons can be looked into for limited purpose of ascertaining condition prevailing at the time which prompted or actuated the proposal of bill to introduce the same and the extent of existing evil of the society. Further, in ***Bhaiji vs. Sub-Divisional Officer, (2003) 1 SCC 692***, this court again reiterated the following principles of statutory interpretation in paragraph 11:-

"11. *Reference to the Statement of Objects and*

Reasons is permissible for understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to the statute, and the evil which the statute sought to remedy. The weight of judicial authority leans in favour of the view that the Statement of Objects and Reasons cannot be utilized for the purpose of restricting and controlling the plain meaning of the language employed by the legislature in drafting a statute and excluding from its operation such transactions which it plainly covers. (See Principles of Statutory Interpretation by Justice G.P. Singh, 8th Edn., 2001, pp. 206-09.)"

46. The statement of

object of U.P. Civil Laws

(Amendment) Act, 2015 thus explains the reason for

bringing the amendment for increasing the pecuniary

jurisdiction but the word 'institution' used in

statement of object shall not control the expressed language of Section 15. The expression 'cognizance' used in Section 15 shall mean and include institution hearing and decision of the case. When statute provides that cognizance of particular cause is to be taken by a particular court, no other court can take cognizance of the cause, since legislature never creates or provides for parallel jurisdiction in two different courts for taking cognizance of a cause. When Section 15 provides that all suits of civil nature of which the value does not exceed Rs.25,000/- "shall be cognizable by the Courts of Small Causes", the cognizance shall be taken by that very Court and no other Court.

47. As noted above, the proviso to sub-section (2) provides

that figure Rs.5,000/- shall be construed to Rs.25,000/-. By U.P. Civil Laws (Amendment) Act, 2015, the figure of Rs.25,000/- stood substituted by Rs.1 lac. Reading subsection(2) read with proviso and U.P. Civil Laws (Amendment Act), 2015 clearly means that Small Cause suits with valuation not exceeding Rs.1 lac shall be cognizable by Court of Small Causes. When a Small Cause suit not exceeding value of Rs.1 lac is cognizable by Court of Small Causes, obviously, no other court can take cognizance. Additional District Judge to whom small causes suit in question was transferred since its valuation was more than of Rs.25,000/- was not competent to take cognizance of the suit after U.P. Civil Laws (Amendment Act), 2015 w.e.f.07.12.2015, when the suit in question became cognizable by Small Causes Court i.e. Court of Civil Judge, Senior Division. To the above extent, the judgment of learned Single Judge in **Shobhit Nigam's Case** has to be approved and judgment of Single Judge in **Pankaj Hotels (Supra)** laying down that even after 07.12.2015, the Additional District Judge had jurisdiction to decide the suit in question cannot be approved.

48. We further observe that learned Single Judge in **Pankaj Hotels case** having noticed an earlier view of learned Single Judge in **Shobhit Nigam's case**, and he being of the opinion that judgment does not lay down the correct law, appropriate course open for Single Judge was to refer the matter for consideration by a larger bench. The judgments of the High Court are relied on and followed by all sub-ordinate courts in the State. It is always better to achieve certainty by an authoritative opinion by the High Court instead of giving conflicting views by different learned Single Judges which may confuse the litigants, lawyers and sub-ordinate courts in applying the law.

ISSUE NO.3

49. It is the submission of learned counsel for the appellant that even if the Additional District Judge was not competent to decide the small causes suit on 22.10.2016, the judgment of the Additional District Judge was not liable to be interfered with by the

revisional court in view of Section 21 of the Code of Civil Procedure. Section 21 of the Code of Civil Procedure relates to objection to jurisdiction. Section 21 of the Code of Civil Procedure is as follows:-

"21. Objections to jurisdiction. - [(1)] No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

[(2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice.]"

50. The policy underlying Section 21 of Code of Civil Procedure is that when the case has been tried by a court on merits and the judgment rendered, it should not

be liable to be reversed purely on technical grounds, unless it has resulted in failure of justice. The provisions akin to Section 21 are also contained in Section 11 of the Suit Valuation Act, 1887 and Section 99 of Code of Civil Procedure. This Court had occasion to consider the principle behind Section 21, Code of Civil Procedure and Section 11 of the Suit Valuation Act, 1887 in **AIR 1954 SC 340, Kiran Singh v. Chaman**

Paswan. In paragraph 7 of the judgment following was laid down: -

"7 The policy underlying Sections 21 and 99 of the Civil Procedure Code and Section 11 of the Suits Valuation Act is the same, namely, that when a case had been tried by a court on the merits and judgment rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice, and the policy of the legislature has been to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate court, unless there has been a prejudice on the merits. The contention of the appellants, therefore, that the decree and judgment of the District Court, Monghyr, should be treated as a nullity cannot be sustained under Section 11 of the Suits Valuation Act."

