THE HIGH COURT OF MADHYA PRADESH
MP No.5582/2019
Dharamveer Sharma Vs. The State of M.P. and others

Gwalior, Dated :01/11/2019

Shri Vinay Kumar Mishra, Advocate for petitioner.

Shri P.S. Raghuvanshi, Government Advocate for respondents/State.

This petition under Article 227 of the Constitution of India has been filed against the order dated 16/9/2019 passed by Third Additional District Judge, Gwalior in Case No.6900105/2016, by which the petitioner has been directed to pay the stamp duty, failing which the execution application shall stand dismissed by considering the arbitration award as not executable.

2. The necessary facts for disposal of the present petition in short are that the petitioner claims himself to be a registered contractor having entered into an agreement with the respondents on 19/1/2004 for the work of fixing Chanda Patthar in 42 villages of Gwalior District. A dispute arose between the parties regarding payment of work done by the petitioner and since an Arbitrator was not appointed by the respondents, therefore, the petitioner filed an application under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (in short "the Act, 1996"), which was registered as MCC No.745/2006 and by order dated 12/9/2018 Justice S.K. Dubey, Former Judge of this Court, was appointed as an Arbitrator. An award

was passed on 13/6/2009 in favour of the petitioner and an amount of Rs.1,32,250/- and Rs.14,600/- alongwith interest at the rate of 15% per annum was granted and cost of Rs.15,000/- was also awarded. The respondents filed an application under Section 34 of the Act, 1996 before the Court of Second Additional District Judge, Gwalior, which was registered as MJC No.96/2010 and the said objection was dismissed by order dated 20/8/2010. Thereafter, an appeal under Section 37 of the Act, 1996 was filed before this Court, which was registered as AA No.6/2010 and the same was dismissed vide order dated 20/7/2011. Thereafter, the petitioner submitted an application for execution of award and the notices were served on the respondents and they submitted their appearance before the Executing Court. It is submitted that the Executing Court *suo motu* raised an objection with regard to non-payment of stamp duty on the award and has directed the petitioner to deposit the stamp duty of Rs.29,095/- within 30 days with penalty, failing which the execution application shall be dismissed as not executable.

3. Challenging the order passed by the court below, it is submitted by the counsel for the petitioner that the court below has not considered the provisions of Article 11 of schedule 1-A (M.P. State amendment) of the Indian Stamp Act, 1899 (in short “the Act, 1899”), which clearly provides that the stamp duty is not payable if

an award is passed on a reference made by an order of the Court in the course of suit. It is submitted by the counsel for the petitioner that the Division Bench of Delhi High Court in the case of **Darshan Singh Vs. M/s. Forward India Finance P. Ltd. New Delhi and others** reported in **1984 Delhi 140** has held that in case if reference is made through a Court in a suit or in some other proceedings, then the award does not require to be stamped and if the award is made on a private reference, i.e. without the intervention of the Court, then the stamp duty is to be paid. It is submitted that in the present case, the Arbitrator was appointed by the Court while exercising power under Section 11 (6) of the Act, 1996 and, therefore, the stamp duty is not payable.

4. Heard learned counsel for the petitioner.

5. Article 11 of Schedule 1-A of the Act, 1899 (MP State amendment) reads as under:-

Description of instrument	Proper stamp-duty
11. Award, that is to say, any decision in writing by an arbitrator or umpire, on a reference made otherwise than by an order of the Court in the course of a suit, being an award made as a result of a written agreement to submit present or future differences to arbitration and not being an award directing a partition.	Twenty rupees for every one thousand rupees or part thereof, of the amount, or value of the property to which the award relates.

6. From the plain reading of this Article, it is clear that the Legislature has intentionally used the words "in the course of suit". Thus, the Legislature has intentionally excluded the benefit of Article 11 of Schedule 1-A of the Act, 1899 on the awards on a reference made under the Arbitration Act, in enforcement of an arbitration agreement filed under the said Act.

7. In the present case, the petitioner has not filed the copy of the agreement, however, it is fairly conceded by the counsel for the petitioner that the agreement was containing the arbitration clause and since the respondents had failed to appoint the Arbitrator, therefore, the petitioner had filed an application under Section 11 (6) of the Act, 1996 and the said application was allowed and Justice S.K. Dubey, Former Judge of High Court of M.P., was appointed as the sole Arbitrator. The petitioner has neither placed the copy of the agreement nor the order of this Court passed under Section 11 (6) of the Act, 1996.

8. It is submitted by the counsel for the petitioner that the words "in the course of suit" are of wide amplitude and they cannot be given a narrower meaning to a suit filed under Section 9 of CPC only.

9. The submission made by the counsel for the petitioner cannot be accepted for the simple reason that it is well established principle of law that for seeking the benefit of exemption clause in a taxing

statute this Court has to give strict interpretation to the provision and in case of any ambiguity, it must be interpreted in favour of the revenue and not the assessee claiming the benefit of such exemption. Thus, when there is ambiguity in exemption notification, it is subject to strict interpretation and the benefit of such ambiguity cannot be claimed by the assessee, but it has to be interpreted in favour of the revenue. In the present case, undisputedly there was an agreement between the petitioner and the respondents containing the arbitration clause. After a dispute was raised by the petitioner, if the respondents had appointed the Arbitrator on their own, then according to the counsel for the petitioner himself, the exemption granted under Article 11 of Schedule 1-A of the Act, 1899 (MP State amendment) was not available to the petitioner, however, it is submitted that since the Arbitrator was appointed under the orders of the High Court, therefore, the exemption is available. If the aforesaid submission made by the counsel for the petitioner is accepted, then it would create an anomaly which would be beyond reconciliation. While exercising the power under Section 11 of the Act, 1996, this Court is not required to decide any disputed question of fact or the claims and the counterclaims of the parties, but it is only required to consider that whether there was any agreement containing the arbitration clause or not and whether the respondents have failed to appoint the

Arbitrator or not. Thus, the application under Section 11 of the Act, 1996 is filed for the enforcement of the arbitration clause only and not for adjudication of any disputed question of facts about the claims and counterclaims of the parties. A coordinate Bench of this Court in the case of **M.P. Power Generation Co. Pvt. Ltd. and another Vs. Ansaldo Energia SPS** decided on **21/3/2016** in **W.P. No.16506/2015** has held as under:-

