HIGH COURT OF MADHYA PRADESH : JABALPUR

F.A. No.514/2012

M/s Technofab Engineering Limited .....Appellant

Versus

Bharat Heavy Electricals Limited and others ....Respondents

F.A. No.1134/2012

Harnath Singh Chowhan .....Appellant

Versus

Smt. Chandravati (dead) and others ....Respondents

M.A. No.1774/2011

Ku. Archana Rai .....Appellant

Versus

Babulal Goojar and others ....Respondents

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Coram:

Hon'ble Shri Justice A. M. Khanwilkar, Chief Justice
Hon'ble Shri Justice Shantanu Kemkar
Hon'ble Shri Justice J.K. Maheshwari

Whether approved for reporting : Yes

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Shri Rajendra Tiwari, learned Senior Advocate with Shri Varun Kumar, Advocate for the appellant in F.A. No.514/2012.

Shri S.K. Rao, learned Senior Advocate with Shri Ajit Agrawal, Shri Sanjiv Kumar Chaturvedi, Shri Vineet Kumar Pandey, Advocates for the appellant in F.A. No.1134/2012.

Shri R.K. Sanghi with Shri Kapil Patwardhan, Advocates for the appellant in M.A. No.1774/2011.

Shri Ravish Chandra Agrawal, learned Advocate General with Shri Amit Seth, Govt. Advocate for the respondents/State.

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Reserved On : 07.09.2015

Date of Decision : 15.09.2015

J U D G M E N T

{ 15th September, 2015}

Per: A.M. Khanwilkar, Chief Justice:

These matters have been referred by the Division Bench for reconsideration of the principle expounded in the decision of Division Bench of our High Court in the case of **Fatehchand vs. Land Acquisition and Rehabilitation Officer and others**[1]**.**

2. The questions to be considered by the Full Bench have been formulated by the Division Bench in F.A. No.514/2012 and F.A. No.1134/2012 vide order dated 28.11.2014, as follows:-

> "1. Whether the ratio of the decision in Fateh Chand Supra (supra) is correct?
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> 2. Whether the decision of the Supreme Court in the State of Bombay vs. M/s. Supreme General Films Exchange Limited, AIR 1960 SC 980 has application to Article 1-A of Schedule I to the Court Fees Act, 1870 as amended by Court Fees (Madhya Pradesh Amendment) Act, 2008?"

[1] 2009 (4) M.P.L.J 50

3. M.A. No.1774/2011 has been ordered to be heard analogously with the two appeals vide order dated 01.09.2015, hearing whereof was already in progress on the aforesaid two questions. As similar question was ordered to be considered by the Larger Bench even in the said appeal, request made by the counsel for the appellant in this appeal was acceded to on clear understanding that the appellant in this appeal will not ask for adjournment of the case which was already in progress before the Full Bench, merely because his appeal has now been ordered to be heard analogously. That condition was accepted by the counsel for the appellant in the said appeal.

4. Accordingly, hearing in all the three appeals finally concluded on 07.09.2015 and was reserved for recording opinion on the two questions referred to us for consideration.

5. The questions posed by the Division Bench, are in the appeals filed before this Court, arising from the judgment and decree or order passed by the subordinate Court in suit/proceedings instituted prior to 02.04.2008 – before coming into force of the Court Fees (Madhya Pradesh Amendment) Act,

2008 (No.6 of 2008). In each of these cases, the suit/proceedings so filed have been decided by the subordinate Court after coming into force of the Amendment Act. In that background, the appellant claims that since the cause to present the appeal before this Court arose after coming into force of Amendment Act of 2008, which is more beneficial legislation to the appellant, providing for upper limit of Court Fees to be paid on the memorandum of appeal, the appellant cannot be charged Court Fees on the basis of unamended provisions.