51. One more submission which was raised in the said appeal was considered by this Court. One of the submission of the

appellant who had instituted the suit in the subordinate court was that as per the revised valuation, the appeal against the decree of subordinate judge did not lay before the District Court but to the High Court, hence, the judgment of the District Judge in appeal should be ignored. The appeal in the High Court be treated as first appeal. It was contended that appellant has been prejudiced in the above manner.

Rejecting the above submissions, this court laid down following in paragraphs 11 and 12:-

"11 ...This argument proceeds on a misconception. The right of appeal is no doubt a substantive right, and its deprivation is a serious prejudice; but the appellants have not been deprived of the right of appeal against the judgment of the Subordinate Court. The law does provide an appeal against that judgment to the District Court, and the plaintiffs have exercised that right. Indeed, the undervaluation has enlarged the appellants' right of appeal, because while they would have had only a right of one appeal and that to the High Court if the suit had been correctly valued, by reason of the undervaluation they obtained right to two appeals, one to the District Court and another to the High Court.

The complaint of the appellants really is not that they had been deprived of a right of appeal against the judgment of the Subordinate Court, which they have not been, but that an appeal on the facts against that judgment was heard by the District Court and not by the High Court. This objection therefore amounts to this that a change in the forum of appeal is by itself a matter of prejudice

for the purpose of Section 11 of the Suits Valuation Act.

12. The question, therefore, is, can a decree passed on appeal by a court which had jurisdiction to entertain it only by reason of undervaluation, be set aside on the ground that on a true valuation that court was not competent to entertain the appeal? Three High Courts have considered the matter in Full Benches, and have come to the conclusion that mere change of forum is not a prejudice within the meaning of Section 11 of the Suits Valuation Act. Vide *Kelu Achan v. Cheriya Parvathi Nethiar Mool Chand v. Ram Kishan and Ramdeo Singh v. Raj Narain*. In our judgment, the opinion expressed in these decisions is correct "

52. The above principle has been reiterated by this Court in ***AIR (1962) SC 199, Hiralal vs. Kalinath and AIR 1963 SC 634, Bahrain Petroleum Co. vs. P.J.Pappu and Another.***

53. This court in ***(1993) 2 SCC 130, R.S.D.V. Finance***

Company Private Limited vs. Shree Vallabh Glass Works

Ltd. had again considered Section 21 of the Code of Civil Procedure. In paragraphs 7 and 8, following has been laid down: -

"7 It may be further noted that the learned Single Judge trying the suit had recorded a finding that the Bombay Court had jurisdiction to entertain and decide the suit. Sub-section (1) of Section 21 of the Code of Civil Procedure provides that no

objection as to the place of suing shall be allowed by any appellate or revisional court unless such objection was taken in the court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement and unless there has been consequent failure of justice. The above provision clearly lays down that such objection as to the place of suing shall be allowed by the appellate or revisional court subject to the following conditions:

(i) That such objection was taken in the court of first instance at the earliest possible opportunity;

(ii) in all cases where issues are settled then at or before such settlement of issues;

(iii) there has been a consequent failure of justice.

8. In the present case though the first two conditions are satisfied but the third condition of failure of justice is not fulfilled. As already mentioned above there was no dispute regarding the merits of the claim. The defendant has admitted the deposit of Rs 10,00,000 by the plaintiff, as well as the issuing of the five cheques. We are thus clearly of the view that there is no failure of justice to the defendant by decreeing of the suit by the learned Single Judge of the Bombay High Court, on the contrary it would be totally unjust and failure of justice to the plaintiff in case such objection relating to jurisdiction is to be maintained as allowed by the Division Bench of the High Court in its appellate jurisdiction."

54. In (2005) 7 SCC 791, **Harshad Chiman Lal**

Modi vs.

DLF Universal Ltd. , this court had again considered Section 21 and other provisions of Code of Civil Procedure. In paragraph 30, following has been laid down: -

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

55. Again in (2007) 13 SCC 650,

Subhash Mahadevasa

Habib v. Nemasa Ambasa Dharmadas, this court held that

there is distinction between lack of inherent jurisdiction and objection to territorial and pecuniary jurisdiction. This court noticed the amendments made in

Section 21 in the year 1976 . Following was stated in

paragraph 34, 37 and 41:-

"34. It may be noted that Section 21 provided that no objection as to place of the suing can be allowed by even an appellate or revisional court unless such objection was taken in the court of first instance at the earliest possible

opportunity and unless there has been a consequent
 justice. In 1976, the existing section was
 numbered as sub-section (1) and sub-section
 (2) was added relating to pecuniary
 jurisdiction by providing that no objection as to
 competence of a court with reference to the
 pecuniary limits of its jurisdiction shall be allowed by any ap
 revisional court unless such objection had been
 taken in the first instance at the earliest
 possible opportunity and unless there had been a consequent
 justice....