> "19. The Supreme Court in the cases of *Gajapathi Raju* (supra), *T.N. Electricity Board* (supra) and *Praveen Enterprises* (supra) has held that the 1996 Act does not contain any provision for the court to refer the dispute to the Arbitrator. Even if the submission of the respondent that appointment (sic: appointment) of arbitral tribunal is an implied reference in terms of arbitration agreement as held by the Supreme Court in para 41 of the decision in the case of *Praveen Enterprises* (supra) is accepted, then also in the instant case, on the day when the Supreme Court appointed arbitrator for the petitioners, the arbitral tribunal was not appointed in terms of arbitration agreement, which would be evident from the facts stated hereinafter. In the instant case, admittedly, arbitration agreement provides that both the parties have to appoint their arbitrators, and the arbitrators (sic: arbitrators) appointed by the parties, in turn, would appoint an Umpire which is necessary (sic: necessary) for the constitution of the Arbitration Tribunal. The respondent appointed Justice Chandurkar as its arbitrator, whereas the petitioners failed to appoint their arbitrator and, therefore, in a proceeding under section 11 (6) of 1996 Act by order dated 25.2.2002 Justice S.C. Agarwal was appointed as Arbitrator for the petitioners. Two arbitrators, in turn, appointed

Umpire on 08.3.2002. The award in question is not an outcome of section 8 of 1996 Act. Merely by appointment of an Arbitrator by the Supreme court for the petitioners under section 11 (6) of 1996 Act on 25.2.2002, it cannot be said that dispute (sic: dispute) stood referred to the Arbitrator, because as per arbitration agreement the dispute was to be adjudicated by two arbitrators and one umpire. Therefore, award in question does not fall in exception carved out by Article 11 of Schedule 1A of Stamp Act, 1899 and the stamp duty has to be paid as required by Article 11 of Schedule 1A of the Stamp Act, 1899. Presumably, for this reason, one of the Arbitrator has already directed the respondent to affix the stamp duty. An award is an instrument within the meaning of the Stamp Act and has to be duly stamped before it is available for any purpose. [See: H*industan Steel Ltd. vs. Messers Dilip construction Company,* (1969) 1 SCC 579 and *SMS Tea Estates Pvt. Ltd.* (supra)]. The court is duty bound to impound an insufficiently stamped award under section 33 of the 1899 Act.

20. At this stage, it is appropriate to advert to the submissions made by learned senior counsel for the respondent. It is well settled legal proposition that when there is no ambiguity in the statute, it may not be permissible to refer to, for purposes of its construction, any previous legislation or decisions rendered thereunder. [See: *State of Punjab Vs. Okara Grain Buyers Syndicate Ltd.* Okara, AIR 1964 SC 669 and *Board of Muslim* Waks (sic: *Wakfs*), *Rajasthan* v. *Radha Kishan*, AIR 1979 SC 289]. Therefore, the definition of expression “reference” under the 1940 Act as well as decisions rendered dealing with the previous 1940 Act have no relevance in the fact situation of the case. Therefore, reliance placed by learned senior counsel on the decisions in the cases of *Thawardas* (supra), *Barnagore Jute Factory Co.* (supra), *P.C. Agarwal* (supra) and *Jolly Steel Industries* (supra), *Hari Shankar Lal* (supra), *Ramasahai Sheduram* (supra), *Hayat*

> *Khan* (supra) and *Usha Rani* (supra) are of no assistance to the respondent. This Court has already recorded a conclusion that award in question is not passed on a reference by the Court, therefore, the question whether the proceeding under section 11(6) of the 1996 Act can be termed as a suit or not, need not be dealt with. So far as the reliance placed by the learned senior counsel for the respondent in the cases of *Dr. Chiranji Lal* (supra) and *Jitender Mohan Malik* (supra) is concerned, it has been held in the aforesaid cases that provisions of Stamp Act have not been connected to arm the litigant with a weapon of technicality to a case of his opponent. It has further been held in the aforesaid decision that if the decree is not duly stamped, it has to be impounded and if requisite stamp duty and penalty are paid, decree can be acted upon. Therefore, reliance placed on the aforesaid decision also does not help the respondent.
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> 21. In view of the preceding analysis, the impugned order passed by the executing Court suffers from an error apparent on the face of record. Accordingly, it is quashed. The Executing Court is directed to examine the question whether the award dated 23.09.2004 bears adequate stamp duty. In case, it comes to the conclusion that the Award is not duly stamped, it shall take action in light of decision of the Supreme Court in *Peteti Subba Rao Vs. Anumala S. Narendra*, (2002) 10 SCC 427 and after payment of deficit stamp duty and penalty, if any, shall treat the document in question as duly stamped and shall proceed to act upon the same expeditiously."

10. The counsel for the petitioner submitted that he does not agree with the proposition of law laid down by the coordinate Bench in the case of **M.P. Power Generation Co. Pvt. Ltd. (supra)**. However, except making the above-mentioned submissions, no argument was

advanced as to why this Court should take a contrary view or should refer the matter to the Division Bench. Merely because a counsel for the party does not agree with the judgment passed by the Court, would not be sufficient for this Court to take a contrary view.

11. It is further submitted that since the judgment passed by the Division Bench of Delhi High Court runs contrary to the judgment passed by the coordinate Bench of this Court, therefore, the judgment passed by the coordinate Bench of this Court is bad.

12. Considered the submission made by the counsel for the petitioner.

13. It is well established principle of law that a judgment passed by the High Court is binding on the co-ordinate Bench, subordinate Courts, Tribunals and Authorities. Thus, this Court is bound by the judgment passed by the coordinate Bench of this Court passed in the case of **M.P. Power Generation Co. Pvt. Ltd. (supra)** and this Court cannot take a contrary view merely on the ground that it is contrary to the judgment of another High Court. Furthermore, it is clear that the coordinate Bench while deciding the controversy in question has considered each and every aspect in detail. Otherwise, even if the submission made by the counsel for the petitioner is accepted, then a peculiar situation would arise, which would be as

under:-

> (i) In a case of dispute, if the opposite party appoints an Arbitrator in the light of the arbitration clause contained in the agreement, then the stamp duty would be payable;
>
> (ii) and if the opposite party fails to appoint an Arbitrator and the Arbitrator is appointed under Section 11 (6) of the Act, 1996, then according to the petitioner, the stamp duty would not be payable. As already held that while deciding the application under Section 11 (6) of the Act, 1996 the High Court is only required to consider that whether a party has failed to act as required under the appointment procedure agreed upon by the parties (agreement) or the parties or two appointed Arbitrators fails to reach an agreement expected of them under that procedure or a person, including an institution, fails to perform any function entrusted to him or it under that procedure.