6. This very question was considered by the Division Bench of our High Court in the case of Fatehchand (supra). The Division Bench opined that the Amendment Act was not made retrospective in nature either expressly or impliedly. In absence thereof, it was required to be treated as prospective in nature. Relying on the decision of the Supreme Court in the case of **State of Bombay vs. M/s Supreme General Films Exchange Ltd.**[2] and the decision of the Division Bench of our High Court in the case of **Smt. Supriya Kathand and others vs. Shri Lal**

[2] AIR 1960 SC 980

Singh and others[3] and two Single Judge judgments in **Dinaji Tukaram Pawar vs. Jiwanlal Pawar**[4] and **Chairman, Gramin Vidyut Sahkari Samiti and others vs. Rajesh Kushwaha and others**[5], held that the amended provision had no applicability to appeals filed after the amendment arising out of the suit instituted prior to the amendment. The Division Bench distinguished the decision of the Supreme Court in **Lakshmi Ammal vs. K.M. Madhavakrishnan and others**[6] and answered the issue against the appellant holding that the appellant, who incidentally files the appeal, after the Amendment of 2008, was not entitled to get the benefit of upper limit of Court Fees. But, would be liable to pay *ad valorem* Court Fees as per the unamended provisions. The correctness of this view is the subject matter before us.

7. Concededly, the conclusion and opinion recorded by the Division Bench in Fatehchand's case (supra) is, essentially, on the principle stated by the Supreme Court in the case of State of

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[3] MA No.2110/2008 decided on 25.6.2008
[4] 1980 MPLJ 801
[5] 2002 (1) MPLJ 168
[6] (1978) 4 SCC 15

Bombay (supra). Just as the Division Bench relied on the said decision, even the other decisions referred to by the Division Bench in Fatehchand's case (supra), of this Court, of Division Bench and Single Bench respectively, essentially, rely on the principle stated in the case of State of Bombay (supra) of the Supreme Court, referred to above. Let us, therefore, straightaway turn to the decision of the Supreme Court.

8. Notably, the matter before the Supreme Court arose from the decision of the Bombay High Court where the argument was in relation to the amended provision "enhancing the Court Fees". That was obviously a converse situation. In other words, the unamended provision regarding the Court Fees amount was more beneficial to the plaintiff. By amendment, however, the Court Fees amount, on the same claim, was enhanced precipitously. In the context of that amendment, the Supreme Court considered the argument of the plaintiff. The Supreme Court held that right of appeal is a substantive right which vests in a litigant at the date of the filing of the suit, and cannot be taken away unless the legislature expressly or by necessary

intendment says so; furthermore, an appeal is a continuation of the suit, and it is not merely that a right of appeal cannot be taken away by a procedural enactment which is not made retrospective, but the right cannot be impaired or imperiled nor can new conditions be attached to the filing of the appeal; "nor can a condition already existing be made more onerous or more stringent so as to affect the right of appeal arising out of a suit instituted prior to the amendment".

9. Indeed, in paragraph No.8 of the reported decision, the Supreme Court has unambiguously mentioned the core controversy examined by it. It was in respect of grievance of the plaintiff/appellant about impairment of the right of appeal by imposing a more stringent or onerous condition thereon, is not a matter of procedure only or is it a matter of substantive right? In paragraph 12 after analyzing the arguments and the decisions pressed into service, by the parties, the Supreme Court concluded thus:-

> "12. It is thus clear that in a long line of decisions approved by this Court and at least in one given by this Court, it has been held that an impairment of the right of appeal by putting a new restriction thereon or

> imposing a more onerous condition is not a matter of procedure only; it impairs or imperils a substantive right and an enactment which does so is not retrospective unless it says so expressly or by necessary intendment."
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> *(emphasis supplied)*

10. Indubitably, the right of appeal is a substantive right. Further, it vests in the litigant on the date of filing of the suit. That vested remedy cannot be taken away directly or indirectly by putting a new condition which is more onerous, unless the legislature expressly or by necessary intendment makes that provision. In our considered opinion, this Supreme Court decision is not an authority on the proposition that the quantum of Court Fees specified on the date of filing of the suit, even though much higher and irrational, must govern the filing of an appeal by the party to the said suit/proceedings before the superior Court, notwithstanding the beneficial legislation introduced in the shape of amendment to the Court Fees Act to rationalize the Court Fees leviable on such proceedings.

11. Providing for upper limit of Court Fees instead of *ad valorem* Court Fees is not only a measure of rationalization of Court Fees, but a just and proper approach to expatriate and

dissipate the cause of discrimination and to uphold the rights guaranteed to the litigating public under Articles 14 and 21 of the Constitution of India - of easy access to justice by making it cost effective and in particular restricted Court Fees in the form of upper limit therefor.