37. As can be seen, Amendment Act 104 of 1976 introduced sub-section (2) relating to pecuniary jurisdiction and put it on a par with the objection to territorial jurisdiction and the competence to raise an objection in that regard even in an appeal from the very decree. This was obviously done in the light of the interpretation placed on Section 21 of the Code as it existed and Section 11 of the Suits Valuation Act by this Court in *Kiran Singh v. Chaman Paswan*⁵ followed by *Hiralal Patni v. Kali Nath*⁶ and *Bahrein Petroleum Co. Ltd. v. P.J. Pappu*⁴. Therefore, there is no justification in understanding the expression "objection as to place of suing" occurring in Section 21-A as being confined to an objection only in the territorial sense and not in the pecuniary sense. Both could be understood, especially in the context of the amendment to Section 21 brought about by the Amendment Act, as objection to place of suing.

41. In the light of the above, it is clear that no objection to the pecuniary jurisdiction of the court which tried OS No. 61 of 1971 could be raised successfully even in an appeal against that very decree unless it had been raised at the earliest opportunity and a failure of justice or prejudice was shown. Obviously therefore, it could not be collaterally challenged. That too not by the plaintiffs therein, but by a defendant whose

alienation was unsuccessfully challenged by the plaintiffs in that suit."

56. Now, reverting back to facts of this case it is apparent from the judgment dated 22.10.2016 of Additional District Judge, that no objection to the competence of Additional District Judge to decide the case was taken by any of the parties. No objection having been taken to the pecuniary jurisdiction of the Additional District Judge, Section 21 of the Civil Procedure Code comes into play. Sub-section (2) of Section 21 provides that no objection as to the competence of the Court with reference to the pecuniary limits of the jurisdiction shall be allowed by any Appellate or Revisional Court unless conditions mentioned therein are fulfilled. No objection having been raised by respondent tenant regarding competence of the Court. Sub-section (2) precludes the revisionist to raise any objection regarding competence of the court and further revisional court ought not to have allowed such objection regarding competence of Court of Additional District Judge to decide the suit. The respondent tenant did not raise any objection regarding competence of the Court and

took a chance to obtain judgments in his favour on merits, he cannot be allowed to turn-round and contend that the court of Additional District Judge had no jurisdiction to try the Small Cause Suit and the judgment is without jurisdiction and nullity. Section 21 has been enacted to thwart any such objection by unsuccessful party who did not raise any objection regarding competence of court and allowed the matter to be heard on merits. Further, in deciding the small cause suit by Additional District Judge, the tenant has not proved that there has been a consequent failure of justice.

57. The High Court in the impugned judgment has not adverted to Section 21 of the Code of Civil Procedure. In judgment of ***Shobhit Nigam (Supra)*** also, affect of Section 21 was neither considered nor raised. Section 21 contains a legislative policy which policy has an object and purpose. The object is also to avoid retrial of cases on merit on basis of technical objections.

58. There is another judgment of Single

Judge of the High Court referred to by the learned counsel for the respondent i.e. SCC Revision No.305 of 2016, **Tejuma1 vs. Mohd. Sarfraz, 2017 (121) ALR 392.** In the above case, learned Single Judge had allowed the revision under Section 25 against the judgment dated 12.08.2016 passed by Additional District and Sessions Judge on the ground that the judgment of Additional District Judge was without jurisdiction. In paragraph 6 of the judgment, High Court had noticed judgment of this court in

R.S.D.V. Finance Company Private Limited vs. Shree Vallabh Glass Works Ltd. where it was held that in view of Section 21(1) of the Code of Civil Procedure, objection as to the place of suing should be taken by the party concerned in the court of first instance at the earliest possible opportunity and the objection to this effect shall not be allowed by the Appellate or Revisional Court but relying on the judgment of this Court in **Kiran Singh Vs. Chaman Paswan,** learned Single Judge held that defect of jurisdiction whether pecuniary or territorial or to the subject matter cannot be cured and can be set up at any stage of the proceeding.

59. We are of the view that the above view of the learned Single Judge is neither in consonance with the judgment of this Court in **Kiran Singh's case** nor with **R.S.D.V. Finance Company Private Limited (supra)** which has been noted and referred to by learned Single Judge. Section 21 is statutory recognition of the legislative policy which cannot be ignored or given a go-by by the litigants who challenges an unfavourable decision.

60. We thus of the view that the view of the learned Single Judge in **Tejuma Vs. Mohd. Sarfraj** does not lay down the correct law and cannot be approved.

61. In the foregoing discussion, we are of the view that High Court committed error in allowing the S.C.C. Revision filed by the respondent tenant without taking into consideration Section 21 of the Civil Procedure Code.

62. We thus hold that even when the court of Additional District Judge was not competent to decide the Small Causes Suit in question on the ground that the pecuniary jurisdiction is vested in Court of Small Causes i.e. Civil Judge, Senior

Division w.e.f. 07.12.2015, no interference was called in the judgment of Additional District Judge in the exercise of Revisional Jurisdiction by High Court in view of the provisions of Section 21 of Civil Procedure Code.

63. In result, the appeals are allowed. The judgment of the High Court dated 07.12.2016 is set aside. Parties shall bear their own costs.

.....J.
(A.K. SIKRI)

.....J.
(ASHOK BHUSHAN)

NEW DELHI October
12, 2018.