14. In the present case, it is the case of the petitioner that since the respondents did not appoint the Arbitrator, therefore, he had approached the Court for appointment of Arbitrator. Since the order

of this Court passed under Section 11 (6) of the Act, 1996 has not been placed on record, therefore, it is not clear that on what ground the Arbitrator was appointed, but it is clear that since the respondents had failed to appoint the Arbitrator, therefore, an application under Section 11 (6) of the Act, 1996 was entertained. Thus, this Court had exercised limited power of appointing an Arbitrator, so that the arbitration clause given in the agreement can be enforced. Under these circumstances, this Court is of the considered opinion that the Legislature has deliberately given a narrower meaning by using the words "in the course of suit" and the same cannot be given a wider meaning because it is well established principle of law that if an exemption is claimed by the assessee, then strict interpretation has to be given to the statute and even the assessee cannot take advantage of any ambiguity in the provisions of law. Even otherwise, in the considered opinion of this Court there is no ambiguity in Article 11 of Schedule 1-A of the Act, 1899.

15. The Supreme Court in the case of **Star Industries v. Commr. of Customs (Imports),** reported in **(2016) 2 SCC 362** has held as under:

> **"32.** ....It is rightly argued by the learned Senior Counsel for the Revenue that exemption notifications are to be construed strictly and even

> if there is some doubt, benefit thereof shall not enure to the assessee but would be given to the Revenue. This principle of strict construction of exemption notification is now deeply ingrained in various judgments of this Court taking this view consistently."

The Supreme Court in the case of **Liberty Oil Mills (P) Ltd. v. CCE,** reported in **(1995) 1 SCC 451** has held as under:-

> "Even assuming that it is so, in the case of an ambiguity or doubt regarding an exemption provision in a fiscal statute, the ambiguity or doubt will be resolved in favour of the Revenue and not in favour of the assessee. The matter is concluded by a recent decision of a three-member Bench of this Court in *Novopan India Ltd.* v. *Collector of Central Excise and Customs*."

The Supreme Court in the case of **Commissioner of Customs Vs. Dilip Kumar and Co.** Reported in **(2018) 9 SCC 1** has held as under :-

> **25.** At the outset, we must clarify the position of “plain meaning rule or clear and unambiguous rule” with respect to tax law. “The plain meaning rule” suggests that when the language in the statute is plain and unambiguous, the court has to read and understand the plain language as such, and there is no scope for any interpretation. This salutary maxim flows from the phrase “*cum inverbis nulla ambiguitas est, non debet admitti voluntatis quaestio*”. Following such maxim, the courts sometimes have made strict interpretation subordinate to the plain meaning rule, though strict interpretation is used in the precise sense. To say that strict interpretation involves plain reading of the statute and to say that one has to utilise strict interpretation in the event of ambiguity is self-contradictory.

26. Next, we may consider the meaning and scope of "strict interpretation", as evolved in Indian law and how the higher courts have made a distinction while interpreting a taxation statute on one hand and tax exemption notification on the other. In *Black's Law Dictionary* (10th Edn.) "strict interpretation" is described as under:

> *Strict interpretation*. (16c) *1*. An interpretation according to the narrowest, most literal meaning of the words without regard for context and other permissible meanings. *2*. An interpretation according to what the interpreter narrowly believes to have been the specific intentions or understandings of the text's authors or ratifiers, and no more. Also termed (in senses 1 & 2) strict construction, literal interpretation; literal construction; restricted interpretation; interpretatio stricta; interpretatio restricta; interpretatio verbalis. *3*. The philosophy underlying strict interpretation of statutes. Also termed as close interpretation; interpretatio restrictive. See strict constructionism under constructionism. Cf. large interpretation; liberal interpretation (2).

"Strict construction of a statute is that which refuses to expand the law by implications or equitable considerations, but confines its operation to cases which are clearly within the letter of the statute, as well as within its spirit or reason, not so as to defeat the manifest purpose of the legislature, but so as to resolve all reasonable doubts against the applicability of the statute to the particular case." Willam M. Lile et al., *Brief Making and the Use of Law Books* 343 (Roger W. Cooley & Charles Lesly Ames eds., 3d Edn. 1914).

"Strict interpretation is an equivocal expression, for it means either literal or narrow. When a provision is ambiguous, one of its meaning may be wider than the other, and the strict (i.e.

narrow) sense is not necessarily the strict (i.e. literal) sense.” John Salmond, *Jurisprudence* 171 n. (t) [Glanville L. Williams (Ed.), 10th Edn. 1947].

27. As contended by Ms Pinky Anand, learned Additional Solicitor General, the principle of literal interpretation and the principle of strict interpretation are sometimes used interchangeably. This principle, however, may not be sustainable in all contexts and situations. There is certainly scope to sustain an argument that all cases of literal interpretation would involve strict rule of interpretation, but strict rule may not necessarily involve the former, especially in the area of taxation.

28. The decision of this Court in *Punjab Land Development and Reclamation Corpn. Ltd.* v. *Labour Court*, made the said distinction, and explained the literal rule: (SCC p. 715, para 67)

> “*67*. The literal rules of construction require the wording of the Act to be construed according to its literal and grammatical meaning, whatever the result may be. Unless otherwise provided, the same word must normally be construed throughout the Act in the same sense, and in the case of old statutes regard must be had to its contemporary meaning if there has been no change with the passage of time.”

That strict interpretation does not encompass strict literalism into its fold. It may be relevant to note that simply juxtaposing “strict interpretation” with “literal rule” would result in ignoring an important aspect that is “apparent legislative intent”. We are alive to the fact that there may be overlapping in some cases between the aforesaid two rules. With certainty, we can observe that, “strict interpretation” does not encompass such literalism, which lead to absurdity and go against the legislative intent. As noted above, if literalism is at the far end of the spectrum,

> wherein it accepts no implications or inferences, then "strict interpretation" can be implied to accept some form of essential inferences which literal rule may not accept.

29. We are not suggesting that literal rule *dehors* the strict interpretation nor one should ignore to ascertain the interplay between "strict interpretation" and "literal interpretation". We may reiterate at the cost of repetition that strict interpretation of a statute certainly involves literal or plain meaning test. The other tools of interpretation, namely, contextual or purposive interpretation cannot be applied nor any resort be made to look to other supporting material, especially in taxation statutes. Indeed, it is well settled that in a taxation statute, there is no room for any intendment; that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification. Equity has no place in interpretation of a tax statute. Strictly one has to look to the language used; there is no room for searching intendment nor drawing any presumption. Furthermore, nothing has to be read into nor should anything be implied other than essential inferences while considering a taxation statute.