12. The decision in the case of State of Bombay (supra), as aforesaid, deals with a converse position wherein by virtue of amendment, the legislature precipitously enhanced the Court Fees amount making it more stringent or onerous condition affecting and impairing or imperiling the vested right of the litigant. That logic will have no application to a situation where the amendment is a beneficial legislation and is intended to remove the mischief caused to the litigant due to recovery of irrational Court Fees in the form of *ad valorem* Court Fees, without prescribing any upper limit therefor.

13. With utmost respect to the Division Bench, the decision in the case of State of Bombay (supra) is not an authority for interpreting the amended provisions introduced by the M.P. Amendment Act of 2008. Just as the Division Bench in the case

of Fatehchand (supra) has relied on the principle stated in the case of State of Bombay (supra), even the other decisions referred to in Fatehchand's case (supra) of Division Bench and Single Bench of this Court, proceeded on the same erroneous basis.

14. We may now usefully refer to the Court-Fees (Madhya Pradesh Amendment) Act, 2008 (No.6 of 2008). Section 2 of the Amendment Act postulates that the Court Fees Act, 1970 (Cent. Act No.7 of 1870) in its application to the State of Madhya Pradesh be amended in the manner mentioned therein. Section 3 of the Amendment Act with which we are concerned, reads thus:-

> **"3. Amendment of Schedule I**.— In Schedule I to the principal Act, for Article 1-A, the following article shall be substituted, namely : –
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> | | | |
> |---|---|---|
> | "1-A. Plaint, written statement pleading a set-off or counter claim, or memorandum of appeal (not otherwise provided for in this Act) presented to any Civil or Revenue Court except those mentioned in Section 3. | When the amount or value of the subject matter in dispute does not exceed five lacs rupees. | Twelve percent subject to a minimum of one hundred rupees. |
> | | When such amount or value exceeds five lacs rupees but does not exceed ten lacs rupees. | Sixty thousand rupees plus seven percent on the amount or value in excess of five lacs rupees. |

When such amount or value exceeds ten lacs rupees. :	Ninety five thousand rupees plus three percent on the amount or value in excess of ten lacs rupees subject to a maximum of one lac and fifty thousand rupees.
Provided that minimum fee leviable on a memorandum of appeal shall be one hundred rupees."	

(emphasis supplied)

15. The statement of objects and reasons necessitating the above amendment reads thus:-

> **"Statement of objects and reasons**.—In order to rationalize the court fees leviable on plaint, written statement pleading a set-off or counter-claim, or memorandum of appeal presented to any Civil or Revenue Court, it is decided to amend Article 1-A of Schedule I to the Court-fees Act, 1870 (No.7 of 1870) in its application to the State of Madhya Pradesh.
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> **2.** At present incidences of dishounoured cheques are in abundance and there is no provision of levy of court fees in such complaints. Therefore, it is decided to levy court fees on application or complaint of an offence triable under Section 138 of the Negotiable Instruments Act, 1881 (No. 26 of 1881), by suitable amendment of Article 1 of Schedule II to the principal Act in its application to the State of Madhya Pradesh.
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> **3.** It is also decided to provide for levy of court fees on memorandum of appeal when presented to the High Court by the Claimant for enhancement of award passed by the Motor Accident Claims Tribunal,

> by suitable amendment of Article 11 of Schedule II to the principal Act in its application to the State of Madhya Pradesh.
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> 4. Hence this Bill."
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> *(emphasis supplied)*

16. A fortiori, we are fortified in our opinion that the Amendment of 2008 vide Amendment M.P. Act No.6 of 2008 is a beneficial legislation and also intends to remove the mischief caused to the litigating public because of *ad valorem* Court Fees without any upper limit therefor. The Division Bench in Fatehchand's case (supra) has no doubt distinguished the decision in Lakshmi Ammal (supra) but the principle underlying the said decision would apply on all fours for interpretation of amended provisions of 2008. In that, the Court Fee, if it seriously restricts the rights of a person to seek his remedies in courts of justice, should be strictly construed. That, access to justice is the basis of the legal system. Further, when there is a doubt, reasonable, of course, the benefit must go to the litigating public who says that lesser court fee alone be paid.

17. Besides this decision, it may be useful to advert to another Supreme Court decision in the case of **P.M**.

Ashwathanarayana Setty and others vs. State of Karnataka and others[7]. In that case, the Supreme Court was called upon to consider the question about the legality of the levy of court fees – *ad valorem* on the value or amount of the subject matter of suits and appeals without any prescription of upper limit in the concerned States (Karnataka, Rajasthan and Maharashtra) enactments. The point no.(d) considered by the Supreme Court in this decision, as articulated in paragraph 31 of the judgment, is more or less similar to the issue that arises for our consideration. That has been considered in paragraph 90 to 94 and answered in the following words:-

> **"90.** In the appeal of the State of Maharashtra arising out of the Bombay Court Fees Act, 1959, the High Court has struck down the impugned provisions on the ground that the levy of court fee on proceedings for grant of probate and letters of administration ad-valorem without the upper limit prescribed for all other litigants–the court fee in the present case amounts to Rs.6,14,814 –is discriminatory. The High Court has also held that, there is no intelligible or rational differentia between the two classes of litigation and that having regard to the fact that what is recovered is a fee, the purported classification has no rational nexus to the object. The argument was noticed by the Learned Single Judge thus:
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> > "Petitioners next contend that the impugned clause discriminates as between different types of suiters and that there is no

[7] 1989 Supp (1) SCC 696

> justification for this discrimination. Plaintiffs who go to civil courts claiming decrees are not required to pay court-fees in excess of Rs.15,000. This is irrespective of the amounts claimed over and above Rs.15 lacs. As against this, persons claiming probates have no such relief in the form of an upper limit to fee payable."

91. This contention was accepted by the Learned Single Judge who has upheld the appeal. Indeed, where a proceeding for grant of probate and letters of administration becomes a contentious matter, it is registered as a suit and proceeded with accordingly. If in respect of all other suits of whatever nature and complexity an upper limit of Rs.15,000 on the court fees is fixed, there is no logical justification for singling out this proceeding for an ad valorem impost without the benefit of some upper limit prescribed by the same statute respecting all other litigants. Neither before the High Court – nor before us here – was the impost sought to be supported or justified as something other than a mere fee, levy of which is otherwise within the State's power or as separate 'fee' from another distinct source. It is purported to be collected and sought to be justified only as court fee and nothing else.

92. The discrimination brought about by the statute, in our opinion, fails to pass the constitutional master as rightly pointed out by the High Court. The High Court, in our opinion rightly, held:

> "There is no answer to this contention, except that the legislature has not thought it fit to grant relief to the seekers of probates, whereas plaintiffs in civil suits were thought deserving of such an upper limit. The discrimination is a piece of class legislation prohibited by the guarantee of equal protection of laws embodied in Article 14 of the Constitution. On this ground also item 10 cannot be sustained "

93. We approve this reasoning of the High Court and the decision of the High Court is sustained on this ground alone. In view of this any other ground

urged against the constitutionality of the levy is unnecessary to be examined.

94. Contention (d) is accordingly held an answer against the appellant and the appeals preferred by the State of Maharashtra are liable to be and are hereby dismissed."

In para 98 the Court observed thus:-

"98. Though we have abstained from striking down the legislation, yet, it appears to us that immediate steps are called for and are imperative to rationalise the levies. In doing so the States should realise the desirability of levying on the initial slab of the subject matter – say upto Rs.15,000 – a nominal court-fees not exceeding 2 to 2-1/2 per cent so that small claims are not priced out of courts. "Those who have less in life" it is said "should have more in law". Claims in excess of Rs.15,000 might admit of an *ad volorem* levy at rates which, preferably, should not exceed 7-1/2 per cent subject further to an upper limit which, having regard to all circumstances, could be envisaged at Rs.75,000. The upper limit even prior to 1974 under the 'Bombay Act' was Rs.15,000 and prior to 1961 under the 'Rajasthan Act' at Rs.7500. Having regard to steep inflation over the two decades the upper limit could perhaps go upto Rs.75,000. After that limit is reached, it is appropriate to impose on gradually increasing slabs of the value of the subject matter, progressively decreasing rates, say from 7-l/2 per cent down to 1/2 per cent in graduated scales. The governments concerned should bestow attention on these matters and bring about a rationalisation of the levies."