30. Justice G.P. Singh, in his treatise *Principles of Statutory Interpretation* (14th Edn. 2016 p. 879) after referring to *Micklethwait, In re*; *Partington* v. *Attorney General*, *Rajasthan Rajya Sahakari Spg. & Ginning Mills Federation Ltd.* v. *CIT*, *State Bank of Travancore* v. *CIT* and *Cape Brandy Syndicate* v. *IRC*, summed up the law in the following manner:

> "A taxing statute is to be strictly construed. The well-established rule in the familiar words of Lord Wensleydale, reaffirmed by Lord Halsbury‡ and Lord Simonds, means: '"The subject is not to be taxed without clear words for that purpose; and also that every Act of Parliament must be read

according to the natural construction of its words.'"

In a classic passage Lord Cairns stated the principle thus:

'If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute.'

Viscount Simon quoted with approval a passage from Rowlatt, J. expressing the principle in the following words: (*Cape Brandy case*, KB p. 71)

'… in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.'"

31. It was further observed:

"In all tax matters one has to interpret the taxation statute strictly. Simply because one class of legal entities is given a benefit which is specifically stated in the Act, does not mean that the benefit can be extended to legal entities not referred to in the Act as there is no equity in matters of taxation…."

32. Yet again, it was observed:

"It may thus be taken as a maxim of tax law, which although not to be overstressed ought

not to be forgotten that,

‘the subject is not to be taxed unless the words of the taxing statute unambiguously impose the tax [on] him’, (*Russell* v. *Scott*, AC p. 433).

The proper course in construing revenue Acts is to give a fair and reasonable construction to their language without leaning to one side or the other but keeping in mind that no tax can be imposed without words clearly showing an intention to lay the burden and that equitable construction of the words is not permissible [*Ormond Investment Co.* v. *Betts*]. Considerations of hardship, injustice or anomalies do not play any useful role in construing taxing statutes unless there be some real ambiguity [*Mapp* v. *Oram*]. It has also been said that if taxing provision is

‘so wanting in clarity that no meaning is reasonably clear, the courts will be unable to regard it as of any effect [*IRC* v. *Ross and Coulter*]’.”

33. Further elaborating on this aspect, the learned author stated as follows:

“Therefore, if the words used are ambiguous and reasonable open to two interpretations benefit of interpretation is given to the subject [*Central India Spg. and Wvg. & Mfg. Co. Ltd.* v. *Municipal Committee, Wardha*]. If the legislature fails to express itself clearly and the taxpayer escapes by not being brought within the letter of the law, no question of unjustness as such arises [*CIT* v. *Jalgaon Electric Supply Co. Ltd.*]. But equitable considerations are not relevant in construing a taxing statute, [*CIT* v. *Central India Industries Ltd.*], and similarly logic or reason cannot be of much avail in interpreting a taxing statute [*Azam Jah Bahadur* v. *Expenditure Tax Officer*]. It

> is well settled that in the field of taxation, hardship or equity has no role to play in determining eligibility to tax and it is for the legislature to determine the same [*Kapil Mohan* v. *CIT*]. Similarly, hardship or equity is not relevant in interpreting provisions imposing stamp duty, which is a tax, and the court should not concern itself with the intention of the legislature when the language expressing such intention is plain and unambiguous [*State of M.P.* v. *Rakesh Kohli*]. But just as reliance upon equity does not avail an assessee, so it does not avail the Revenue."

34. The passages extracted above, were quoted with approval by this Court in at least two decisions being *CIT* v. *Kasturi and Sons Ltd.* and *State of W.B.* v. *Kesoram Industries Ltd.* (hereinafter referred to as "*Kesoram Industries case*", for brevity). In the later decision, a Bench of five Judges, after citing the above passage from Justice G.P. Singh's treatise, summed up the following principles applicable to the interpretation of a taxing statute:

> "(*i*) In interpreting a taxing statute, equitable considerations are entirely out of place. A taxing statute cannot be interpreted on any presumption or assumption. A taxing statute has to be interpreted in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any deficiency; (*ii*) Before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section; and (*iii*) If the words are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject and there is nothing unjust in a taxpayer escaping if the letter of the law fails to catch him on account of the legislature's failure to express itself clearly."

* * *

53. After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more than justified to conclude and also compelled to hold that every taxing statute including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in charging provisions, the benefit must necessarily go in favour of subject/assessee, but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State.

55. There is abundant jurisprudential justification for this. In the governance of rule of law by a written Constitution, there is no implied power of taxation. The tax power must be specifically conferred and it should be strictly in accordance with the power so endowed by the Constitution itself. It is for this reason that the courts insist upon strict compliance before a State demands and extracts money from its citizens towards various taxes. Any ambiguity in a taxation provision, therefore, is interpreted in favour of the subject/assessee. The statement of law that ambiguity in a taxation statute should be interpreted strictly and in the event of ambiguity the benefit should go to the subject/assessee may warrant visualising different situations. For instance, if there is ambiguity in the subject of tax, that is to say, who are the persons or things liable to pay tax, and whether the Revenue has established conditions before raising and justifying a demand. Similar is the case in roping all persons within the tax net, in which event the State is to prove the liability of the persons, as may arise within the strict language of the law. There cannot be any implied concept either in identifying the subject of the tax or person liable to pay tax. That is why it is often said that subject is not to be taxed, unless the words of the statute

> unambiguously impose a tax on him, that one has to look merely at the words clearly stated and that there is no room for any intendment nor presumption as to tax. It is only the letter of the law and not the spirit of the law to guide the interpreter to decide the liability to tax ignoring any amount of hardship and eschewing equity in taxation. Thus, we may emphatically reiterate that if in the event of ambiguity in a taxation liability statute, the benefit should go to the subject/assessee. But, in a situation where the tax exemption has to be interpreted, the benefit of doubt should go in favour of the Revenue, the aforesaid conclusions are expounded only as a prelude to better understand jurisprudential basis for our conclusion."