(emphasis supplied)

18. The principle underlying this decision would apply on all fours for considering the argument as to whether the litigating public in the State of Madhya Pradesh must be compelled and strong-armed to pay court fee on *ad valorem* basis without any

upper limit, even though remedy of appeal became available to them after coming into force of M.P. Act No.6 of 2008 w.e.f. 02.04.2008. The answer is an emphatic "No". The State must not only bear in mind the unimpeachable words of the Supreme Court that, those who have less in life should have more in law, but also the inviolable policy of impost of Court Fee must be just, fair and rational. For, irrational Court Fees (*ad valorem* basis without any upper limit), is bound to dissuade the have-nots or persons coming from the humble background, who have to work to make both ends meet. They anyway have to come to the Court for resolution of their disputes, not by choice. Our Constitution enjoins the State to guarantee socialist dispensation, besides ensuring that its action and law should be non-discriminatory, non-arbitrary, just and fair. Further, viewed from the prism of Article 14 of the Constitution of India, if a person files the original suit/proceeding before the trial Court after coming into force of the Amendment Act on 02.04.2008, gets the advantage of the provision of upper limit of Court Fees. But, that benefit, if not extended to another person, who, perforce, is required to file a memorandum of appeal before the

High Court on or after 02.04.2008 in respect of identical subject matter, would result in treating equals as unequals. Both must be considered as equals for the limited purpose of extending benefit of amended provision regarding upper limit of Court Fees, having approached the Court after the coming into force of the amendment, to get justice in relation to similar subject matter – albeit the form of proceedings may be different. Else, the latter (who files appeal) will be obliged to pay Court Fees on *ad valorem* basis absent any upper limit, as per the unamended provision. In the context of the amended provision (beneficial legislation), the condition in the unamended provision attached to the remedy of appeal becomes more onerous to him. Viewed thus, the interpretation of the amended provision under consideration, given by the Division Bench, inevitably, results in amendment becoming a class legislation, prohibited by guarantee of equal protection of laws embodied in Article 14 of the Constitution. In our opinion, the benefit of upper limit of Court Fees prescribed by the Amendment Act, must be applied uniformly to all litigants instituting their claim after 02.04.2008 – be it in the form of plaint before the subordinate Court or

memorandum of appeal before the High Court, as the case may be – being beneficial Court Fee regime.

19. Accordingly, the two questions articulated for our consideration, will have to be answered in favour of the appellants, who have or would institute appeal in the Civil Court or Revenue Court after coming into force of the M.P. Act No.6 of 2008 w.e.f. 02.04.2008, substituting Article 1-A of Schedule I of the Court Fees Act, 1870 as applicable to the State of Madhya Pradesh, irrespective of the fact that the original suit/proceedings instituted in relation to the said remedy was filed prior to the coming into force of the said Act.

20. Besides the logic applicable to the amended Article 1-A of Schedule-I of the Act, referred to above, there is yet another argument canvassed by the counsel for the appellants, which commends to us. The argument proceeds that the intent behind the Amendment Act, 2008 being M.P. Act No.6 of 2008 was to substitute Article 1-A, as is explicitly mentioned in Section 3 of the said Act; and not to amend the existing provision, as such. We find force in this submission. As it is a case of substitution,

in view of the exposition of the Supreme Court in para 15 onwards in the case of **State of Maharashtra vs. The Central Provinces Manganese Ore Co. Ltd.[8],** the amended provision results in repeal and replacement of a legislative provision by a fresh enactment, as in this case. The same view has been taken in the case of **Zile Singh vs. State of Haryana and others[9]**. In para 24 the Supreme Court observed that the substitution of one text for the other pre-existing text is one of the known and well-recognised practices employed in legislative drafting. "Substitution" has to be distinguished from "supersession" or a mere repeal of an existing provision. In para 25 the Court observed thus:-

> "**25.** Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision *(Principles of Statutory Interpretation, ibid, p.565)*. If any authority is needed in support of the proposition, it is to be found in *West U.P. Sugar Mills Assn.* v. *State of U.P., State of Rajasthan* v. *Mangilal Pindwal, Koteswar Vittal Kamath* v. *K. Rangappa Baliga and Co.* and *A.L.V.R.S.T. Veerappa Chettiar* v. *S. Michael*. In West U.P. Sugar Mills Assn. case a three-Judge Bench of this Court held that the State Government by substituting the new rule in place of the old one never intended to keep alive the old rule. Having regard to the totality of the circumstances centering around the issue the Court held that the substitution had the effect of just deleting the old rule

[8] AIR 1977 SC 879
[9] (2004) 8 SCC 1

> and making the new rule operative. In *Mangilal Pindwal* case this Court upheld the legislative practice of an amendment by substitution being incorporated in the text of a statute which had ceased to exist and held that the substitution would have the effect of amending the operation of law during the period in which it was in force. In *Koteswar* case a three-Judge Bench of this Court emphasized the distinction between "supersession" of a rule and "substitution" of a rule and held that the process of substitution consists of two steps : first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place."