The Supreme Court in the case of **Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.** reported in **(2010) 8 SCC 24** has held as under:-

> **"21.** There is however an exception to this general rule. Where the words used in the statutory provision are vague and ambiguous or where the plain and normal meaning of its words or grammatical construction thereof would lead to confusion, absurdity, repugnancy with other provisions, the courts may, instead of adopting the plain and grammatical construction, use the interpretative tools to set right the situation, by adding or omitting or substituting the words in the statute. When faced with an apparently defective provision in a statute, courts prefer to assume that the draftsman had committed a mistake rather than concluding that the legislature has deliberately introduced an absurd or irrational statutory provision. Departure from the literal rule of plain and straight reading can however be only in exceptional cases, where the anomalies make the literal compliance with a provision impossible, or absurd or so impractical as to

defeat the very object of the provision. We may also mention purposive interpretation to avoid absurdity and irrationality is more readily and easily employed in relation to procedural provisions than with reference to substantive provisions.

21.1. Maxwell on *Interpretation of Statutes* (12th Edn., p. 228), under the caption "modification of the language to meet the intention" in the chapter dealing with "Exceptional Construction" states the position succinctly:

> "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, or by rejecting them altogether, on the ground that the legislature could not possibly have intended what its words signify, and that the modifications made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used."

This Court in *Tirath Singh* v. *Bachittar Singh* approved and adopted the said approach.

21.2. In *Shamrao V. Parulekar* v. *District Magistrate, Thana* this Court reiterated the principle from *Maxwell*: (AIR p. 327, para 12)

> "*12*. … if one construction will lead to an absurdity while another will give effect to

> what common sense would show was obviously intended, the construction which would defeat the ends of the Act must be rejected even if the same words used in the same section, and even the same sentence, have to be construed differently. Indeed, the law goes so far as to require the courts sometimes even to modify the grammatical and ordinary sense of the words if by doing so absurdity and inconsistency can be avoided."

21.3. In *Molar Mal* v. *Kay Iron Works (P) Ltd.* this Court while reiterating that courts will have to follow the rule of literal construction, which enjoins the court to take the words as used by the legislature and to give it the meaning which naturally implies, held that there is an exception to that rule. This Court observed: (SCC p. 295, para 12)

> "*12*. … That exception comes into play when application of literal construction of the words in the statute leads to absurdity, inconsistency or when it is shown that the legal context in which the words are used or by reading the statute as a whole, it requires a different meaning."

21.4. In *Mangin* v. *IRC* the Privy Council held: (AC p. 746 E)

> "… the object of the construction of a statute being to ascertain the will of the legislature it may be presumed that neither injustice nor absurdity was intended. If therefore a literal interpretation would produce such a result, and the language admits of an interpretation which would avoid it, then such an interpretation may be adopted."

21.5. A classic example of correcting an error committed by the draftsman in legislative drafting is the substitution of the words "defendant's witnesses" by this Court for the words "plaintiff's witnesses" occurring in Order

7 Rule 14(4) of the Code, in *Salem Bar (II)*. We extract below the relevant portion of the said decision: (SCC pp. 368-69, para 35)

> "*35*. Order 7 relates to the production of documents by the plaintiff whereas Order 8 relates to production of documents by the defendant. Under Order 8 Rule 1-A(4) a document not produced by the defendant can be confronted to the plaintiff's witness during cross-examination. Similarly, the plaintiff can also confront the defendant's witness with a document during cross-examination. By mistake, instead of 'defendant's witnesses', the words 'plaintiff's witnesses' have been mentioned in Order 7 Rule 14(4). To avoid any confusion, we direct that till the legislature corrects the mistake, the words 'plaintiff's witnesses', would be read as 'defendant's witnesses' in Order 7 Rule 14(4). We, however, hope that the mistake would be expeditiously corrected by the legislature."

21.6. Justice G.P. Singh extracts four conditions that should be present to justify departure from the plain words of the statute, in his treatise *Principles of Statutory Interpretation* (12th Edn., 2010, Lexis Nexis, p. 144) from the decision of the House of Lords in *Stock* v. *Frank Jones (Tipton) Ltd.*: (WLR p. 237 F-G)

> "… a court would only be justified in departing from the plain words of the statute when it is satisfied that: (*1*) there is clear and gross balance of anomaly; (*2*) Parliament, the legislative promoters and the draftsman could not have envisaged such anomaly, could not have been prepared to accept it in the interest of a supervening legislative objective; (*3*) the anomaly can be obviated without detriment to such legislative objective; (*4*) the language of the statute is susceptible of the modification

required to obviate the anomaly."

The Supreme Court in the case of **Girdhari Lal & Sons v. Balbir Nath Mathur,** reported in **(1986) 2 SCC 237** has held as under:-

> "**9.** So we see that the primary and foremost task of a court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed. Having ascertained the intention, the court must then strive to so interpret the statute as to promote or advance the object and purpose of the enactment. For this purpose, where necessary the court may even depart from the rule that plain words should be interpreted according to their plain meaning. There need be no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be well justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment by supplementing the written word if necessary."

The Supreme Court in the case of **Bhatia International v. Bulk Trading S.A.** reported in **(2002) 4 SCC 105** has held as under:-

> "**15.** It is thus necessary to see whether the language of the said Act is so plain and unambiguous as to admit of only the interpretation suggested by Mr Sen. It must be borne in mind that the very object of the Arbitration and Conciliation Act of 1996, was to establish a uniform legal framework for the fair and efficient settlement of disputes arising in international commercial arbitration. The conventional way of interpreting a statute is to

seek the intention of its makers. If a statutory provision is open to more than one interpretation then the court has to choose that interpretation which represents the true intention of the legislature. This task often is not an easy one and several difficulties arise on account of variety of reasons, but all the same, it must be borne in mind that it is impossible even for the most imaginative legislature to forestall exhaustively situations and circumstances that may emerge after enacting a statute where its application may be called for. It is in such a situation the court's duty to expound arises with a caution that the court should not try to legislate. While examining a particular provision of a statute to find out whether the jurisdiction of a court is ousted or not, the principle of universal application is that ordinarily the jurisdiction may not be ousted unless the very statutory provision explicitly indicates or even by inferential conclusion the court arrives at the same when such a conclusion is the only conclusion. Notwithstanding the conventional principle that the duty of Judges is to expound and not to legislate, the courts have taken the view that the judicial art of interpretation and appraisal is imbued with creativity and realism and since interpretation always implied a degree of discretion and choice, the courts would adopt, particularly in areas such as, constitutional adjudication dealing with social and defuse (*sic*) rights. Courts are therefore, held as "finishers, refiners and polishers of legislation which comes to them in a state requiring varying degrees of further processing" (see *Corocraft Ltd.* v. *Pan American Airways*, All ER at p. 1071 D, WLR at p. 732, *State of Haryana* v. *Sampuran Singh*, AIR at p. 1957). If a language used is capable of bearing more than one construction, in selecting the true meaning, regard must be had to the consequences, resulting from adopting the alternative constructions. A construction that results in hardship, serious inconvenience,

> injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results. (See *Johnson* v. *Moreton* and *Stock* v. *Frank Jones (Tipton) Ltd.*) In selecting out of different interpretations, the court will adopt that which is just, reasonable and sensible rather than that which is none of those things, as it may be presumed that the legislature should have used the word in that interpretation which least offends our sense of justice. In *Shannon Realities Ltd.* v. *Ville de St Miche*, AC at pp. 192-93, Lord Shaw stated:
>
> > "Where words of a statute are clear, they must, of course, be followed, but in Their Lordships' opinion where alternative constructions are equally open that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system."
>
> This principle was accepted by Subba Rao, J. while construing Section 193 of the Sea Customs Act and in coming to the conclusion that the Chief of Customs Authority was not an officer of Customs. (*Collector of Customs* v. *Digvijaysinhji Spg. & Wvg. Mills Ltd.*)

The Supreme Court in the case of **Indian Performing Rights Society Ltd. v. Sanjay Dalia,** reported in **(2015) 10 SCC 161** has held as under:-

> "**24.** If the interpretation suggested by the appellant is accepted, several mischiefs may result, intention is that the plaintiff should not go to far-flung places than that of residence or where

he carries on business or works for gain in order to deprive the defendant a remedy and harass him by dragging to distant place. It is settled proposition of law that the interpretation of the provisions has to be such which prevents mischief. The said principle was explained in *Heydon's case*. According to the mischief rule, four points are required to be taken into consideration. While interpreting a statute, the problem or mischief that the statute was designed to remedy should first be identified and then a construction that suppresses the problem and advances the remedy should be adopted. *Heydon's* mischief rule has been referred to in *Interpretation of Statutes* by Justice G.P. Singh, 12th Edn., at pp. 124-25 thus:

> "(*b*) *Rule in Heydon's case*; *purposive construction: mischief rule*
>
> When the material words are capable of bearing two or more constructions the most firmly established rule for construction of such words 'of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law)' is the rule laid down in *Heydon's case* which has now attained the status of a classic (*Kanai Lal Sur* v. *Paramnidhi Sadhukhan*). The rule which is also known as "purposive construction" or "mischief rule" (*Anderton* v. *Ryan*), enables consideration of four matters in construing an Act: (*i*) What was the law before the making of the Act; (*ii*) What was the mischief or defect for which the law did not provide; (*iii*) What is the remedy that the Act has provided; and (*iv*) What is the reason of the remedy. The rule then directs that the courts must adopt that construction which "shall suppress the mischief and advance the remedy". The rule was explained in *Bengal Immunity Co. Ltd.* v. *State of Bihar* by S.R. Das, C.J. as follows: (AIR p. 674, para 22)

'*22*. It is a sound rule of construction of a statute firmly established in England as far back as in 1584 when *Heydon's case* was decided that: (ER p. 638)

"… for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:

1st: What was the common law before the making of the Act.

2nd: What was the mischief and defect for which the common law did not provide.

3rd: What remedy Parliament hath resolved and appointed to cure the disease of the commonwealth, and

4th: The true reason of the remedy;

and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and *pro private commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*.' (*Bengal Immunity Co. Ltd.* v. *State of Bihar*)."

*   *   *   *

32. Justice G.P. Singh in *Principles of Statutory Interpretation*, 12th Edn., has observed that regard be had to the subject and object of the Act. The court's effort is to harmonise the words of the statute with the subject of enactment and the object the legislature has in view. When two interpretations are feasible, the court will prefer the one which advances the remedy and suppresses the mischief as envisioned. The relevant portion is extracted below:

"As stated earlier (Chapter 1, Title 2 'Intention of the Legislature', text and Notes 57 to 69, pp. 14 to 17) and as approved by

the Supreme Court:

'*9.* … "the words of a statute, when there is doubt about their meaning, are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained."'

(*Workmen* v. *Dimakuchi Tea Estate*, AIR p. 356, para 9.) The courts have declined "to be bound by the letter, when it frustrates the patent purposes of the statute". (*Cabell* v. *Markham*), (Judge Learned Hand). In the words of Shah, J.:

'*8.* … It is a recognized rule of interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they best harmonize with the object of the statute and which effectuate the object of the legislature.'

(*New India Sugar Mills Ltd.* v. *CST*, AIR p. 1213, para 8.) Therefore when two interpretations are feasible the court will prefer that which advances the remedy and suppresses the mischief as the legislature envisioned. (*Carew & Co. Ltd.* v. *Union of India*, SCC p. 804, para 40.) The Court should adopt an object-oriented approach keeping in mind the principle that legislative futility is to be ruled out so long as interpretative possibility permits. [*Busching Schmitz (P) Ltd.* v. *P.T. Menghani*, SCC pp. 843-44, para 17.] The object-oriented approach, however, cannot be carried to the extent of doing violence to the plain language used by rewriting the section or substituting words in place of the actual words used by the legislature. (*CIT* v.

> *N.C. Budharaja and Co.*, SCC p. 288, para 13.)
>
> Having regard to the object of the U.P. Bhoodan Yagna Act, 1953 to implement the Bhoodan movement, which aimed at distribution of land to landless labourers who were versed in agriculture and who had no other means of subsistence, it was held that the expression 'landless persons' in Section 14, which made provision for grant of land to landless persons, was limited to landless labourers as described above and did not include a landless businessman residing in a city. (*U.P. Bhoodan Yagna Samiti* v. *Braj Kishore*.)"

33. In *Busching Schmitz (P) Ltd.* v. *P.T. Menghani*, it has been observed that purposive interpretation may be made having regard to the object of the provisions and to avoid any obvious lacuna.