Also see **State of Tamil Nadu and others vs. K. Shyam Sunder and others**[10]**,** para 55:

> "**55**. In State of Rajasthan v. Mangilal Pindwal, this Court held that when the statute is amended, the process of substation of statutory provisions consists of two parts:
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> (i) the old rule is made to cease to exist;
>
> (ii) the new rule is brought into existence in its place.
>
> In other words, the substitution of a provision results in repeal of the earlier provision and its replacement by the new provision. (See also Koteswar Vittal Kamath v. K. Rangappa Baliga & Co.).''
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> *(emphasis supplied)*

21. As a result, we hold that the decision of the Division Bench in the case of Fatehchand (supra) does not lay down the correct legal position. Further, we hold that the principle expounded by the Supreme Court in State of Bombay (supra) is inapplicable to the fact situation arising on account of the

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[10] (2011) 8 SCC 737

amended provisions, which are more beneficial to the litigating public in the State of Madhya Pradesh; and not onerous, much less more onerous condition so as to result in impairment or imperilment of the substantive right of remedy of appeal of the concerned appellant.

22. Two other questions arose for our consideration. The first was about the efficacy of "comma (,)" inserted in the amended Article 1-A of Schedule I after the word expression "counter claim" and before the expression "or memorandum". However, that question need not detain us because of the Hindi version of the official Act which does not contain such **","** at the given place. In view of the provisions in the Madhya Pradesh Official Language Act, 1957 (M.P. Act No.5 of 1958), in particular, Section 3 thereof, we may have to accept the Hindi publication as more authentic and prefer the same. Section 3 of the Act of 1957 reads thus:-

> **"3. Official language for official purposes of the State**.—[1] Subject as hereinafter provided, Hindi shall be the official language of the State for all purposes except such purposes as are specifically excluded by the Constitution and in respect of such matters as may be specified by Government from time to time by notification.

> [(2) The form of numerals to be used for the official purposes of the State shall be the Devanagari form of numerals:
>
> Provided that the State Government may, by notification, authorize the use of the international form of Indian numerals for any official purpose of the State.]"

23. The Full Bench of our High Court in the case of **Mangilal and another vs. Board of Revenue, M.P. and others**[11] has authoritatively held that after the enactment of the Madhya Pradesh Official Language Act, 1957, the Hindi version published, be relied in a case of doubt. The Full Bench has considered the provisions of the Madhya Pradesh Official Language Act as also Article 345 of the Constitution of India while answering the question considered in that behalf.

24. Our attention was invited to the decision of the Division Bench of our High Court in the case of **Vikramsingh and others vs. Collector, Dewas and others**[12]**.** This decision, no doubt, refers to the exposition of the Full Bench in the case of Mangilal (supra) but has distinguished the same on the ground that the Court was concerned with a notification and not

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[11] 1983 JLJ 385 (Full Bench)
[12] 1989 JLJ 675

question of any interpretation involved in it.

25. Be that as it may, the other incidental question, which arose for our consideration, was in the context of the expression used in Article 1-A of Schedule-I as "Civil Court". The expression "Civil Court" has not been defined in the Court Fees Act or for that matter in the Civil Procedure Code, as such. The question posed was whether the High Court can be considered as a Civil Court. This doubt has been answered by relying on the definition of High Court as given in the General Clauses Act, 1897. Section 3(25) defines the expression "High Court" which reads thus:-

> "(25) ***"High Court"***, used with reference to civil proceedings, shall mean the highest Civil Court of appeal (not including the Supreme Court) in the part of India in which the Act or Regulation containing the expression operates."

26. In view of this definition, the expression "Civil Court" occurring in Article 1-A of Schedule-I encompasses the High Court being the highest civil court of appeal (not including the Supreme Court) in the part of India (the State of Madhya Pradesh) to which the Court Fees Act operates, as is applicable

to the State of Madhya Pradesh.