34. The learned author Justice G.P. Singh in *Interpretation of Statutes*, 12th Edn. has also observed that it is the court's duty to avoid hardship, inconvenience, injustice, absurdity and anomaly while selecting out of different interpretations. The doctrine must be applied with great care and in case absurd inconvenience is to be caused that interpretation has to be avoided. Cases of individual hardship or injustice have no bearing for enacting the natural construction. The relevant discussion at pp. 132-33 and 140-42 is extracted here-under:

> "(*a*) *Hardship, inconvenience, injustice, absurdity and anomaly to be avoided*
>
> In selecting out of different interpretations 'the court will adopt that which is just, reasonable and sensible rather than that which is none of those things' (*Holmes* v. *Bradfield Rural District Council*, All ER p. 384) as it may be presumed 'that the legislature should have used the word in that interpretation which least offends our

sense of justice'. (*Simms* v. *Registrar of Probates*, AC p. 335.) If the grammatical construction leads to some absurdity or some repugnance or inconsistency with the rest of the instrument, it may be departed from so as to avoid that absurdity and inconsistency. (*Grey* v. *Pearson*, HLC p. 106.) Similarly, a construction giving rise to anomalies should be avoided. (*N.T. Veluswami Thevar* v. *G. Raja Nainar*, AIR SC pp. 427 and 428.) As approved by Venkatarama Aiyar, J.:

'*7*. … Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence.' (*Tirath Singh* v. *Bachittar Singh*, AIR p. 833, para 7.)"

*   *   *

"Consideration of hardship, injustice or absurdity as avoiding a particular construction is a rule which must be applied with great care. 'The argument ab inconvenienti', said Lord Moulton, 'is one which requires to be used with great caution'. (*Vacher & Sons Ltd.* v. *London Society of Compositors*.) Explaining why great caution is necessary Lord Moulton further observed: (AC p. 130)

'… There is a danger that it may degenerate into mere judicial criticism of the propriety of the Acts of legislature. We have to interpret statutes according to the language used therein, and, though occasionally the respective consequences of two rival interpretations may guide us in our choice between them, it can only be where, taking

the Act as a whole, and viewing it in connection with the existing state of the law at the time of the passing of the Act, we can satisfy ourselves that the words can have been used in the sense to which the argument points.'

(*Vacher & Sons Ltd.* v. *London Society of Compositors*.) According to Brett, L.J., the inconvenience necessitating a departure from the ordinary sense of the words should not only be great but should also be what he calls an 'absurd inconvenience'. Moreover, individual cases of hardship or injustice have no bearing for rejecting the natural construction (*Young & Co.* v. *Royal Leamington Spa Corpn.*), and it is only when the natural construction leads to some general hardship or injustice and some other construction is reasonably open that the natural construction may be departed from. It is often found that laws enacted for the general advantage do result in individual hardship; for example laws of Limitation, Registration, Attestation although enacted for the public benefit, may work injustice in particular cases but that is hardly any reason to depart from the normal rule to relieve the supposed hardship or injustice in such cases. (*Lucy* v. *W.T. Henleys Telegraph Works Co. Ltd.*) 'It is the duty of all courts of justice', said Lord Campbell, 'to take care for the general good of the community, that hard cases do not make bad law'. (*East India Co.* v. *Oditchurn Paul*.) 'Absurdity' according to Willes, J., should be understood 'in the same sense as repugnance that is to say something which would be so absurd with reference to the other words of the statute as to amount to a repugnance'. (*Christophersen* v. *Lotingae*.) 'Absurdity', said Lord Greene, M.R., 'like public policy, is a very unruly horse'.

(*Grundt* v. *Great Boulder Proprietary Mines Ltd.*) He proceeded to add:

'There is one rule, I think which is clear … that, although the absurdity or the non-absurdity of one conclusion as compared with another may be, and very often is, of assistance to the court in choosing between two possible meanings of ambiguous words, it is a doctrine which has to be applied with great care, remembering that Judges may be fallible in this question of an absurdity and in any event it must not be applied so as to result in twisting language into a meaning which it cannot bear. It is a doctrine which must not be used to rewrite the language in a way different from that in which it was originally framed.'

(*Grundt* v. *Great Boulder Proprietary Mines Ltd.*, Ch pp. 159-60.) The alternative construction contended for must be such which does not put an undue strain on the words used; (*Kanailal Sur* v. *Paramnidhi Sadhukhan*) and does not require recasting of the Act or any part of it. It must be possible to spell the meaning contended for out of the words actually used. (*Shamrao V. Parulekar* v. *District Magistrate, Thana*.)

No doubt in cases of ambiguity that construction which better serves the ends of fairness and justice will be accepted, but otherwise it is for the legislature in forming its policy to consider these elements. (*IRC* v. *Mutual Investment Co. Ltd.*) If no alternative construction is open, the court cannot ignore a statutory provision 'to relieve what it considers a distress resulting from its operation; a statute has to be given effect to whether the court likes it or not'. (*Martin Burn Ltd.* v. *Corpn. of Calcutta*.) The function of the court is to find out what is legal and not what is right. (*Chandavarkar Sita Ratna Rao* v. *Ashalata*

> *S. Guram*.) It is presumed that a legislative body intends which is the necessary effect of its enactments; the object, the purpose and the intention of the enactment is the same; it need not be expressed in any recital or Preamble; and it is not competent for any court judicially to ascribe any part of the legal operation of the statute to inadvertence. (*Kariapper* v. *Wijesinha*.)
> The courts should as far as possible avoid a construction which results in anomalies. (*N.T. Veluswami Thevar* v. *G. Raja Nainar*.)"

The Supreme Court in the case of **ESI Corpn. v. A.K. Abdul Samad,** reported in **(2016) 4 SCC 785** has held as under:-

> "**9.** In our considered view, the clause "shall also be liable to fine", in the context of the Penal Code may be capable of being treated as directory and thus, conferring on the court, a discretion to impose sentence of fine also in addition to imprisonment although such discretion stands somewhat impaired as per the view taken by this Court in *Zunjarrao Bhikaji Nagarka*. But clearly no minimum fine is prescribed for the offences under IPC nor that the Act was enacted with the special purpose of preventing economic offences as was the case in *Chern Taong Shan*. The object of creating offence and penalty under the Employees' State Insurance Act, 1948 is clearly to create deterrence against violation of provisions of the Act which are beneficial for the employees. Non-payment of contributions is an economic offence and therefore the legislature has not only fixed a minimum term of imprisonment but also a fixed amount of fine of five thousand rupees under Section 85(*a*)(*i*)(*b*) of the Act. There is no discretion of awarding less than the specified fee, under the main provision. It is only the proviso which is in the nature of an exception whereunder the court is vested with discretion

> limited to imposition of imprisonment for a lesser term. Conspicuously, no words are found in the proviso for imposing a lesser fine than that of five thousand rupees. In such a situation the intention of the legislature is clear and brooks no interpretation. The law is well settled that when the wordings of the statute are clear, no interpretation is required unless there is a requirement of saving the provisions from vice of unconstitutionality or absurdity. Neither of the twin situations is attracted herein."