27. Although, the counsel appearing for the respective parties have invited our attention to other decisions which, however, we find it to be only repetitive. Nevertheless, we may refer to the same for the sake of completing the record, without analyzing in detail. The learned Advocate General has additionally placed reliance **In re Reference under S. 5, Court-fees Act**[13] and of the Division Bench in **Sawaldas Madhavdas vs. Arati Cotton Mills Ltd.**[14], which decisions have been considered by the Supreme Court in the case of State of Bombay (supra).

28. Reliance was also placed on the decision in the case of **Messrs. Hoosein Kasam Dada (India) Ltd. vs. The State of Madhya Pradesh and others**[15] on the proposition that amendment does not apply to proceedings commenced before amendment. For the same reasons, as recorded while analyzing the decision of the State of Bombay (supra), even this decision will be of no avail and is not an authority on the proposition

[13] AIR 1955 BOMBAY 287
[14] AIR 1955 (Bombay) 332
[15] AIR 1953 SC 221

answered by us.

29. Reliance was also placed on the decision of the Supreme Court in **Garikapati Veeraya vs. N. Subbiah Choudhry and others**[16] to buttress the contention that suit filed before the specified date, gives rise to vested right of appeal and that right of appeal is not a mere matter of procedure but is a substantive right. We have already considered this aspect and also find that the principle expounded in this decision, in no way, alter the interpretation of Article 1-A in Schedule-I as amended by M.P. Act No.6 of 2008. We have already analyzed this aspect in the earlier paragraphs of the judgment in detail.

30. Reliance was also placed on the decision of Division Bench in the case of **Arjuna Govinda (Plaintiff) vs. Amrita and others**[17]. This decision is on the same lines as in the case of State of Bombay (supra). In that, the amendment of Court Fees Act resulted in enhancement of Court Fees and not beneficial to the litigating public, as is in this case. Accordingly, even this

[16] AIR 1957 SC 540
[17] 1956 NLJ 382

judgment, for the same reasons, will be of no avail in answering the questions under consideration, being a converse case.

31. Reliance was also placed on another decision of Full Bench reported in the case of **Radhakisan Laxminarayan Toshnival vs. Shridhar Ramchandra Alshi and others**[18]. The question considered in this decision was right of appeal being a substantive and a vested right, cannot be taken away by the rule making powers of the High Court and in any event the amended rule was not expressly made retrospective, it cannot affect the pending appeals. The logic considered in the said decision is not strictly applicable to the questions considered in the context of the amendment to the provisions of the Court Fees Act, making it more favourable and beneficial to the litigating public for resorting to the remedy of appeal against the decision rendered by the subordinate Court in the original proceedings/suit instituted prior to 02.04.2008. We may make it clear that the view taken by us necessarily applies to all appeals filed or to be filed in the Civil or Revenue Court after the cut off date, i.e., coming into the force of M.P. Act No.6 of 2008 w.e.f.

[18] AIR (37) 1950 Nagpur 177 (Full Bench)

02.04.2008.

32. We do not intend to examine any other situation as that does not arise for our consideration.

33. Reliance has also been placed by the learned Advocate General on the decision of the Single Judge of our High Court in the cases of **Dinaji Tukaram Pawar vs. Jiwanlal**[19] and **Chairman, Gramin Vidyut Sahkari Samiti Maryadit** (supra). For the view that we have taken to overturn the opinion of the Division Bench, for the same reasons, even these decisions will have to be held as not laying down the correct position of law; and to have misapplied the exposition of the Supreme Court in State of Bombay (supra), which decision deals with a converse situation of enhanced Court Fees, making it more onerous to the litigant for resorting to remedy of appeal.

34. We place a word of appreciation on record for the able assistance given not only by the learned Advocate General and the Senior Counsels for the appellants who have appeared before us but also by Shri R.K. Sanghi, Advocate, having filed

[19] 1980 MPLJ 801

the written submissions which enabled us to conclude the hearing of the cases expeditiously.

35. As the reference has been answered, the matters may now be placed before the appropriate Court for further consideration in accordance with law.

(**A.M. Khanwilkar**) **(Shantanu Kemkar)** **(J.K. Maheshwari)**
Chief Justice **Judge** **Judge**

PSM/AM.