The Supreme Court in the case of **Southern Motors v. State of Karnataka,** reported in **(2017) 3 SCC 467** has held as under:-

> "**36.** As would be overwhelmingly pellucid from hereinabove, though words in a statute must, to start with, be extended their ordinary meanings, but if the literal construction thereof results in anomaly or absurdity, the courts must seek to find out the underlying intention of the legislature and in the said pursuit, can within permissible limits strain the language so as to avoid such unintended mischief."

The Supreme Court in the case of **State of Jharkhand v. Tata Steel Ltd.** reported in **(2016) 11 SCC 147** has held as under:-

> "**25.** In this regard, reference to *Mahadeo Prasad Bais* v. *ITO* would be absolutely seemly. In the said case, it has been held that an interpretation which will result in an anomaly or absurdity should be avoided and where literal construction creates an anomaly, absurdity and discrimination, statute should be liberally construed even slightly straining the language so as to avoid the meaningless anomaly. Emphasis has been laid on the principle that if an interpretation leads to absurdity, it is the duty of the court to avoid the same.
>
> **26.** In *Oxford University Press* v. *CIT* Mohapatra, J. has opined that interpretation should serve the

intent and purpose of the statutory provision. In that context, the learned Judge has referred to the authority in *State of T.N.* v. *Kodaikanal Motor Union (P) Ltd.* wherein this Court after referring to *K.P. Varghese* v. *ITO* and *Luke* v. *IRC* has observed: (*Oxford University Press case*, SCC p. 376, para 33)

> "*33.* … '*17.* The courts must always seek to find out the intention of the legislature. Though the courts must find out the intention of the statute from the language used, but language more often than not is an imperfect instrument of expression of human thought. As Lord Denning said it would be idle to expect every statutory provision to be drafted with divine prescience and perfect clarity. As Judge Learned Hand said, we must not make a fortress out of dictionary but remember that statutes must have some purpose or object, whose imaginative discovery is judicial craftsmanship. We need not always cling to literalness and should seek to endeavour to avoid an unjust or absurd result. We should not make a mockery of legislation. To make sense out of an unhappily worded provision, where the purpose is apparent to the judicial eye 'some' violence to language is permissible.' (*Kodaikanal Motor Union case*, SCC p. 100, para 17)"

27. Sabharwal, J. (as His Lordship then was) has observed thus: (*Oxford University Press case*, SCC p. 384, para 58)

> "*58.* … It is well-recognised rule of construction that a statutory provision must be so construed, if possible, that absurdity and mischief may be avoided. It was held that construction suggested on behalf of the Revenue would lead to a wholly unreasonable result which could never have been intended by the legislature. It was said that the literalness in the interpretation of

> Section 52(2) must be eschewed and the court should try to arrive at an interpretation which avoids the absurdity and the mischief and makes the provision rational, sensible, unless of course, the hands of the court are tied and it cannot find any escape from the tyranny of literal interpretation. It is said that it is now well-settled rule of construction that where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the legislature, the court may modify the language used by the legislature or even 'do some violence' to it, so as to achieve the obvious intention of the legislature and produce a rational construction. In such a case the court may read into the statutory provision a condition which, though not expressed, is implicit in construing the basic assumption underlying the statutory provision."

The Supreme Court in the case of **H.S. Vankani v. State of Gujarat,** reported in **(2010) 4 SCC 301** has held as under:-

> "**43.** It is a well-known rule of construction that the provisions of a statute must be construed so as to give them a sensible meaning. The legislature expects the court to observe the maxim *ut res magis valeat quam pereat* (it is better for a thing to have effect than to be made void). The principle also means that if the obvious intention of the statute gives rise to obstacles in implementation, the court must do its best to find ways of overcoming those obstacles, so as to avoid absurd results. It is a well-settled principle of interpretation of statutes that a construction should not be put on a statutory provision which would lead to manifest absurdity, futility, palpable injustice and absurd

inconvenience or anomaly.

44. In this connection reference may be made to the judgment in *R (Edison First Power Ltd.)* v. *Central Valuation Officer* wherein Lord Millet said: (All ER pp. 116-17)

> "*116.* … The courts will presume that Parliament did not intend a statute to have consequences which are objectionable or undesirable; or absurd; or unworkable or impracticable; or merely inconvenient; or anomalous or illogical; or futile or pointless.
>
> *117.* But the strength of these presumptions depends on the degree to which a particular construction produces an unreasonable result. The more unreasonable a result, the less likely it is that Parliament intended it…."

45. Reference may also be made to the judgment in *Andhra Bank* v. *B. Satyanarayana* wherein this Court has held: (SCC p. 662, para 14)

> "*14.* A machinery provision, it is trite, must be construed in such a manner so as to make it workable having regard to the doctrine '*ut res magis valeat quam pereat*'."

46. In *Tinsukhia Electric Supply Co. Ltd.* v. *State of Assam* this Court held as follows: (SCC p. 754, para 118)

> "*118.* The courts strongly lean against any construction which tends to reduce a statute to futility. The provision of a statute must be so construed as to make it effective and operative, on the principle '*ut res magis valeat quam pereat*'. It is, no doubt, true that if a statute is absolutely vague and its language wholly intractable and absolutely meaningless, the statute could be declared void for vagueness. This is not in judicial review by testing the law for arbitrariness or unreasonableness under Article 14; but what a court of construction, dealing with the language of a statute, does in order to ascertain from, and accord to, the statute the

meaning and purpose which the legislature intended for it."

47. Reference may also be made to the decisions in *Madhav Rao Jivaji Rao Scindia* v. *Union of India*, *Union of India* v. *B.S. Agarwal* and *Paradise Printers* v. *UT of Chandigarh*.

48. The above legal principles clearly indicate that the courts have to avoid a construction of an enactment that leads to an unworkable, inconsistent or impracticable results, since such a situation is unlikely to have been envisaged by the rule-making authority. The rule-making authority also expects rule framed by it to be made workable and never visualises absurd results."

16. Accordingly, this Court is of the considered opinion that the Executing Court did not commit any mistake in passing the order dated 16/9/2019 in Case No.6900105/2016, thereby directing the petitioner to pay the stamp duty, failing which the execution application shall stand dismissed by considering the arbitration award as not executable.

17. With aforesaid, the petition fails and is hereby **dismissed.**

(G.S. Ahluwalia)
Judge

Arun*